



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item I, November 20, 2009
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The new water year started October 1. According to the US Drought Monitor, 93.2 percent of the state is abnormally dry, 18.6 percent is in moderate drought (southwest and south central), and 6.8 percent (eastern central and southeast) is normal. These conditions are slightly lower, or drier, than statewide conditions one year ago. The Surface Water Supply Index (SWSI) reflects ratings from the US Drought Monitor, and also shows a slight trend downward, toward drier conditions. Most climate models are predicting an increasing El Nino trend, which is likely to result in below normal precipitation and warmer than normal temperatures this winter.

Water Resources Department Presentations: The Director and senior staff have made a significant number of presentations this fall, most related to the Integrated Water Resources Strategy (IWRS). See Agenda Item A for a description of these events.

2009 Bike Commute Challenge: During the month of September, the Department participated in a state-wide Bicycle Commute Challenge. Every year during the month of September, Department employees compete to see how many commuter trips they can replace with bicycle trips.

This year the Department enjoyed more participation than in past years. The Department awards the prize of "Chrome Crank" to the division that has the highest percentage of trips. This year Technical Services took the prize, with 10.5 percent, with Field Services close behind with 10.0 percent! Water Rights came in third, with 4.5 percent, the Director's Office had 3.4 percent, and Administrative Services won the "Broken Pedal" award with 2.4 percent. Every division fielded participants, with 27 people total participating, and one thousand three hundred fifty five (1,355) total miles ridden for the Department.

Compared to other agencies, the Department also had the highest number of riders for mid-size agencies (100-500 people) in the Salem area.

Metro Urban and Rural Reserves (MURR): Senate Bill 1011, passed by the Oregon Legislature in 2007, provides an alternative and regional approach to plan for future urban development and the protection of farms, forests and natural landscapes over a 40- to 50-year horizon in the Portland Metropolitan region. The participants in this long-term regional planning effort include Metro and Clackamas, Multnomah and Washington Counties (commonly referred to as the Core 4). The process involves identification and recommendation of “urban reserves” and “rural reserves.”

A Reserves Steering Committee is advising the Metro Council and county commissions on the formal designation of the urban and rural reserves. The Department partnered with eight other state agencies to work closely with the Reserves Steering Committee and to provide policy and technical expertise. On October 14, 2009, the nine state agencies presented the Reserves Steering Committee and the Core 4 with a document containing their coordinated and collective commentary on their most recent proposals for urban and rural reserve designations. “Constrained water supply” was one of four subjects areas identified as needing additional information that should be developed before final decisions are made.

The two remaining phases in this regional planning effort include the recommendation for “urban reserves” and “rural reserves” via intergovernmental agreements (scheduled for December 2009) and the formal designation of “urban reserves” by the Metro Council and “rural reserves” by the county commissions (scheduled for May 2010).

Budget Update – 10 Percent Reduction Options: Due to current economic conditions and the potential revenue consequences of the January 26, 2010 special election, the Legislative Fiscal Office has requested that state agencies submit General Fund reduction options that amount to 10 percent of their Legislatively Adopted Budget for 2009-11. For the Department, the General Fund budget totals \$21 million; 10 percent reductions equate to \$2.1 million. The Department’s executive staff have been working on these reduction options for the current biennium and have identified fund shifts and opportunity savings that meet reduction options of up to 5 percent of WRD’s General Fund budget. The next 5 percent in reduction options to meet the required 10 percent reduction option list reflects priorities developed during the 2009 session. This list of 10 percent reduction options was submitted to the Legislative Fiscal Office on November 13, 2009.

II. Commission Follow Up

Litigation Update: Two actions were filed regarding implementation of Senate Bill 788 (new and increased fees). Additionally, one of the cases, a petition to Marion County Circuit Court, challenges the collection of new or increased fees authorized under House Bills 2231 (start card fee increase) and 2232 (geotechnical hole recording fee). All three of the bills declared an emergency for the immediate preservation of the public peace, health and safety, and stating that the bills take effect on July 1, 2009. The Governor signed HB 2231 and HB 2232 on July 22, 2009 and SB 788 on July 23, 2009. The Commission first adopted temporary rules (OAR 690 Division 180) in late July to implement the exempt use recording provisions of SB 788, stating that the recording of exempt uses was required for wells completed on or after July 1, 2009. These rules were later amended to only apply to wells completed on or after July 23, 2009, the date of signing by the Governor, in order to limit, as much as possible, the expenditure of fees on attorney and court costs and maximize the expenditure to maintain existing staff. Commission action is not required to implement the other bills.

Fred Turek, et al. v. WRD and WRC, Oregon Court of Appeals

This case was filed in the Oregon Court of Appeals following the adoption of temporary rule OAR Division 180 by the Commission on July 30, 2009. The petition alleged that the Department and Commission did not have authority to collect the exempt use recording fee prior to Governor's signature. Exempt use as listed in ORS 537.545 established a water right essentially the same as that acquired by a water right permit / certificate, without the need to file for a water right permit. These exempt uses can make a call for water and are subject to regulation based on all of the attributes of a water right. The Legislature established the exempt use recording fee to partially cover the cost of recording this unique water right, which includes determining available ground water supplies and potential injury to other water users. The Legislature's Ways and Means Committee shifted the funding from general funds to exempt use recording fees for six existing ground water scientists.

Upon action by the Commission to make the effective date July 23, 2009, both the state and Petitioner have filed motions to dismiss with the Court of Appeals. The Court has not responded as of this date.

Preston Janssen et al v. WRD, Marion County Circuit Court

This case is different from the above, in that it alleges that the Department issued final orders in the implementation of SB 788, HB 2231, and HB 2232. However, the primary issue is the same, an allegation that the Department does not have the authority to collect fees under the three adopted bills until after Governor's signature. Motions have been filed with the Marion County Circuit Court. As of this date the Court has not taken action.

Municipal Water Management and Conservation Plan Workshop: The Water Supply and Conservation Section is continuing its outreach efforts by offering two Municipal Water Management and Conservation Plan Workshops. The first workshop was scheduled as part of the Oregon Association of Water Utilities' (OAWU) conference in Florence, Oregon on November 3, 2009, and was presented by Lisa Jaramillo and Bill Fujii. A second workshop for the OAWU will be held in Hood River on December 16, 2009. To date, more than 100 participants have pre-registered to attend the Florence workshop.

III. Commission/Board Schedules

	Location	Date
State Land Board	TBA	Dec. 8, 2009
Environmental Quality Commission	Portland	Dec. 10-11, 2009
Dept. of Geology and Mineral Industries	TBA	TBA
Parks and Recreation Commission	Astoria	Nov. 19, 2009
Fish and Wildlife Commission	Salem	Dec. 10-11, 2009
Board of Forestry	TBA	TBA
Land Conservation and Development Commission	Salem	Jan. 20-22, 2010
Board of Agriculture	Portland	Dec. 15-16, 2009
Oregon Watershed Enhancement Board	TBA	Jan. 20-21, 2010
Water Resources Commission	TBA	TBA