



Oregon

Kate Brown, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Racquel Rancier, Senior Policy Coordinator 

SUBJECT: Agenda Item G, November 16, 2018
Water Resources Commission Meeting

Legislative Update

I. Introduction

During this informational agenda item, staff will provide an update on the 2018 Emergency Board Request and the 2019 Legislative Session.

II. Emergency Board

The Department's base budget to pay for legal expenses is approximately \$835,000, and the Department anticipates that it will exceed that amount by \$1.3 million for the 2017-19 biennium. During September 24-26, the Oregon Legislature held interim meetings of committees. The Joint Emergency Board approved \$1.3 million to pay for the Department's anticipated legal expenses this biennium.

III. 2019 Legislative Session

Legislative Concepts: As previously discussed, the Department's 2019 Legislative Concepts address the following three topics: (1) Extending Place-Based Planning; (2) Modernizing the Dam Safety Statutes; and (3) Transfers in the Type of Stored Water. Descriptions of the concepts are included in Attachments 1-3. If approved by the Governor's office to move forward, these concepts will be pre-session filed.

Agency Request Budget: The Department submitted its 2019-21 Agency Request Budget (ARB) in early August. The ARB proposes investments in water that will further implementation of the 2017 Integrated Water Resources Strategy to help the state understand and meet water needs now and into the future.

The full ARB and detailed descriptions of each policy option package are available online at: www.oregon.gov/OWRD/programs/policylawandrules/LegislativeAndBudget/. Table 1 on the next page lists the policy option packages proposed in the 2019-2021 ARB.

Table 1. Final 2019-21 Agency Request Budget Policy Option Packages

<i>Budget Packages</i>	<i>FTE</i>	<i>General Fund</i>	<i>Lottery Bonds / Other Funds</i>
Place-Based Planning Community Support	0.88	\$979,950	-
Groundwater Data, Management & Protection	11.44	\$3,558,247	(\$235,608)
Resolving Complex Water Issues	2.64	\$1,362,009	-
Protecting the Public through Dam Safety	0.88	\$1,278,485	-
Addressing Increasing Legal Expenses	-	\$1,000,000	-
Supporting Water Management in the Field	7.04	\$1,502,450	-
Investing in Projects to Meet Water Needs	0.88	\$1,433,962	\$32,738,356
Improving Water Use Measurement & Reporting	6.16	\$1,428,313	-
Increase Access to Data for Decision Making	4.40	\$1,579,508	-
Increasing Understanding of Water Law and Tools	0.88	196,623	-
Marijuana & Compliance with Water Laws	4.40	\$901,525	-
Continuing Payroll Shared Services	1.00	-	\$146,808
Supporting Agency Functions	3.52	\$1,314,904	(\$156,965)
Mitigation to Allow for New Water Uses	0.88	\$215,531	-
Updating the IWRS	-	\$50,000	-

The next step in the budget process is for the Governor to release her proposed budget on December 1. During the 2019 Legislative Session, the Oregon Legislature will consider and set agency budgets.

Legislative Calendar: The Oregon Legislature will meet for interim Legislative Days during December 12-14 and then convene January 14-16 for Organizational Days. During Organizational Days, members are sworn in, pre-session filed bills are introduced, and committees are finalized. The 2019 Legislative Session will begin January 22, 2019. Sessions during odd-numbered years may last up to 160 days (June 30, 2019).

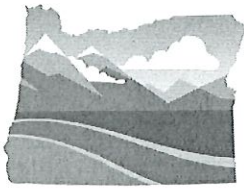
IV. Conclusion

Department staff will continue to provide updates to the Commission on the 2019 Legislative Session.

Attachments:

1. Extending Place-Based Planning Sunset One-Pager
2. Modernizing Dam Safety Statutes One-Pager
3. Transfers in the Type of Stored Water One-Pager

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LC 507: Extending Place-Based Planning

Background

Water is essential for economic growth and development, job creation, and the livelihoods of many farmers and ranchers across the state. In addition, water is necessary for fish and wildlife, recreation, and other instream purposes that are important to Oregonians. Given the importance of water, in order for a region to achieve their vision for the future, they must consider how their water resources needs will be met. Planning is essential to being able to formulate solutions to water challenges that may affect communities, ecosystems, and economic development.

