



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 H, February 23, 2007
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: Regional storms early in January brought the only significant amount of precipitation for the entire month. By the middle of January, the state entered a dry pattern that has persisted for more than 3 weeks. January precipitation ranged from 27-71 percent of average across Oregon. The dry pattern has also failed to contribute to mountain snow packs. While most of January was cold and dry, by the end of the month temperatures had risen and some melting of the mountain snow pack occurred. Late January snow melt has further exacerbated the snow pack and water supply conditions.

As of February 1, Oregon snow pack was well below normal in all basins except the Lower Columbia and Hood River. February 1 snow pack was 50-80 percent of average throughout most of the state. Oregon streamflow and reservoir forecasts are reflective of these conditions. As of February 1, the 27 major irrigation reservoirs covered by this report were 60 percent of capacity. Many are expected to face reduced spring inflows and may not fill to their capacity this year.

Summer streamflow forecasts are below normal for much of the state.

Walla Walla Basin Tour and Meeting: On November 20, 2006, the Director and staff attended a tour of the Walla Walla watershed. Following the tour, the Director and regional staff met with representatives and managers from the Hudson Bay District Improvement Company and the Walla Walla River Irrigation District. The purpose of this meeting was to explore options for protecting instream flows provided by the districts under a federal agreement and opportunities for more flexibility for these districts to meet their supply needs.

Watermaster Training: During the last week of November 2006, the Department hosted a training for its watermasters and assistant watermasters. The training covered a range of topics including testifying, injury reviews on transfer applications, working with the media, interacting with counties on Measure 37 claims, and regulation and enforcement.

Oregon Water Utility Council (OWUC) Symposium: On December 4, 2006, the Director was invited to speak at the OWUC Symposium at the Salem Convention Center. The topic was “Water: Making Wise Choices.” The purpose of the conference was to gather representatives of the municipal water utility industry and other organizations to learn about water issues that will be addressed during the upcoming legislative session. The Director also spoke about the Oregon Water Supply and Conservation Initiative included in the Governor’s Recommended Budget.

Oregon Farm Bureau Meeting: On December 5, 2006, the Director and staff attended the Annual Farm Bureau Meeting in Bend. The Director provided a briefing on Klamath Basin groundwater.

Oregon Water Resources Congress Meetings: On December 6, 2006, the Director attended the annual meeting of the Oregon Water Resources Congress in Hood River. The topic of discussion was challenges and opportunities in water management. The Director highlighted the Oregon Water Supply and Conservation Initiative as a key step in meeting our future water supply challenges. The Director also attended the Oregon Water Resource Congress Tri-State Meeting on December 15, 2006 in Portland. Topics included water supply planning and Columbia River management.

Government to Government Activities: The Department has been working closely with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) during the past months. The State and CTUIR have entered into an intergovernmental agreement, and staff have been meeting regularly to implement the agreement. Additionally, on December 19, 2006, the Director and staff attended a meeting with BOR, CTUIR, and Westland Irrigation District. The topic of discussion was Phase III of the Umatilla Exchange Project. Finally, the Director and staff attended the 9th Annual State Tribal Summit in Canyonville, Oregon on December 13, 2006. Topics of discussion included tribal education and healthcare concerns, and drug-related issues.

Flow Restoration Update: On January 31, 2007, Department staff hosted a meeting with our instream flow restoration and conservation partners including the Klamath Basin Rangeland Trust, Deschutes River Conservancy, Oregon Water Trust, National Fish and Wildlife Foundation, and Walla Walla Watershed Alliance. The Department provided updates on its flow restoration program including recent rule changes and trends in applications received and flow restored. The meeting provided an opportunity for our conservation partners to give us feedback on how we prioritize our flow restoration workload to best meet their funding and other timelines. This meeting was very timely since July 20, 2007 marks the 20th anniversary of the Instream Water Right Act. During this time, approximately 900 cfs has been restored to Oregon streams and rivers through instream leasing, instream transfers, and allocations of conserved water. The Department has also recently rolled out an updated Water Conservation web site (<http://www.oregon.gov/OWRD/mgmt.shtml>) which allows the public to check on the status of their instream transfers and allocation of conserved water applications.

Rural Oregon Day: On February 12, 2007, the Director participated in Rural Oregon Day in Salem. Governor Kulongoski and Director Ward highlighted the importance of water to rural communities and the need to move forward with the Oregon Water Supply and Conservation Initiative.

County Outreach Project: In March 2007, April Snell, our Sea Grant Fellow, will be initiating an outreach effort with counties across the State. The goals of this effort include learning more about what counties are doing in terms of water supply planning, inform them of Department resources to aid their ongoing and future efforts, and to build stronger links between land use and water planning. April will be interviewing county planners from around the state. The interview questions have been developed and are being reviewed. Possible outcomes of this project include water supply planning success stories, lessons learned, and challenges from the perspective of different counties. The information collected from these interviews can also be used to support the Futures Subcommittee effort and the Oregon Water Supply and Conservation Initiative and to strengthen the Department's relationships with Oregon counties.

Affirmative Action Report: The Department's 2007 -2009 Affirmative Action Plan has been submitted and approved by the Governor's Affirmative Action Office. Some of the key elements of the Plan are to continue to educate staff, develop a work environment that is attractive to a diverse pool of applicants, retain employees, and be accepting and respectful of employees' differences.

