



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item N, November 21, 2008
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: On October 1 we started the 2009 water year. Water Year 2008 seemed to be a year of extreme conditions, but when considered in total we had a near "normal" year. In many areas snowpack was above normal, but a combination of below normal soil moisture and other climate variations that controlled snow melt, resulted in a runoff that was nearly normal. As of October 7, the U.S. Drought Monitor classifies water conditions in Oregon as follows: 30% of the state (west of the Cascades) conditions are normal or slightly above normal. East of the Cascades approximately 50% of the state is "abnormally dry" and 20% of the state (southeast Oregon) ranges from moderate to severe drought.

Scientists with the Climate Impacts Group at the University of Washington are expecting a near normal winter. However, soil conditions are still below normal which will impact runoff.

Agpac Educational Services Association: On September 22, 2008, the Agpac Educational Services Association sponsored a Natural Resource Tour for public officials, for which Director Ward and Brenda Bateman served as presenters. The Department's presentations included an overview of groundwater resources in Oregon, as well as a discussion of the Mt. Angel Ground Water Limited Area and current Department programs, such as the grant opportunities, integrated water resources planning, and partnership with local communities.

Exempt Use Workshops: The Department participated in a series of workshops, hosted by Representative Jackie Dingfelder, focused on "exempt use wells." This discussion represented a continuation from the 2007 Legislative Session, and included about 25 stakeholders, from diverse organizations. Doug Woodcock, Manager of the Department's Ground Water Section, provided much of the background material for the group to use as they considered potential legislation or policies focusing on exempt uses. The workshop series concluded October 28. Attached, is a one-page briefer that describes the current status of exempt use wells in Oregon. (See Attachment 1)

OSU Roundtables: A series of roundtables took place during September and October, also hosted by Representative Dingfelder. The workshops, facilitated by faculty and staff at OSU, asked local community members to share their ideas and concerns about the future of water resources in Oregon. Brenda Bateman and Water Resources Commissioner Mary Meloy attended the water

roundtable hosted by OSU and Representative Jackie Dingfelder in Bend, Oregon on September 25, 2008. The remaining workshops took place in Newport, Ontario, Medford, and Salem, and have enjoyed participation from almost 400 people, including several of our Water Resources Commissioners. Jeanne LeJeune and John Jackson attended the workshop in Newport on September 30th, Charlie Barlow attended the workshop in Ontario on October 7th, John Roberts attended the workshop in Medford on October 14th and Jeanne LeJeune, John Jackson and Jay Rasmussen attended the final workshop in Salem on October 21st. These workshops have garnered many good ideas about how to plan for, learn about, manage, conserve, and protect Oregon's water supplies. The staff from OSU's Institute for Water and Watersheds and Institute for Natural Resources will prepare a final paper with recommendations for the Water Resources Commission to consider as it continues to develop an integrated water resource strategy over the next several years. The final paper and presentation will also be made available to the Oregon Legislature and other policy makers.

Oregon Watershed Enhancement Board 10th Biennial Conference: On November 5–7, 2008, OWEB hosted its 10th biennial conference on “working for healthy watersheds, climate change and watershed resilience.” Department staff coordinated with our flow restoration partners (Deschutes River Conservancy, Oregon Water Trust and Klamath Basin Rangeland Trust) to develop a joint exhibit during the conference. The exhibit provided information on Department flow restoration programs and showcased projects completed or underway by our partners.

17th Annual Oregon Water Law Conference: The 17th Annual Oregon Water Law Conference took place in Portland, Oregon on November 6-7, 2008. The Department served as a co-host for the conference and two Department staff participated as speakers. State Engineer, Barry Norris, and Debbie Colbert, Field Services Administrator gave presentations focused on the Department's role in the Umatilla Basin Aquifer Recovery Project and the protection of water rights.

New PNWS Water Conservation Certification Rolls Out: Over the last three years, several Oregon cities (including Eugene, Corvallis, Medford and Portland) and the Oregon Water Resources Department (OWRD) participated in the creation of a Water Conservation Certification program. The new program is offered by the Pacific Northwest Section of the American Water Works Association (PNWS).

The PNWS will be rolling out its first workshop and continuing education classes in Vancouver, WA on November 13 and 14, 2008. An application for Continuing Education Units (CEU) for the program has been submitted to the states of Washington, Oregon and Idaho. If the program is approved, then the CEUs can be used toward water system operators' licenses in those states. The workshop will offer 14 hours of classroom instruction covering a full range of practical water conservation subjects. The curriculum will include public education, technical aspects of water management, and water conservation regulations. The workshop application is posted on the AWWA's website at: www.pnws-awwa.org/Page.asp?NavID=140.

The certification should be an excellent opportunity for the professional development of municipal, agency and other staff.

