



# Oregon

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## MEMORANDUM

To: Representative Ken Helm, Chair  
House Energy and Environment Committee

From: Tom Byler, Director

Date: February 21, 2017

Subject: Response to Committee Questions on House Bill 2295

During the February 13 hearing on House Bill 2295, the Department was asked to follow up with the Committee on several questions. Below are the Department's responses. Please do not hesitate to contact me if you have additional questions or information needs.

### 1. Did the Department carry out promises related to SB 788 from 2009?

A budget note included in the Department's 2009 budget report directed the Department to continue to work on efforts to reduce backlogs. In response, in November 2009 through January 2010, the Water Resources Department conducted Lean-Kaizen process reviews for new water right applications, transfers, and certificates. In addition, the Department also convened an efficiency workgroup, consisting of interested water right professionals, consultants and attorneys to review Department operations and develop a list of possible areas for improvement. A report of the workgroup was completed in October of 2010. Since then, the Department has continued to undertake efforts to review, update, and improve its water right transactions processes. Process improvement efforts are regularly reported to the Water Resources Commission.

The Department has highlighted below outcomes of some of these efforts and how it has continued to work towards increasing processing efficiency and reducing backlogs in key program areas. In addition, some of the legislation highlighted in question #3 below resulted from these process improvement efforts.

*New Water Right Applications:* With surface water almost fully allocated across Oregon during much of the year, new water right applicants are increasingly turning to groundwater sources. The Department reviews applications for groundwater availability, injury to existing water rights, and interference with surface water resources. This work is complex and time-consuming. In December 2009, using a facilitator, water rights staff streamlined the business process for reviewing applications using the Lean-Kaizen method. Staff redesigned the water right application forms to better communicate to the public what information is needed. In addition, the Department also hired temporary employees to help with less complicated reviews. In 2014, the Department again

assessed the program and implemented additional changes including: modifying forms to be more clear and informative; changing how applications are routed within the Department; and improving the process for generating the Department's weekly public notice. Currently, we are modernizing our document generator tools, which will save a couple of hours of staff time per application. Given the complexity and number of groundwater reviews, the processing of new groundwater rights continues to take more time; the Department is continuing to look for ways to increase efficiencies and improve service delivery in this program area.

*Extensions:* The Department received 266 extension applications in 2015, an all-time high, and 179 applications in 2016. Despite the high application rates for this program, the Department has been able to process these requests in a timely manner. The key has been the improvement of document-generation tools, which allow the extension caseworker to quickly generate proposed final orders once review of the application is complete.

*Certificates:* Securing a water right certificate is the final step in "perfecting" a water right. When issued, it provides greater management flexibility for the water user. By 2003, the Department's certificate backlog had grown to more than 6,000 claims for certificates awaiting processing, with an annual processing rate of less than 400. To address this issue, the Department initiated several process improvements and backlog reduction strategies, including a Lean-Kaizen effort in late 2009. Staff evaluated the processes involved in certificate issuance and determined that senior staff members were spending too much time on simple administrative drafting tasks when they could be resolving more complicated mapping and survey issues. In response, several entry-level temporary employees were hired to perform the less complex program functions. These approaches have led to a reduction in the backlog of work in this area to 1,422, even though the Department has received nearly 4,700 new claims during this time. Based on current projections, it will take the Department approximately three years to eliminate the backlog entirely.

*Transfers:* After receiving a water right certificate, water rights holders can change the point of diversion, place of use, or type of use through a water right "transfer." This allows water users to move water where it is needed, when it is needed. The backlog in processing water right transfers in 2004 was about 760 applications, rendering transfers a somewhat inefficient management option. Starting with the Lean-Kaizen effort in 2009, the Department has taken a number of process improvement steps, as well as used the Reimbursement Authority program to expedite transfer applications. The Department instituted a completeness check when transfer requests first arrived to catch and correct incomplete files as soon as possible. Staff also began grouping transfers by type to speed up processing. IT staff automated work, merging basic data electronically into documents. The pending workload as of the end of 2016 had dropped to approximately 300. The number of transfer applications filed annually has increased steadily for each of the past five years.

