

OREGON



WATER RESOURCES
DEPARTMENT

Report on Contested Cases and Litigation

Joint Committee on Ways and Means
Subcommittee on
Natural Resources

February 3, 2020

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Purpose of Budget Note

- Include actions taken by agency resulting in the agency being a party to a contested case or legal action between January 2015 and June 2019
- Identify
 - Legal question being addressed
 - The statutes or rules that were the basis for the action the agency undertook
 - Describe the fundamental basis for dispute

Purpose of Budget Note

- Multiple cases
 - Statement of purpose of the law
 - What the agency is attempting to achieve by taking action under the law
 - How litigation might be avoided in the future

Overview of Report

- General Authority (ORS Chapters 536-543A)
 - Water is a public resource
 - WRD is responsible for the management of the use of water
- Adjudications
 - Determining pre-1909 Water Code claims
 - No changes recommended at this time

Overview of Report

- Applications for New Water Rights
 - Includes surface water, groundwater, instream and reservoir applications
 - Water Availability and Over-Appropriation
 - Division 33 – Additional Public Interest Standards
 - Surface water-groundwater connection management
 - Review of groundwater laws

Overview of Report

- Permit Extensions
 - More scrutiny due to water scarcity
 - ½ permit holder and ½ nonapplicants
 - Municipal extensions policy changes
- Transfers
 - Most protests by non-applicants with concerns of injury to existing water rights

Overview of Report

- Cancellations
 - Administrative proceedings initiated by sworn affidavits alleging non-use
 - Could benefit from additional review of the rules and statutes for affidavits
- Well Construction/Enforcement
 - Two cases

Overview of Report

- Water Distribution and Regulation
 - Uses of water without a water right
 - Protecting senior rights
 - Surface water—groundwater connection
 - Attempt to compel agency action

Overview of Report

- Key Takeaways
 - Water is a critical resource
 - Scarcity increases management challenges
 - Disputes arise from applicants, other water users, and third parties
 - Resolving disputes can be technically and legally complex and time-consuming

Overview of Report

Questions?

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