



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Acting Director

SUBJECT: Agenda Item L, October 22, 2004
Water Resources Commission Work Session

Director's Report

I. Commission Follow Up

Sustainability Plan: On October 6, 2004, the Department provided a quarterly report to the Sustainability Board on implementation of its 2003 – 2005 Sustainability Plan. The Department has made significant progress on eight of the nine goals identified in the plan. In particular, one goal was to establish 125 mitigation credits to “jump start” the Deschutes Mitigation Bank Program. So far in 2004, we have approved over 140 permanent mitigation credits. That is six times more credits than were generated in 2003.

The Department is also organizing a panel discussion for the January 2005 Commission meeting. The panel will be discussing global warming and its implications for water supply in the Northwest. The panel will include scientists and representatives from the National Fish and Wildlife Foundation, Oregon Water Resources Congress, Pacific Corp, City of Portland, and other organization.

Oregon Coastal Coho Project: The State of Oregon is heading into the final phases of an assessment of recovery efforts for Coastal Coho salmon. The assessment will evaluate the effectiveness of the State's Oregon Plan efforts over the past seven years to recover Coastal Coho. As part of the assessment, the Department is developing a report on voluntary streamflow restoration in Coastal Coho streams and on the impact of consumptive use on predicted streamflows. The Department presented preliminary findings to a group of stakeholders on September 8, 2004 in Tillamook.

II. Current Events

Current Water Conditions: With the exception of the southeast quarter of the state, water conditions in Oregon are near normal. In the southeast quarter of the state from the Klamath Basin east, water conditions range from abnormally dry to extremely dry with the lowest surface

water supply index identified in the Klamath Basin. The long-term forecast predicts higher than normal temperatures and normal precipitation through December.

Budget Update: In the current 2003-2005 budget the Department is on track with spending plans; however, unfunded health costs and an unfunded one time special payment to staff in February will continue to put a squeeze on the budget. Our success in managing the current budget is a result of holding vacant positions open for longer than the mandated 30-day period.

The Department has submitted the Agency Request Budget for the 2005-2007 biennium. Our Department of Administrative Services (DAS) budget analyst is recommending a 10% reduction based on current General Fund revenue forecasts. The Department will be appealing these reductions. While we are not optimistic about any new General Fund revenues, the analyst has identified our request for additional adjudication funding as a high priority for adding back into the budget. Other General Fund enhancements are not being considered by DAS or appealed by the Department.

Reimbursement Authority: House Bill 2551 (2003 Oregon Laws) established a pilot project that provides the Department the authority to enter into a voluntary agreement with an applicant for expedited agency action on an application or other request for regulatory action. Under such an agreement, the applicant pays the cost to hire additional temporary staff; contract for services; or provide additional services to the applicant not otherwise available.

Since enactment of the bill, the Department has developed the program and established three “pools” of pre-qualified contractors that are available to perform reimbursement authority work and prepare draft documents reflecting appropriate agency action on water right transfers, water right permit extensions, and water rights certificates. Since the contractor pools were established in late March 2004, the Department has entered into agreements to expedite the processing of 13 water right transfers, 3 water right certificates, and 2 permit extensions. To date, the range in cost for the transactions has been from \$630 for development of a certificate to \$1400 to process a complex transfer. The time to complete a water right transfer through the reimbursement authority program has been between 3 and 4 months.

The Department’s legislative concept 690-02 proposes to remove the January 2, 2006 sunset on this program so the Department can maintain this important alternative service delivery tool.

Regulatory Streamlining (Customer Service Survey): As part of its activities under the Governor’s Regulatory Streamlining Executive Order (EO-03-01), the Department has developed and is implementing a Customer Service Plan. Among other plan elements, the Department continues to assess customer service satisfaction through mail-in surveys provided with final decision documents. The Department has also conducted an on-line survey of individuals accessing the Department’s Internet web page and is developing an internal customer service protocol.

The mail-in “transaction survey” was initiated mid-February 2004 and is ongoing. To date, approximately 130 responses have been received, which equated to about a 17% return. Of the

surveys returned, approximately 80% rate the Department's overall customer service as acceptable or better. Staff will continue to evaluate trends in responses to identify opportunities for improvement.

The on-line web page survey ran for approximately one week in April 2004 and yielded 770 responses. Over 60 percent of on-line survey respondents indicated that "most of the time" they can find the information they are looking for. The greatest interests of survey respondents were well log information, water rights information, and interactive mapping. Data from the on-line survey will be used to improve the Department's web page, which is currently being redesigned.

US Forest Service Workshop: In May 2004 Department staff provided presentations at the U.S. Forest Service workshop on Oregon water rights and uses. Staff presentations covered topics such as Oregon water law basics, flow restoration tools, the adjudication process, and OWRD data inventory and information tools.

Western States Water Council (WSWC) Meeting: In July 2004 the Department hosted a WSWC meeting in Newport, Oregon. The agenda included updates on relevant federal legislation, federal policy and legislative activities, and water right transfers. Activities also included a tour of the Hatfield Marine Science Center and boat trip exploring Yaquina Bay and river.