American Water Resources Association: On November 17-19, 2008 Brenda Bateman moderated a panel focused on “State Water Resources Plans” at the 2008 Annual Water Resources Conference in New Orleans, Louisiana. Brenda Bateman chairs AWWA's Policy Technical Committee, which

featured committee members from Georgia, Delaware, Washington, and California on the panel. At the conference, AWRA presented Brenda Bateman with the “A. Ivan Johnson Outstanding Young Professional Award,” in honor of an AWRA past president who was dedicated to helping young professionals meet their potential.

Deschutes Work Group/House Bill 3494 Report: In 2008, the Department began evaluation of the Deschutes Ground Water Mitigation Program as required by HB 3494 (2005 Oregon Laws). By January 31, 2009, the Department is required to report to the Legislature on the implementation and operation of the Deschutes Ground Water Mitigation and Mitigation Bank programs. HB 3494 directs the Department to consult with Deschutes River Basin water users and organizations. To implement this effort, the Department has formed a Deschutes Work Group composed of stakeholders and local water users representing a wide range of interests. This group is meeting during 2008 to provide input on areas where the program is working and to help identify areas for improvement. More information about the work group is available on the Department's website at: http://www.wrd.state.or.us/OWRD/Deschutes_five_year_eval.shtml

Position Updates:

- Susan Douthit is our new District Transfer Program Advisor. Susan has worked for the Department over the last eight years, most recently, she has worked as a transfer specialist processing water right transfer applications and voluntary cancellations.
- Tiffany Geotz has accepted the Assistant Hydrographer position in the Hydrographics/ Measurement & Reporting Section. Tiffany was previously our Receptionist.
- Nikki Hendricks is the new Hydrographer in the Hydrographics/ Measurement & Reporting Section.
- Lisa Jaramillo is our new Water Supply and Conservation Specialist. Lisa has worked for the Department for over 13 years, most recently she has worked processing water right transfers.
- Dorothy Mortenson is new to our IT developer group. She brings tremendous GIS experience with her and will be working to upgrade our use of GIS technology throughout the Department.
- Kody Thurgood is our new Flow Restoration staff person in the Salem office. Most recently, Kody has worked as a transfer specialist focused on the South Central Region.

II. Commission Follow Up

Department Budget Proposals: Because of reduced revenue forecasts, the Department of Administrative Services (DAS) recently required the Department to submit budget items that represent a 10 percent cut in the existing budget. Further, DAS denied all new budget requests for the 2009-11 biennia. The Department appealed this ruling, and provided additional materials to support the appeal. The Governor will take these materials into account and publish his recommended budget in early December.

H2O Initiative: The Governor's Headwaters to Ocean (H₂O) Initiative, continues to evolve, with an advisory group of about 10 people, working together during the summer to pare down the original concept presented to stakeholders earlier in 2008. The resulting white paper reflects the group's discussions and brainstorming efforts; while not every Advisory Group member supports every proposal outlined, the group did commit to considering the items as a package, pending further

discussion. In general, the group recognizes the need to engage in long-term planning, while simultaneously addressing very pressing and critical water needs in Oregon's communities. The group favors a two-track approach to water issues, encouraging the state to begin some long-term investments in planning and data collection, while addressing immediate concerns in four other areas: water supply and conservation, pollution prevention and reduction, measurement of water use, and ecosystem services. The Advisory Group presented this approach to the Governor's office Sept. 24, 2008, and received strong support coupled with a reminder that the state revenue forecast may present a challenge for programs relying on general funds. The October 16, 2008 draft of the white paper is attached. (See Attachment 2)

Legislative Concepts: For the 2009 Legislative Session, the Governor is forwarding seven legislative concepts that originated with the Department. Staff has worked closely with stakeholders and Legislative Counsel during the past several months to develop drafts. Attached is a copy of the 2009 Proposed Legislative Concepts Summary. (See Attachment 3)

Global Warming Commission: Oregon's Global Warming Commission met in Bend, September 16th to consider the public policy recommendations brought by its subcommittees. Director Ward co-chairs the water subcommittee, which presented a paper encouraging policy-makers to support long-term efforts related to integrated water resources planning and water-related data collection and scientific modeling, as well as efforts designed to meet immediate community needs in the areas of water conservation and supply development. The September 15, 2008 memo is attached. (See Attachment 4)

Liquefied Natural Gas (LNG): The Department has received six applications for water from NorthStar Energy LLC, to construct and operate an LNG facility at Bradwood Landing on the Columbia River. The Department has issued limited licenses for three of the applications, for pressuring testing and dredging operations, which are part of the construction of the facility. There are three remaining applications. The Department has issued proposed final orders (PFOs) for two of them, for the purposes of fire suppression and industrial use. One of the PFOs has been protested and the Department is working through the protest process with the applicant and stakeholders. The final application, for 66.845 cubic feet per second (CFS), is for the purpose of ballast water. The Department completed its initial review, held a public comment period, and is working with Oregon Department of Fish and Wildlife and the Department of Environmental Quality to finalize its review of the application. ODFW has notified the Department of its intent to withhold recommendation until receiving a biological opinion from National Marine Fisheries Service. The applicant is considering whether to place its application on administrative hold while awaiting input from NMFS.

