



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 E, June 4, 2010
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: According to the U.S. Drought Monitor, the western portion of Oregon (west of the Cascades) is currently near normal water conditions. The eastern portion of Oregon ranges from abnormally dry (80% of the geographical area) to severe drought at the southern border with California. The three month forecast predicts above normal temperatures and near normal precipitation. Drought conditions are likely to persist in the Klamath Basin and the basins adjacent. Spring and summer stream flow forecasts range from normal to slightly below normal west of the Cascades, to 26% to 90% of normal east of the Cascades.

As of May 1, irrigation reservoirs contain significantly less water than the same time last year, and are well below normal storage levels. Generally, the worst conditions are in basins adjacent to the California border with the Owyhee Reservoir supplying Owyhee basin at 60% of normal, Drews Reservoir supplying Lake County irrigators at 35% of normal, and Gerber Reservoir at 50% of normal, Clear Lake Reservoir at 30% of normal, and Upper Klamath Lake at 68% of normal (all supplying Klamath Basin irrigators).

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 has announced that on March 16th irrigators in Klamath County can expect to receive only 30% of the normal amount of stored water they need; many are turning 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 weekly briefings of the Governor, and weekly press releases to the media, containing situation updates. The Department, while interviewing qualified candidates for the Klamath Watermaster position, has rotated field and headquarters staff through the Klamath Falls office in order to provide customer service to water users in the Basin. Water users have requested "emergency drought permits," which would allow them to temporarily use groundwater, in lieu of their surface water rights, and for emergency transfers of water from one parcel of land to another. As of May 17, the Department had received 45 drought applications to cover a total of 30,229 acres; as of the same date, the Department had approved 41 applications, to cover a total of 24,805 acres.

Ecological Flow Technical Advisory Group: House Bill 3369 has a requirement that water storage projects funded by grants or loans established by the Bill include protection for “peak and ecological flows.” In response, the Department established an Ecological Flow Technical Advisory Group (EFTAG) tasked with creating a scientific framework for defining peak and ecological flows. In asking members to participate, the Department considered the academic, professional, and work experience backgrounds of each individual as related to the science of peak and ecological flow regimes. Since the work of this group is intended to be science-driven participants needed to demonstrate their scientific qualifications through their education and work experience. A list of participants is attached.

EFTAG is considering ecological flows within three major groups:

- Base flows, including instream flows as established under instream water rights
- Maintenance flows needed to maintain healthy stream channel morphology
- Triggering flows related to biologic needs

A final draft report is nearly complete and in late May a formal peer review will begin. The peer review will be led by Oregon’s Independent Multidisciplinary Science Team (IMST). The scientist leading the review team will be Dr. Clint Shock, superintendent of OSU’s Malheur Agricultural Experiment Station in Ontario, Oregon. Completion is targeted for sometime in July.

Policy discussions on this topic will not begin until the peer review is completed and the report has been finalized. Policy discussions will occur through a Rules Advisory Committee (RAC). Representatives of all affected interests will be invited to participate in the RAC.

Public Outreach and Presentations: The Director’s Office has conducted more than 25 briefings, presentations, workshops, and open houses since the last Water Resources Commission update in February 2010. All of these meetings included updates on the Integrated Water Resources Strategy, and involved Oregon communities, boards/commissions, stakeholders, partners, and the Governor and his staff. For more detail, please see Agenda Item B, on the Integrated Water Resources Strategy.

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 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. A court date has not been scheduled.

Micke v. Oregon Water Resources Department, et. al., Marion County Circuit Court

The Mickes have filed for Judicial Review of an alleged final order associated with a reservoir application. Talks have taken place with the water right applicant, the Mickes and the Department. A tentative resolution has been reached.

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.

Fort Vannoy Irrigation District v. Oregon Water Resources Department, Josephine County Circuit Court

This case is a petition for Judicial Review of a final order approving a limited license for irrigation. Talks between the limited license applicant, the irrigation district and the Department resulted in a settlement. The case was recently dismissed.

Rulemaking Update:

Coastal Basin Program Rulemaking

On March 1, 2010, the Department filed notice in the Oregon Bulletin of its intent to hold public hearings to receive comment on proposed changes to the North Coast, Rogue, Umpqua, South Coast, North Coast and Mid-Coast coastal basin programs contained in OAR Chapter 690, Divisions 501, 515, 516, 517, and 518, respectively. With the Commission's assistance, the Department conducted five public hearings; one in each of the five coastal basins as required by statute. The Department received oral comments at the public hearing held in Roseburg and written comments, including extended comments submitted by WaterWatch of Oregon. The public comment period ended on April 15, 2010. In consideration of the public comments received, the Department decided not to bring final proposed rules before the Commission at their June 2010 meeting, as had been planned, in order to provide more time and opportunity to listen and respond to the public's issues and concerns.

Water Development Loan Fund (HB 3369)

Department staff is reviewing provisions in HB 3369 related to the adoption of rules establishing standards for borrowers obtaining loans issued from the Water Development Loan Fund with a view toward bringing final proposed rules before the Commission for its consideration at the November 2010 meeting.

Ground-Source Heat Borings Rulemaking

Ground-source heat borings are vertical holes used in the construction and development of closed-loop heating systems for residential and commercial properties. Department staff are reviewing provisions in administrative rules contained in OAR Chapter 690, Divisions 230 and 240 to develop standards for ground-source heat borings that would provide greater protection of the state's groundwater resources. The Department intends to bring final proposed rules before the Commission for its consideration at the November 2010 meeting.

III. Commission/Board Schedules

	Location	Date
State Land Board	Salem	June 8, 2010
Environmental Quality Commission	Lakeview	June 16-17, 2010
Dept. of Geology and Mineral Industries	Portland	June 15, 2010
Parks and Recreation Commission	LaPine	July 15, 2010
Fish and Wildlife Commission	Salem	July 16, 2010
Board of Forestry	Enterprise	June 8-9, 2010
Land Conservation and Development Commission	Salem	July 21-23, 2010
Board of Agriculture	Klamath Falls	June 2-3, 2010
Oregon Watershed Enhancement Board	Garibaldi	September 14-15, 2010
Water Resources Commission	TBA	August 26-27, 2010