



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 C, November 17, 2006
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The water year started on October 1, 2006. It will be a few months before we can start to assess the water conditions.

Western States Water Council: On August 15, 2006, the Director attended a Western States Water Council meeting in Salt Lake City, Utah. The goal of this meeting was to brainstorm approaches for council members and others to develop a scope of work for addressing the high priority recommendations documented in the June 2006 Water Needs and Strategies for a Sustainable Future report. On October 4 to 6, 2006, the Director also attended a quarterly meeting of the Western States Water Council in Sheridan, Wyoming.

CTUIR Water Right Claims Meeting: On September 14 -15, 2006, the Director met with Department of Interior staff including assistant Secretary Mark Limbaugh in Washington D.C., and representatives from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Westland Irrigation District regarding the CTUIR's Water Right Claims and implementation of Phase III of the Umatilla Exchange project.

Community Action and Innovation for Watershed Sustainability Conference: On October 18, 2006, the Director attended the Community Action & Innovation for Watershed Sustainability Conference in Walla Walla, Washington. The conference was hosted by the Watershed Management Council in collaboration with the Walla Walla Watershed Alliance and Walla Walla Community College. The conference explored science and strategies that have been and may be applied toward resolving current and future water allocation and watershed management issues in the western United States. As part of the conference, Director Ward and Director Jay Manning, Washington State Department of Ecology, shared their thoughts on bi-state water management strategies for the Walla Walla Basin.

15th Annual Oregon Water Law Conference: The Department cosponsored the 15th Annual Oregon Water Law Conference on November 2 and 3, 2006 at the World Trade Center in

Portland, Oregon. Department presentations covered municipal water right extensions and legislative and rulemaking updates. The conference was well attended including attendance by Chair Thorndike.

Position Updates: Brandi Elmer joined the Department on October 9, 2006 as Executive Support for the Director's Office.

Electronic Filing of Start Cards: On September 25, 2006 the Department initiated online payment and filing for well construction start cards. The new online payment service is located at <http://www.wrd.state.or.us/>. This is a great new service that will save both well constructors' and Department staff time.

Chiloquin Dam Update: The Chiloquin Dam has been in place since 1918 and is located on the Sprague River near the City of Chiloquin. The dam is a known barrier to migrating fish, and the federal fish agencies and others have been working for a number of years to reach an agreement on its removal. The agreement to remove Chiloquin Dam was consummated on October 18, 2006 at the Chiloquin Dam. Parties to the agreement include the Bureau of Indian Affairs (BIA), Modoc Point Irrigation District (MPID); and individual landowners. Representatives from BIA, US Bureau of Reclamation, and US Fish and Wildlife service and the Department attended the signing ceremony. In addition to removal of the dam, the agreement will define the roles of the BIA and the MPID in the planning and constructing of MPID's electrically powered pump plant. The electric pump plant will provide irrigation of water currently provided by the dam. It also provides \$2.475 million to the district for mitigation related to the impact of dam removal.

Oregon Plan Education and Outreach: Department staff participated in the 2006 Biennial Oregon Watershed Enhancement Board (OWEB) conference on October 25-27, 2006 in Seaside, Oregon. Staff coordinated a panel discussion on outreach event management, including how watershed councils and others can develop successful events and partnerships to engage the public in watershed restoration.

Governor's Toy Drive: The Department will begin collecting toys and cash donations for the 21st Annual State Agency Toy Drive beginning on November 6, 2006 and ending December 13, 2006. These donations will be taken to the Capitol and added to those collected by all the other state agencies for distribution by the Salem Salvation Army to needy children in Marion, Polk and Yamhill counties.

WRPPIT Update: In 2005, the Office of Regulatory Streamlining convened a multi-agency team to look for opportunities to streamline water-related permits. The team included the Water Resources Department, the Department of State Lands, ODFW, Department of Environmental Quality, and other natural resource agencies. The goal was to improve the regulatory experience for project proponents seeking state water-related permits. The Water-Related Permit Process Improvement Team (WRPPIT) focused on the DSL removal-fill permit process as the nexus for many state agencies' water-related permit requirements and worked to improve the processes, but not to change the current level of natural resource protection. Over the past year the WRPPIT Team developed a pilot process proposal designed to address top customer concerns. The pilot

process will provide project proponents with early information about the relevant regulatory requirements through a multi-agency pre-application conference, and will reconcile agency comments and conditions to avoid conflicting requirements. The participating agencies are now beginning the implementation phase of the pilot process.

BOR Grant for Agricultural Water Conservation and Management Plan Guidebook: In July 2006, the Department, in partnership with the Oregon Water Resources Congress (OWRC) and Oregon State University (OSU), was awarded funding from the Bureau of Reclamation (BOR) for a Water Management and Conservation Project. The goal of the grant is to create a guidebook to assist irrigation districts and other agricultural water suppliers to prepare water management and conservation plans that meet Oregon and federal requirements. The Project will also include a series of workshops and events to introduce district managers, district patrons, board members, and others in water management and conservation plans and how these plans can aid them in meeting water supply and regulatory demands. The Department has convened a steering committee that includes irrigation district managers and representatives from OWRC, the Department, and OSU. The Steering Committee has met three times and is hoping to have an initial draft of the guidebook by January 2007.