*Leases:* An instream lease allows for an existing water right to be temporarily leased and protected instream. These leases can remain in place for a maximum of five years and the Department processes approximately 120 lease applications annually. After five years the applicant can, if desired, lease the water instream for another period of up to five years. In January 2012, the Department began a review of the instream lease program, taking actions to streamline processing and redesign applications. In the fall of 2013, staff conducted another review of the program and identified additional improvements that were implemented in 2014. The average processing time was near 90 days; however, with the Department's streamlining efforts, the majority of the applications are now processed within 45 days. There is no backlog for instream leases.

In addition to progress in particular program areas, the Water Rights Services Division also:

- Improved its approach to developing its weekly public notice document, allowing much of the document to be automated in late 2014. As a result, a weekly process that took a minimum of eight hours to complete now takes between 1.5 to five hours, depending on the complexity of a particular week's notice. Most weeks now take about two hours; therefore, on average the Department estimates it has saved over 300 staff hours per year, freeing up staff time to work on other needs.
- Between 2012 and 2014, staff assisting customers at the Department's "front counter" began logging their interactions in software called SharePoint. This data allows the Department to review what questions are being asked and how frequently, as well as how they are being answered or resolved. Such information facilitates the development of data-driven lists of Frequently Asked Questions, which allows a degree of self-service by customers, while freeing staff time for other work. SharePoint is also being used to develop a divisional knowledge-base to: 1) accelerate water-law-related research, 2) facilitate self-training of new staff, and 3) improve retention of institutional memory.

## **2. What were the fees in 2009?**

House Bill 2295 shows the fees levels for 2009-13, 2013-17, and as proposed for 2017-21. Except for sections 11 and 12, odd sections in the bill amend the fee structure as it is today, whereas even sections of the bill amend the fee structure from 2009 levels. Therefore, fees that are bracketed and in italics in Sections 1, 3, 5, 7, and 9 reflect the fees as they are today that were authorized by the Legislature in 2013. The 2009 level of fees for the same services are bracketed and in italics in Sections 2, 4, 6, 8, and 10. The proposed fees are the same in both sections and are shown in bold.

## **3. What new regulations were passed related to water-right transactions?**

Below is a summary of legislation that has passed since 2009 related to water right transactions:

### **SB 267 (2015)**

- Extended the irrigation district pilot program, which allows districts to change the place of use of water rights within district boundaries for one season without applying for a transfer. Added public notice requirements. Sunsets January 2, 2022.

### **SB 206 (2015)**

- Authorized transfers and leases of determined claims in the Klamath Basin. Sunsets January 2, 2026.

### **HB 3315 (2015)**

- Requires ODFW to track and estimate cost of staff time spent on performing services for other agencies' fee-related programs, such as consultation on water right transactions. Authorizes ODFW to charge agency for costs of services beginning on July 1, 2019.

### **SB 199 (2013)**

- Extended sunset of the Department's Split Season Leasing Program to January 2, 2024. Clarified statutory language describing the program.

SB 200 (2013)

- Allowed an agricultural water right holder to split a permit for multiple ownerships, after meeting certain requirements and producing specific documentation.

HB 2259 (2013)

- Increased the Department's transaction fees and dam safety fees for a four-year period beginning July 1, 2013. The fees sunset July 1, 2017, reverting to 2009-13 levels

HB 2133 (2011)

- Increased efficiencies related to water right processing by allowing for electronic communications with customers in lieu of hardcopy communications, where mutually agreed upon.

HB 2134 (2011)

- Expanded eligibility in a water exchange to include groundwater recharge permits in the Umatilla Basin. Included a "no net loss of flows in the Umatilla River" clause.

HB 2135 (2011)

- Increased efficiencies by reducing the number of required newspaper notices to two consecutive weeks for processes related to water right transactions.

HB 3623 (2011)

- Extended 2014 sunset on the Deschutes Groundwater Mitigation Program from 2014 to 2029.

SB 664 (2009)

- The 2003 Legislative Assembly authorized a pilot project allowing for the temporary transfer of water rights between existing water right holders within eligible irrigation district boundaries without triggering a formal transfer process or fee. This bill extended the sunset for the pilot project to June 30, 2016, and expanded the program to an additional 12 districts.

SB 788 (2009)

- In 2007-09, the Department recovered, on average, about 28 percent of its costs related to water right program-related customer transactions. This bill increased fees to target cost recovery to 50 percent. It also established other provisions related to wells.