III. Rulemaking

Malheur Lake Basin Program: (OAR Chapter 690 Division 512) On October 6, 2008, Harney County submitted a request to initiate rulemaking to establish a reservation as authorized by ORS 537.356 and 537.358. The request was submitted pursuant to a November 10, 2005 Supplemental Settlement Agreement. The County requested a reservation of water for multipurpose storage for future economic development on Home Creek, tributary to the Catlow Valley (south of the community of French Glenn). The proposed reservation would reserve 4,550 acre feet of water for a period of twenty years after adoption, unless extended by the Commission.

As required by ORS 537.356(2), the Department, on behalf of the Commission, has requested comments from the affected local government (Harney County) and watershed council (Harney County Watershed Council) within the geographic area affected by the request. The comment period began on October 16, 2008 and ends February 17, 2009. The comment period does not begin a formal rulemaking process. At a future Commission meeting (most likely the February 2009 meeting), staff will provide a report summarizing the County's request and comments generated by the notice. At that time, the Commission may initiate the rulemaking as requested by the County.

III. Litigation Update

Fort Vannoy Irrigation Dist. v WRC (Oregon Supreme Court)

The Oregon Supreme Court issued a ruling in July 2008 affirming the decision of the Court of appeals, remanding the matter back to the Commission. The Department is working with the Attorney General's office to determine the impact of this decision and how to move forward with processing water right transfer applications.

A petition for reconsideration was filed with the Supreme Court by the water right transfer applicant. There has been no word from the Court as to whether they will reconsider.

Micke v WRD (Marion County Circuit Court) This case relates to the storage of water in a reservoir without benefit of a water right permit. The reservoir in question is located within the Goose and Summer Lake Basin in Lake County. After contact by the watermaster, the Micke's filed a request for Judicial Review of a final order with the Circuit Court. The Micke's also filed a water right application to store and use water. The water right applications were protested by the Lakeview Water Users, alleging that the Users water right would be injured by approval of the application. After considerable work and negotiation, the protest has been withdrawn. Some issues remain prior to issuance of the permit. We expect the court action to be dismissed in the near future.

Noble v WRD (Lytle) (Clackamas County Circuit Court) The Nobles have sought Judicial Review of several water right applications (and permits) for some small reservoirs in the Beaver Creek basin in Clackamas County. Three different owners have been involved as defendants in three similar cases. The Department filed a motion to consolidate the cases; the motion was denied by the Circuit Court. The Department has responded to public information requests, requests for depositions of several Department staff, and has participated in settlement discussions with the Nobles and the applicants. The parties in the Martin case have entered into a settlement agreement and that case has been dismissed by the Circuit Court. The parties in the Vityuk case have also entered into a settlement agreement and the case has been dismissed by the Circuit Court. The remaining case involves the Lytles.

The Department reconsidered an order issued to the Lytles approving a storage permit. The Department subsequently issued a new Order, again approving the storage permit. The Noble's have filed a new action for Judicial Review relating to the Lytle Order in Clackamas County Circuit Court. The attorneys are involved in discovery and depositions. The Lytle case is set for trial the week of December 15th.

Webber v WRD et al (Federal District Court)

The latest litigation suit filed in Federal District Court is a Civil Rico and Civil Rights Complaint and Demand for Jury Trial of all Claims filed by John Carl Webber, Jr. of Prineville, Oregon. Mr. Webber was found irrigating more than one-half acre of non-commercial lawn and garden from a well without the benefit of a water right. He continued using the water on the 3.0 plus acres following the issuance of a Notice of Violation, which resulted in the assignment of a civil penalty. Webber has filed for and received a water right permit to irrigate his 3 plus acre lot. This case is continuing to generate significant time and expense for the Department. To date, no hearing date has been scheduled.

VI. Commission/Board Schedules

	Location	Date
Board of Forestry	Salem	Jan. 7, 2009
Fish and Wildlife Commission	Salem	Dec. 12, 2008
State Land Board	TBA	Dec. 9, 2008
Land Conservation and Development Commission	Tillamook	Dec. 4-5, 2008
Environmental Quality Commission	Portland	Dec. 11-12, 2008
Parks and Recreation Commission	Brookings	Dec. 4, 2008
Oregon Watershed Enhancement Board	Salem	Jan. 21-22, 2008
Board of Agriculture	TBA	TBA
Dept. of Geology and Mineral Industries	TBA	TBA