Well Drillers Committee: The Technical Committee on Drilling Standards has met three times since October 2006. The committee has developed a list of priorities and is working on those issues, including updating the definitions in Divisions 200 and 240, as needed.

Well Constructor's Continuing Education Committee: The Well Constructors Continuing Education Committee met on February 15, 2007. The Committee reviewed course applications and documentation for continuing education credits.

BOR Grant for Agricultural Water Management and Conservation 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 Conservation and Management Project. The goal of the project is to create a guidebook to assist irrigation districts and other agricultural water suppliers in preparing water management and conservation plans that meet Oregon and federal requirements. The project also includes a series of workshops and events to introduce district managers, district patrons, board members, and others to water management and conservation plans and discuss how these plans can aid them in meeting water supply and regulatory demands. The project is guided by a diverse steering committee that includes irrigation district managers, and representatives from OWRC, the Department, and OSU. The Steering Committee has met several times, reviewed initial drafts, and plans to have the guidebook finalized by March 2007. The next phase of the project will be initiated during the same time period, with the development of workshop materials and scheduling of dates and regional locations.

Big Look Task Force: The Oregon Task Force on Land Use Planning (Big Look Task Force) is conducting a comprehensive review of the Oregon Statewide Planning Program and will make recommendations for any needed changes to land-use policy to the 2009 Legislature. The Department appeared before the Big Look Task Force on January 12, 2007.

II. Commission Follow Up

Measure 37 Update: Since Measure 37 went into effect, the Department has received 11 claims asking for compensation or waiver of agency rules and statutes. The Department has denied all of these claims filed with the agency. Two of the denials have been appealed to circuit court, one in Yamhill County and the other in Marion County.

US Geological Survey (USGS) Report on the Klamath Basin: Progress continues on the cooperative USGS Upper Klamath Basin ground water study. The study focus of late has been twofold: incorporating the geologic framework and the watershed models into the basin-wide numerical flow model, and preparing the hydrology report for publication. The latest estimate from the USGS is that the hydrology report will be published in March or April. This is a revised projection, and is due to a new publication process that out-sources reports to the regional offices. The USGS understands the significance of the report and is doing what it can to ensure the report is available as soon as possible. The hydrology report will provide documented confirmation of the hydrological information we are already using to manage ground water in the basin. A second publication addressing the numerical model construction and simulation results for the upper basin is scheduled for completion at the end of 2008.

Water Right Information System: Information Services and Field Services are working on an upgrade of our Water Right Information System (WRIS), which will include several improvements to our customer service tools as well as streamline several of our business processes. Among these improvements will be the ability to electronically share permit and transfer application materials as well as electronic distribution and receipt of intra-agency review forms. Additionally, it will provide staff and the public with easier access to water right transfer documents and information on the status of pending water rights and transfer applications. The new system is expected to be rolled out and available by the end of March 2007.

III. Rulemaking

The Department has no rulemakings pending at this time. Staff will present a list of potential 2007 and 2008 rulemaking efforts to the Commission at the May 2007 meeting.

IV. Litigation Update

Flesch v. Oregon Water Resources Department (Benton Co.) (Filed Nov. 2006): Watermaster District 2 issued a notice of violation to Arthur Flesch for irrigating up to 1.5 acres from an exempt well. Flesch requested reconsideration, which the Department did not grant. Flesch filed a petition for judicial review against the "Western Region, WRD" and the watermaster. The Attorney General's office is preparing an answer to the petition.

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 Nobles 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. 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. The Department is currently involved in mediation seeking to resolve this matter without going to trial.

Miller LaGrande Ranches, LLC vs. Oregon Water Resources Department: Miller LaGrande Ranches filed three 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 for the first application indicated the 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 reviews for the second and third applications indicate that the applications 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 reached.

Miller LaGrande Ranches was issued a Notice of Violation by the watermaster for using the wells without 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.

Miller LaGrande Ranches has subsequently filed another application. The newest application proposes the construction of two new wells. The application proposes to develop up to 7 cubic feet per second from the deeper basalt aquifer. The Department has issued an initial review indicating that it is likely that a permit can be issued.

Further legal action may be avoided on this matter.

Fort Vannoy Irrigation Dist. v Water Resources Commission: This case stems from a contested case on a water right transfer that was protested by Fort Vannoy Irrigation District. On July 29, 2005, the Commission denied Fort Vannoy Irrigation District's exceptions to the Proposed Order. Subsequent to the Commission's denial, Fort Vannoy Irrigation District 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 | Salem | Feb. 22-23 |
| Oregon Watershed Enhancement Board | Willamette Valley | Mar. 14-15 |
| Land Conservation and Development Commission | Salem | Mar. 8-9 |
| Parks and Recreation Commission | Salem | Mar. 8 |
| Fish and Wildlife Commission | Salem | Mar. 16 |
| State Land Board | Salem | Apr. 11 |
| Board of Forestry | Salem | Mar. 7 |
| Board of Agriculture | Salem | Feb. 22-23 |
| Dept. of Geology and Mineral Industries | Portland | Feb. 6 |