II. Commission Follow Up

Measure 37 Update: The Department has received ten claims to date and has issued staff reports denying all of these claims. One denial has been appealed and will be heard in Yamhill County circuit court.

Klamath Water Rights Permitting: At the August 2006 Commission meeting, the Commission requested that the Department provide a summary of the water rights, both surface and ground water, the number of applications, and quantity requested, to be included in the November Director's Report. The Department compiled this information and provided it to the Commission on October 3, 2006.

USGS Report on the Klamath Basin: The US Geological Survey (USGS) Groundwater report for the Klamath Basin is still targeted for completion around the first of the year. The peer review process has been completed, comments have been received, and the comments are currently being incorporated for USGS director approval. The report will then be prepared for publication.

III. Rulemaking

Besides those proposed for the November Commission meeting, the Department does not have any pending rulemakings at this time. Over the next several months, staff will evaluate rulemaking needs and develop a proposed schedule to share with the Commission. Based on Commission input at the August 2006 meeting, the Department anticipates convening a Rules Advisory Committee in mid-2007 to provide input on issues not resolved in the most recent instream water right rulemaking (OAR Chapter 690, Division 77).

IV. Litigation Update

Harrington v. Oregon Water Resources Department: This involves several cases.

Harrington I related to the denial of water right applications requesting to store water. Harrington has constructed reservoirs within the Big Butte Creek basin. The basin was classified for the exclusive use of the City of Medford by the Oregon Legislature. The Jackson County Circuit Court ruled in the Department's favor. Harrington has appealed to the Oregon Court of Appeals. No date for argument has been scheduled before the court.

Harrington II related to the Watermasters action to regulate due to water being stored without the necessary water right. The Jackson County Circuit Court again ruled in the Department's favor. This case has also been appealed to the Court of Appeals. No date for argument has been scheduled before the court.

Harrington III is a "1983" discrimination filing in Federal Court. In this case Harrington is alleging that the department has acted to discriminate against him in his efforts to obtain legal authorization for the reservoirs which are on his property. The Department has been responding to requests of discovery. Additionally, many former and current staff are being deposed. No court date has been set at this time.

Additionally, two criminal cases have been filed against Harrington in Jackson County. Harrington pled guilty to the first, the second is still pending.

Charles Noble, Deborah Noble and David Hillison v. Oregon Department of Water Resources et al: The Noble's and Hillison are seeking Judicial Review in Clackamas County Circuit Court of the Department's final orders approving three water right applications and issuing permits to store water. As with Harrington III, the Department is responding to a request for discovery. Additionally, several Department staff have been deposed in this case. No court date has been set at this time.

Miller LaGrande Ranches, LLC vs. Oregon Water Resources Dept: Miller LaGrande Ranches filed two water right applications proposing to construct and use two wells for irrigation. A review by the Department determined that the two wells were in hydraulic connection with the Grande Ronde River. The initial review indicated that the first application would likely be denied due to the quantity of water being requested and the impact on the Grande Ronde River. The applicant subsequently reduced the quantity of water requested. The Department is proposing to issue a permit for the reduced rate.

The initial review on the second application indicates that the application will likely be denied due to the hydraulic connection with the Grande Ronde River and the fact that the cumulative impact of one cubic foot per second within the Grande Ronde Scenic Waterway has been achieved.

Miller LaGrande Ranches was issued a **Notice of Violation** by the watermaster for using the wells without benefit of a water right permit. Miller LaGrande Ranches filed for a Temporary Restraining Order against the watermaster's regulation.

The Union County Circuit Court issued a temporary restraining order and scheduled a preliminary injunction hearing. Following the hearing, the Court denied the motion for the preliminary injunction and dismissed the temporary restraining order.

Further legal action may be filed on this matter.

Fort Vannoy Irrigation Dist. v Water Resources Commission: This is a contested case and relates to a water right transfer that was protested by Fort Vannoy Irrigation Dist. On July 29, 2005, the Commission denied the exceptions to the Proposed Order filed by Fort Vannoy Irrigation Dist. Subsequent to the Commission's denial, Fort Vannoy Irrigation Dist. filed a request for judicial review with the Court of Appeals. Briefs have been filed with the Court; however, no date for argument has been scheduled.

| V. Commission/Board Schedules | Location | Date |
|--|-----------------|----------------|
| Environmental Quality Commission | TBA | Dec 14-15 |
| Oregon Watershed Enhancement Board | TBA | Jan 24-25, |
| Land Conservation and Development Commission | Salem | Nov. 29-Dec. 1 |
| Parks and Recreation Commission | TBA | Jan 18 |
| Fish and Wildlife Commission | Salem | Dec 8 |
| State Land Board | Salem | Dec 12 |
| Board of Forestry | Salem | Jan 3 |
| Board of Agriculture | Salem | Nov 15 |
| Dept. of Geology and Mineral Industries | Portland | Nov 14 |