In September 2004 the Department participated in a WSWC meeting in Salt Lake City focused on water supply issues. Major issues identified by the states included surface water/ground water conjunctive management, construction of additional storage facilities (both surface and ground water), and coordination between all the federal agencies and the states. Staff made a presentation on supply issues in the Deschutes and Klamath Basins. In September, the Department also participated in a conference sponsored by the WSWC and the Water Education Foundation on state water management issues at terminal water bodies/closed basins. Staff made presentations on current litigation and negotiation in the Klamath Basin and on water management challenges in closed basins in Oregon.

Water Rights Education: In September 2004, Department staff participated in a conference sponsored by the Oregon Agriculture Alliance. The focus of the conference was to educate water users and potential water users about the water rights process. Staff made presentations on water right permitting rules and statutes, water right transfers, extensions and certificates, and on the specific processes used to evaluate a ground water permit application.

National Fish and Wildlife Foundation (NFWF): In October, the Department received a grant from the NFWF Columbia Transactions Program. This funding will continue the Department's partnership with the Walla Walla Basin Watershed Council and local irrigation districts to provide assistance on applications for allocations of conserved water in the Walla Walla Basin. Funding was also provided to help local water users with voluntary flow restoration in the Lostine River Basin.

Certified Water Right Examiner (CWRE) Workshops: In late October and early November 2004, the Department will host a series of workshops for current and future water right examiners in La Grande, Bend, Salem, and Roseburg. The workshop agenda includes presentations on recent updates to the CWRE rules, the Reimbursement Authority Program, and water right transfer rulemaking activity. To date, the Department has received about 100 registrations for the workshops.

III. Litigation Update

Brayman et al v. Lewis et al Harney County Circuit Court – This matter involves several legal challenges to the watermaster’s regulation of water in Foley Slough, a distributary channel of the Silvies River in Harney County. As part of settlement discussions, the parties developed a water management plan that outlines regulatory and management actions. The plan, which was finalized and issued after reviewing written comments, has been appealed to the circuit court.

Fitzgerald Ranch, Inc., et al v. Oregon Water Resources Department Lake County Circuit Court – Petitioner Fitzgerald Ranch, Inc. and others are seeking judicial review of a water right certificate the Department recently issued to Adel Irrigation District.

Harrington v. Oregon Water Resources Department Jackson County Circuit Court – This involves two separate petitions for judicial review. In May 2004, Petitioner Harrington sought judicial review of final orders denying reservoir permit applications. In June 2004 Petitioner Harrington sought judicial review of final orders related to water use regulation. The court is currently considering motions for summary judgment regarding the denial of the reservoir permits. There currently is not action on the petition regarding water use regulation.

Hannigan v. Oregon Water Resources Department Oregon Court of Appeals – The Hannigans submitted a petition seeking judicial review of the Director’s final order canceling several water rights for mining use in the Burnt River Basin. On September 15, 2004, the court affirmed the Director’s order, agreeing with the Department on all issues.

Hood River Valley Residents Committee and Friends of Mt. Hood v. Water Resources Department Oregon Court of Appeals – In September 2004 the above named organizations petitioned for judicial review of a final order approving a permit extension for Meadows Utilities LLC.

WaterWatch et al v. Oregon Water Resources Commission Oregon Court of Appeals – In November 2002, WaterWatch of Oregon and thirteen other individuals, businesses, and organizations filed a petition for judicial review of the Commission’s Deschutes Ground Water Mitigation rules, and Mitigation Bank and Mitigation Credit rules (OAR Chapter 690, Divisions 505 and 521). Briefing by the parties was completed in December 2003. Oral argument before the court took place in May 2004.

WaterWatch of Oregon v. Oregon Water Resources Commission and Coos Bay North Bend Water Board Oregon Supreme Court – This case involves judicial review of a January 17, 2001, Commission final order approving a water right permit application for Coos Bay North Bend Water Board. Upon review, the court reversed the Commission’s order approving the application and remanded the matter back to the Department. In September 2004, the Oregon Supreme Court accepted the Department’s petition for review and also accepted the petition for review filed by Coos Bay North Bend Water Board. Oral argument before the Supreme Court should take place in early 2005.

Zyryanoff v. Water Resources Commission Polk County Circuit Court - This case involved the Judicial Review of a Department Final Order issuing a “remaining right certificate” as part of a water right transfer. Based on a request by the Petitioner, the case has been dismissed.

IV. Commission/Board Schedules

	Location	Date
Environmental Quality Commission (EQC)	TBA	TBA
Oregon Watershed Enhancement Board (OWEB)	TBA	Jan 19 -20, 2005
Land Conservation and Development Commission (LCDC)	Portland	Nov 3 - 4, 2004
Parks and Recreation Commission	Astoria	Oct 28, 2004
Fish and Wildlife Commission	TBA	TBA
Board of Agriculture	TBA	TBA
State Land Board	Condon	Dec 14, 2004
Board of Forestry	Tillamook	Oct 21 - 22, 2004
Dept. of Geology and Mineral Industries (DOGAMI)	TBA	TBA