



Oregon

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Before the
Senate Environment and Natural Resources Committee
Senator Jackie Dingfelder, Chair

Testimony on Senate Bill 200 “Splitting a Permit”

Presented by:
Oregon Water Resources Department
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Thank you for the opportunity to present testimony on Senate Bill 200, a Department bill that would authorize the Water Resources Department to split a water right permit, retaining all conditions to the original permit.

Background

Generally, a water right is attached to the land that is described in the right, as long as the water is used beneficially. This attachment to the land is called “appurtenancy.” If the land is sold, the water right goes with the land to the new owner.

Over the years, as properties are divided and sold, the water right appurtenant to the land is also affected. It is not unusual to have one or more water right holders ready to “prove up,” or “certificate,” their portion of a water right, while the rest are not yet ready. The ability to certificate a water right is very important, as it provides greater management flexibility for a water user. By the same token, the inability to certificate a water right can stand as an obstacle to economic development.

The Department is aware of a number of cases in which an irrigator is unable to certificate a water right, because of the inability of a neighbor to develop water on adjoining land that shares that same water right.

Proposal

This bill would amend the water use permit process, allowing permit holders to certificate their portion of the original water user permit as they become eligible.

The request focuses on a rather narrow circumstance—the need to split permits issues for agricultural purposes such as irrigation and nursery operations. Amendments proposed to Senate Bill 200 specify in Section 2 that this request pertains to a water right permit for “irrigation, nursery, temperature control, stock water use, and agricultural water use that has a subsequent

completion date.” The proposed amendments specifically exclude municipal permits, because municipal water users already have access to a tool called “partial perfection.”

Development of the Bill

During 2012 and 2013, the Department worked closely with agricultural users and the conservation community to craft the bill in a way that guards against: (1) injury to existing water rights; (2) enlargement of the water right; and (3) modified permit conditions. To be clear, this bill would not release water right holders from the obligations that existed under the original permit; the bill would carry forward any terms and conditions from the original permit.

Senate Bill 200 and its proposed amendments require specific documentation in order to process this application. This includes: an accurate map, a copy of the property deed, an affidavit certifying that the water right has not been conveyed or withheld, a statement confirming that the most recent water use has been exercised within the terms of the water use permit, and agreements signed by all the owners of the land to which the water right is appurtenant.

The Department then has the responsibility to verify the information submitted by the applicant, as well as to communicate its findings to each owner of the land to which the existing water right is appurtenant, to provide public notice, and to allow for comment and properly filed protests.

If the Department determines that the application has been properly filed, and that the issuance of replacement water right permits will not enlarge upon the water right or otherwise cause injury to water right holders, the Department shall issue one or more replacement water right permits.

The replacement water right permits:

- Must have the same conditions as the replaced water right permit;
- May not add or change a place of diversion or point of appropriation;
- May not result in an enlargement of the authorized water use;
- Must apportion the water in proportion to the amount of land to which the water right is appurtenant; and
- Must identify the owner and the land to which the replacement water right is appurtenant.

The Department may collect, from the applicant, processing fees that reflect the actual cost of the work.

Conclusion

Senate Bill 200 and its proposed amendments would modify ORS 536.050, authorizing the Department to split a water right permit, according to the conditions described above.

There is a minimal fiscal impact for this bill, as it would allow the Department to charge the applicant a fee to cover the costs of processing such a request.