



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 E, August 27, 2010
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: As a result of an exceptionally wet spring, the surface water supply index (SWSI) has been trending upward across the state. The only basin with a "low water supply" according to the SWSI designation is the Klamath Basin. Reservoir conditions improved significantly by early summer. This was a result of both a wet spring and cool temperatures resulting in low demand. U.S. Army Corps of Engineers reservoirs in the Willamette and Rogue basins, and Willow Creek near Heppner filled.

Precipitation in June ranged from 140% to 270% of normal. Statewide, total precipitation for the water year ranges from 90% to 117% of normal.

Streamflow during June was well above normal, with exceptions in the Upper Deschutes (60%), Malheur (60%) and the Klamath (92%) basins. The rest of the state experienced two to three times normal flow, some places received near flood stage events in both May and June. For the water year, total stream flow is below normal (60% to 80%) with the exception of the North and South Coast, and the Harney Basin. Two snow recording sites were still recording snow levels as of July 1. This is very unusual for a date so late in the year.

According to the National Drought Monitor approximately 75% of the state is currently designated "none" or no reported drought conditions. The exception is the south central part of the state, Klamath and Lake Counties primarily, where conditions range from "abnormally dry" to "severe drought." The southern half of Klamath County has a designation of "severe drought."

Klamath Basin Drought: On March 16, Governor Kulongoski issued Executive Order No. 10-03, declaring a drought for Klamath County and all bordering counties, based on lower than average precipitation levels, snowpack, and water storage conditions for the Klamath Basin. The Federal Government announced that irrigators in the federal project in Klamath County would receive between 30% to 50% of the amount of stored water needed to irrigate the entire project area, prompting many irrigators to turn to groundwater for relief. OWRD staff members are spending

considerable time monitoring groundwater levels and working with irrigators to mitigate interference problems.

The Department has been involved with regular briefings of the Governor, and press releases to the media, containing situation updates. The Department continues to rotate field and headquarters staff through the Klamath Falls office in order to provide customer service to water users in the Basin. The Department has processed 61 “emergency drought permit applications,” which, if approved, would allow the temporary use of groundwater, in lieu of surface water rights. The Department has issued 58 drought permits covering a total of 32,448 acres (maximum rate of 200 cubic feet per second (cfs) and an annual maximum duty of 97,345 acre feet (af).

Staff members have been meeting with the U.S. Bureau of Reclamation (BOR), Klamath Water and Power Agency (KWAPA), irrigation districts and representatives from the State of California to regulate wells in areas with the greatest ground water declines. This action has resulted in stabilization of water levels in several locations.

The City of Merrill experienced a water emergency during the last few days of June. The water level in the city’s primary municipal well dropped below the pump intake. The well is more than 1,000 feet deep and the pump was set at less than 100 feet from land surface leaving more than 900 feet of water in the well. State, Federal, Klamath County and local officials all worked together to meet the emergency water needs of the community until the pump could be lowered. Department staff members are collecting pump and water level information from other water supply entities in the Klamath Basin in an attempt to avoid similar problems in the future.

Ecological Flow Technical Advisory Group: House Bill 3369 has a requirement that water development projects funded by grants or loans established by the Bill include protection for “peak and ecological flows.” The Ecological Flow Technical Advisory Group (EFTAG), tasked with creating the scientific framework for defining peak and ecological flows, has nearly completed its work. A draft paper was completed and submitted to the Independent Multidisciplinary Science Team (IMST) for peer review. The Department has received the completed peer review, along with additional reviews completed by three independent, qualified individuals recommended by outside water interests.

Remaining work includes developing a final draft that addresses the peer review comments. The final draft document will be sent to the EFTAG members to give them an opportunity to provide comments before the paper is finalized. It is likely a final product will be available on October 1, 2010.

Update on Proposed Bottling Plant in Cascade Locks: Nestle is considering developing a bottling plant operation in the City of Cascade Locks. The company would like to use spring water that currently serves an Oregon Department of Fish and Wildlife (ODFW) fish hatchery. The fish hatchery potentially could switch to groundwater instead of surface water in the future. In December of 2009, the Department issued a one-year Limited License to the City of Cascade Locks for 10 gallons a minute so that ODFW could test whether or not using groundwater would work for the fish rearing facility. If the test is successful, ODFW could file an Exchange application under ORS 540.533(1) that, if approved, would allow the City provide spring water to Nestle while allowing the fish hatchery to use groundwater for its operations.

Public Outreach and Presentations: The Director's Office continued its outreach related to the Integrated Water Resources Strategy, finishing the last of its 2010 Open Houses and holding IWRS workshops with Oregon Girls State and Federal Partners. Staff also met to discuss the IWRS with Oregon's Drinking Water Advisory Committee (DWAC), the Oregon Business Council, and the Oregon Sustainability Board.

