



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 F, February 19, 2010
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The Surface Water Supply Index (SWSI) is an indicator of trending water conditions throughout the state. Indices are provided by the Natural Resource and Conservation Service for fourteen major water basins throughout Oregon. The range for water conditions varies from very wet conditions to extremely dry conditions. Currently there are eleven major basins in Oregon with indices that are within a range of normal to just below normal. These basins can be characterized as slightly below normal or mild drought. The other three basins have indices that are within a range of just below normal to moderate drought. These basins are Klamath, Malheur and Lake County, with the lowest in Klamath County. Conditions in Klamath County can be described as "moderate drought."

The U.S. Drought Monitor, another water supply indicator produced by several federal agencies, describes the majority of Oregon as experiencing abnormally dry conditions. Southern portions of Klamath Basin and Lake County Basin are described as experiencing moderate drought conditions.

For the beginning of January snow conditions throughout Oregon ranged from 67 percent of normal in Harney County to 86 percent of normal in the Umatilla Basin. The best months for snow accumulation are typically December, January, and February. The long-range forecast indicates El Niño conditions with near normal precipitation and slightly above normal temperatures.

Reservoir conditions range considerably throughout the state. Warm Springs Reservoir in the Malheur Basin is 10 percent of normal, while reservoirs in the Deschutes Basin are close to or slightly above normal.

II. Commission Follow Up

Litigation Update: (*Water for Life, Inc., et al. v. Oregon Water Resources Department, et al.* Marion County Circuit Court Case No. 096-23629) Water-For-Life has filed action against the Department for participation in the Klamath Basin Restoration Agreement (KBRA). The Department has been a participant in the KBRA discussions, although not in a lead position. The Department role has been to assure 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 and the process is in its final days. 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 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 Marion County Circuit Court Judge issued a ruling denying the request for the TRO on January 7, 2010, this issue is not resolved. An additional Injunction Hearing scheduled for January 14, 2010 was subsequently canceled 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.

(*Fred Turek, an individual, and Casey Jones, Jr., an individual v. Oregon Water Resources Department and Oregon Water Resources Commission, et al. Oregon Court of Appeals Case No. A143101*) and (*Jannsen, Preston et al v. Oregon Water Resources Department et al Marion County Circuit Court Case No. 09C19373*) Both of these cases related to implementation of legislation establishing new fees and adjusting existing fees. Following the Commission's adoption of the Division 190 Rules, petitions were submitted to dismiss both cases. The Courts accepted the petitions and the cases were subsequently dismissed.

Rulemaking Update: Department staff has engaged in rulemaking activity in three areas for which it anticipates bringing final proposed rules before the Commission at the Commission's June 2010 meeting. The three areas of rulemaking include:

Proposed Division 522 Rules: (*Deschutes Basin*) Proposed Division 522 rules are intended to operate in conjunction with the Deschutes Basin Groundwater Mitigation rules (Division 505) and Mitigation Band and Credit rules (Division 521). The proposed rules were drafted based on the recommendations of a Work Group convened by the Oregon Water Resources Department (Department) pursuant to House Bill 3494 (Chapter 669, 2005 Oregon Laws).

In accordance with administrative rule, the amount of new groundwater use that can be approved in the Deschutes Ground Water Study Area under the mitigation program is limited to a cumulative total of 200 cubic feet per second. The proposed draft rules adjust how the Department counts appropriations under this existing limitation or "cap." In addition, the proposed rules clarify how municipal and quasi-municipal entities can grow into permits issued under the mitigation program using a combination of offsets of existing groundwater rights and approved mitigation.

Finally, the proposed rules provide greater flexibility in re-assigning permanent mitigation that is not used by an applicant, permit, or certificate holder. A public hearing draft of the proposed rules was made available for public comment on January 1, 2010. The public comment period extends through February 19, 2010.

Proposed Changes to Coastal Basin Programs: (*North Coast (Div. 501); Rogue (Div. 515); Umpqua (Div. 516); South Coast (Div. 517); and Mid-Coast (Div. 518)*) The Oregon Water Resources Commission adopts and periodically modifies programs for the state's major drainage basins as part of its statutory responsibility (ORS 536.300). Basin programs are administrative rules which establish water management policies and objectives and which govern the appropriation of the surface and ground water within each of the respective basins. Since 1955 the Commission has relied on basin studies that examine existing water resources and the means and methods of conserving and augmenting water resources to meet existing and contemplated future needs.

There is a need to update the listed basin program rules. Most of these rules were first adopted in the mid-1960s. These basin programs include provisions which are no longer consistent with current practice, due to changes in statute and other administrative rules. Examples of these dated provisions include a requirement that the Commission review all reservoir applications which propose to store more than 3,000,000 gallons of water before the application can be approved for a permit. Another example is the inclusion of "reservations" of water for specific uses. The term "reservation," as used at the time these basin program rules were adopted, has a different meaning than the more recent and current meaning of the term "reservation" under ORS 537.356, which was codified in 1987.

Water Development Loan Fund: (*HB 3369*) Department staff are reviewing provisions in HB 3369 related to the adoption of rules establishing standards for borrowers obtaining loans issued from the Water Development Loan Fund. The Department may bring final proposed rules before the Commission for consideration in June 2010.

Water Management and Conservation Plan Workshops: In 2009, the Water Supply and Conservation Section provided three workshops around the state related to the preparation of water management and conservation plans (WMCPs). The first workshop was held in Sisters and concentrated on Agricultural WMCPs. The other workshops, held in Florence and Hood River, focused on Municipal WMCPs. The presentations were well received and attended by approximately 125 individuals.

This year, the Water Supply and Conservation Section is continuing its outreach efforts by offering a Municipal Water Management and Conservation Plan Workshop on March 4, 2010, in Sunriver, Oregon. The workshop will be presented by Lisa Jaramillo and Bill Fujii and is scheduled as part of the Oregon Association of Water Utilities' (OAWU) annual management and technical conference. It is expected that between 30 and 35 people will attend this workshop.

III. Commission/Board Schedules

	Location	Date
State Land Board	Salem	April 13, 2010
Environmental Quality Commission	TBA	April 29-30, 2010
Dept. of Geology and Mineral Industries	Portland	March 26, 2010
Parks and Recreation Commission	Cottage Grove	March 18, 2010
Fish and Wildlife Commission	Salem	March 12, 2010
Board of Forestry	Salem	March 3, 2010
Land Conservation and Development Commission	Bend	March 17-19, 2010
Board of Agriculture	TBA	TBA
Oregon Watershed Enhancement Board	Hood River	March 16-17, 2010
Water Resources Commission	TBA	June 3-4, 2010