



Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator

SUBJECT: Agenda Item A, March 24, 2008
Water Resources Commission Meeting

Potential 2009-2011 Legislative Concepts for WRD

I. Issue Statement

The Water Resources Department (WRD) is considering several potential Legislative Concepts related to instream leases, mitigation programs, transfers, the Water Development Fund, wave energy, and well inspection fees. Final concepts are due to Oregon's Department of Administrative Services (DAS) on April 4, 2008 for pursuit during the 2009-11 Legislative Session.

II. Background

The Water Resources Department typically selects four or five key legislative concepts to bring forward each Legislative Session. The Department focuses on concepts that update or clarify statutes, streamline Department operations, address legislation scheduled to sunset, and provide or clarify authority for the Department. During the March 24, 2008 Commission meeting, staff will present the Legislative Concepts currently under consideration. The due date to submit initial concepts to DAS is April 4, 2008. The Department will have an opportunity to refine these concepts, adding more detail, before July.

III. Discussion

Below are WRD's potential legislative concepts, along with a brief description.

1. Instream Leasing. This concept would allow the instream lease of a Claim of a Water Right that has been included in a Final Order of Determination. It modifies ORS 537.348 for WRD to make a Claim of a Water Right eligible for in-stream lease prior to the court's issuance of a final decree. Instream leases provide a water right holder with evidence of use and are a valuable tool for protecting

- water rights during seasons when the water will not be used for consumptive beneficial use. Allowing additional water right holders access to the instream leasing option will help protect water rights while waiting for a court's final decree, which can take months or even years to produce.
2. Recognizing and Establishing Mitigation Banks Statewide. This concept would modify ORS 536, to give WRD explicit authority to recognize and establish mitigation banks state-wide for the purpose of off-setting the effects of new water supply projects, as required in many new permits. ORS 537.746 specifically authorizes WRD to establish a system of water mitigation credits in the Deschutes River Basin. Although the Department and legal counsel believe WRD has the authority recognize or establish mitigation "banks" statewide, this legislative concept would explicitly authorize the Department to do so.
 3. Deschutes Mitigation Program Placeholder. WRD plans to conduct a review of the Deschutes Mitigation Program, pursuant to HB 3494, with a resulting report to the 2009 Legislature. ORS 537.746 requires a report to the Legislature, no later than Jan. 31, 2009, that includes a summary of: (a) the cumulative rate of water appropriated under all ground water permits approved in the Deschutes River Basin after July 29, 2005; (b) the volume of water in acre-feet provided by the mitigation bank; and (c) the measured stream flow of the Deschutes River and its major tributaries. Depending on the recommendations of the task force, WRD may propose language modifying the Deschutes Basin Mitigation Program. WRD will likely make any modifications through Administrative Rules, but would submit this placeholder in the event the task force has statutory recommendations.
 4. Irrigation District Transfers. Water right holders can make certain changes to their existing water rights through a water right transfer application. A supplemental water right or permit is an additional appropriation of water to make up a deficiency in supply from an existing water right and is used in conjunction with a primary water right. If an applicant applies to change the place of use as identified in the primary water right, any supplemental water rights or permits must either be moved or cancelled as part of the place of use transfer application. Currently, statutes related specifically to irrigation district transfers (ORS 540.570 and 540.580) do not explicitly permit the transfer of supplemental permits along with the transfer of water rights, while statutes pertaining to other water uses (ORS 540.510 and 540.523) do. WRD proposes to modify ORS 540.570 and 540.580 to address this gap and provide greater consistency.
 5. The Water Development Fund. This concept would revise ORS 541.700 through 541.855 to update the language structuring the Water Development Fund, used last by the Department during the early 1980s to help communities finance water supply projects.

Pursuant to SB 1069 (2008 Oregon Laws), the Department will administer a grant fund, assisting communities to conduct the feasibility studies necessary to evaluate water conservation, re-use, and storage projects. The Department anticipates that as more communities are able to complete feasibility studies, there will be a greater need to find funding for subsequent stages of project development.

Section XI of the Constitution has already established the Water Development Fund with many of the Fund's basic features, specifying that the fund "shall be used to provide financing for loans for ...construction of water development projects." Specifically, the Constitution notes that secured repayment is a "prerequisite" to the advancement of money from the fund. Finally the Constitution states that "not less than 50 percent of the potential amount available from the fund will be reserved for irrigation and drainage projects. For municipal use, only municipalities and communities with populations less than 30,000 are eligible for loans from the fund."

ORS 541.700 - .855 contains outdated language (e.g., \$100 fees) that would need to be modified before recapitalizing and using the fund.

6. Wave Energy. Wave energy projects are currently included under the hydropower licensing requirements of ORS 543. Because these statutes were originally written for river-based hydroelectric projects, however, some of the statutes may not work particularly well in an ocean setting. WRD may propose revisions to ORS 543 hydropower licensing requirements, to address circumstances unique to wave energy.
7. Start Card Fees. WRD uses Start Card Fees, which arrive with the notification of construction of new wells, to pay the Department's well inspection staff. Currently, the fee of \$125 per new well does not sustain the well inspection program, which also includes the inspection of on-going wells and data entry for geotechnical wells (test wells for industrial and other purposes). WRD last increased start card fees in 2003, and believes—with encouragement from stakeholders—that fee increases should be moderate and frequent, in order to keep pace with the increasing cost of doing business. Staff is considering an increase to start-card fees, while implementing a new fee on geotechnical wells (see below).
8. Establishment of Fees for Geotechnical Wells. In tandem with the above fee increase, a new fee on the entry of data coming from geotechnical wells will ensure that WRD can sustain the cost of its well inspection program during the next biennium. WRD suggests a new \$10 administrative fee for on-line filing and \$25 for paper filing.

IV. Summary

WRD is considering the above concepts for submittal during the 2009-2011 Legislative Session. The final concepts will depend greatly on the counsel the Department receives from the Water Resources Commission during its March 24, 2008 meeting. Staff will also seek support and input from the regulated community, agency partners, and other stakeholders during the next several months. Final approval of WRD's Legislative Concepts will come from the Governor.