In 2015, the Oregon Legislature authorized the Water Resources Department to pilot the place-based approach to integrated water resources planning. Place-based integrated water resources planning provides an opportunity for communities to work collaboratively, in partnership with the state, to understand their water resources challenges and needs, and identify potential solutions to meet those needs. Building trust and developing long-term relationships are additional benefits that can be realized through place-based strategies; these are important foundations for successful implementation of tangible water resources projects.

The authority for the state to assist groups with place-based planning sunsets in 2019. The Department has been working with four places to pilot place-based planning. At least two of the four groups are not likely to complete plans before the legislation sunsets, and all have expressed a need for assistance in developing a strategy for implementation. Continuing to undertake place-based planning is Recommended Action 9.A of Oregon's Integrated Water Resources Strategy.

What the bill does

This bill proposes to extend the sunset date to 2023 to allow the state to continue to pilot the place-based approach to water planning. This would allow the Department to provide financial and technical assistance to the communities currently using this approach and allow them to finish their work, completing the pilot phase.

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LC 508: Modernizing Dam Safety Statutes

Background

The Oregon Water Resources Department is the state agency charged with overseeing the safety of more than 960 dams across the state that are authorized to store water for agriculture, cities, industry, recreation, fisheries, and other purposes. While dams provide benefits, the consequences of failure of a dam can be significant, potentially resulting in loss of lives and damage to property and infrastructure. As a result, states have adopted dam safety programs. With a few exceptions, Oregon's dam safety statutes have not been updated since 1929, and there is a need to modernize the statutes.

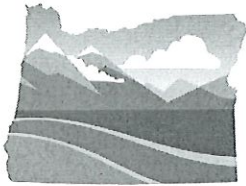
What the bill does

The bill proposes to:

1. Consistent with current and past practice, clarify that the State's focus is on non-federally regulated dams that store water or wastewater. Remove dikes and other hydraulic structures from regulatory oversight to a non-regulatory, technical assistance program.
2. Require plans and specifications for modifications to dams to be approved by the Department and require the Department to receive final engineering documentation that the dam was built as specified before water or wastewater can be impounded for a new or modified structure.
3. Establish a fee for reviews of plans for dams based on actual time spent on the review, but with a cap to provide certainty on the maximum that may be charged.
4. Provide clear guidance for owners that they are responsible for maintaining their dam, and taking specific actions if the structure is at risk of failure and may jeopardize life or property.
5. Clarify the Department's general authorities to implement the statutes, as well as specify actions the Department may take during a dam failure.
6. Establish a process to ensure that removal of high or significant hazard dams are done safely to protect people and property.
7. Improve the process for addressing maintenance and safety issues. Provide additional tools to work with landowners and get compliance, and to address seismic and flood risk. This includes: (a) allowing the Department to work with the owner to develop a plan and timeframe for repair, instead of having to go directly to enforcement; (b) during enforcement, requiring a hearing only if requested by the owner; (c) authorizing the Department to require action on maintenance issues if they are left unaddressed; and (d) in the event that there is an immediate risk to people or property, allowing the Department to obtain a court injunction.
8. Allow the Department to issue civil penalties for failure to address maintenance issues, failure to submit emergency action plans on high-hazard dams, and other violations of the dam safety statutes.
9. In order to improve readability and functionality of the statutes, repeals the current laws; as a result many existing authorities appear as new language.

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LC 509: Transfers in the Type of Stored Water

Background

A water right is necessary to use or store water in Oregon. Rights to *use* water specify the place where the water is used, the type of use of the water, and the point that the water is diverted from a water source, such as a stream, reservoir, or well. If there is a desire to change one of these three components of a water use right, one must apply for a “transfer.”

Similarly, rights to *store* water specify the location of the reservoir, the location of the dam (if applicable), the point where water is diverted (if applicable), and the purpose/use for which the water is stored. The Water Resources Department has long debated about its authority to make changes to storage rights. In light of a lack of clarity in its existing laws, prior to 2018, the Department had occasionally allowed changes in the location of reservoirs and, more commonly, processed changes in the purpose of use. Recent proposals to change the location of stored water resulted in the Department taking a closer look at their authorities. In 2018, the Department of Justice issued a memo determining that, with some exceptions, the statutes do not provide the Water Resources Department with the authority to allow changes to storage rights.

The Department has allowed for changes to rights to store water in the past, with changes in the purpose/type of the stored water being more common. Without the ability to change the type of use of stored water, water right holders will not be able to manage water as necessary to meet emerging needs, opportunities, or challenges.

What the bill does

This bill proposes to provide the Department with clear authority to allow for changes in the purpose for which the water is stored under a primary storage right.

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