Willamette Basin Reservoirs: The U.S. Army Corps of Engineers (COE) is a key player relating to water management in the Willamette Basin. The COE owns 13 reservoirs located throughout the Basin. The authorized purposes for the reservoirs are flood control; hydroelectric power production; navigation; irrigation; fish and wildlife; recreation; and municipal and industrial. Water right certificates have been issued, which allow the storage of 1.62 million acre feet of water behind the dams for irrigation purposes. The COE's reservoir authorizing documents address the use of dams; and use of the stored water; set stream flows below the dams; and, set target flows in the Willamette River at Albany and Salem. The majority of water use, irrigation, municipal, industrial and others in the Willamette Basin are accomplished by diverting natural flow.

Several species of fish were listed under the Endangered Species Act, which resulted in the issuance of a Biological Opinion (BiOp) for the Willamette Basin in 2008. Federal and state agencies are working together to implement the provisions of the BiOp. Department staff are involved in several of the work groups that have been formed. The federal agencies are moving forward with implementation strategies that address passage, temperature and riparian restoration. The COE has adjusted releases from the reservoirs to meet streamflow needs identified in the BiOp. There is concern that the new BiOp flows will affect the COE's ability to store water in March, April and May, which could cause water shortages in the mid-to-late summer.

II. Commission Follow Up

Litigation Update:

Water for Life, Inc., et al. v. Oregon Water Resources Department, et al., Marion County Circuit Court

Water-For-Life has filed an action against the Department for its participation in the Klamath Basin Restoration Agreement (KBRA). (Marion County Circuit Court Case No. 096-23629). The Department has been a participant in the KBRA discussions, although not in a lead position. The Department role has been to ensure that any agreements resulting from the KBRA are consistent with Oregon Water Law. A small portion of the draft restoration agreement has the potential to resolve five or six of the remaining Contests associated with the Klamath Adjudication. Discussions associated with development of the KBRA have been underway for about four years. The Department does not believe that there is merit to the Water-For-Life lawsuit.

Late on December 31, 2009, the Department was served with a request for a Temporary Restraining Order (TRO) filed by Water-For-Life. The TRO requested that the Marion County Circuit Court restrain the Department from further participation in the KBRA process. Although a Marion County Circuit Court Judge issued a ruling denying the request for the TRO on January 7, 2010, this issue is not yet resolved. An additional Injunction Hearing scheduled for January

14, 2010 was subsequently cancelled following the Judge's ruling. A hearing on the merits of the case will be scheduled in the future.

The final version of the KBRA was released to the public on January 8, 2010. The Department believes that the current version of the KBRA is consistent with Oregon Water Law.

This case is still pending in Marion County Circuit Court. No court date has been set.

Deborah Noble et al v. Oregon Water Resources Department, et al (Lytle), Clackamas County Circuit Court

This case is filed in Clackamas County Circuit Court and is a petition for Judicial Review of a water right permit. An alternate reservoir application was filed on a small (1 acre foot) existing reservoir and the Nobles are raising issues regarding impacts to fish. The hearing is scheduled for the first full week of December.

Oregon Water Resources Department v. William Cummings, Jr., Cummings Well Drilling, Lake County Circuit Court

The Water Resources Department filed an action in Lake County Circuit Court to enjoin William Cummings Jr. and Cummings Well Drilling from drilling wells. Mr. Cummings was formerly licensed as a well constructor with the State of Oregon, but his well constructors license was suspended several years ago for numerous infractions and for failure to pay an assessed civil penalty. This is the first use of this enforcement tool since the Commission delegated authority during its meeting February 19, 2010. No court date has been scheduled.

It was reported that Mr. Cummings has continued to contract with landowners to provide well construction services. The Commission, at its June 4, 2010 meeting, authorized the Director to take action under ORS 537.780(1)(i) to seize the well drilling rig. On July 15, 2010, the Criminal Justice section of the Attorney General's Office, in conjunction with the Water Resources Department, seized the well drilling rig. The rig was set up over a well on private property in Lake County. The landowners provided their full cooperation and allowed access to their property for the seizure. The watermaster is assisting the landowners in their efforts to have the well completed in compliance with Oregon Laws relating to well construction.

III. Commission/Board Schedules

	Location	Date
State Land Board	Salem	Oct. 12, 2010
Environmental Quality Commission	Portland	Oct. 21-22, 2010
Dept. of Geology and Mineral Industries	Salem	Nov. 9, 2010
Parks and Recreation Commission	Newport	Sept. 22, 2010
Fish and Wildlife Commission	Hillsboro	Sept. 2, 2010
Board of Forestry	Silverton	Sept. 8-9, 2010
Land Conservation and Development Commission	Salem	Sept. 1-2, 2010
Board of Agriculture	Astoria	Sept. 8-10, 2010
Oregon Watershed Enhancement Board	Garibaldi	Sept. 14-15, 2010
Water Resources Commission	Salem	Nov. 18-19, 2010