



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, June 1, 2007
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: May 1 snow pack was approximately 61% of normal. Many basins in the state have lost snow at all but the highest elevations. Eastern Oregon basins fell short of a normal snowpack this winter. Those basins with below normal winter snowpack saw rapid melt in March and April. Only the Willamette and Deschutes basins approached a normal snowpack this past winter. In many areas of Eastern Oregon, the melt out is several weeks ahead of schedule. With the below normal winter snowfall and early melt off, many water users, particularly in Eastern Oregon, will see well below normal spring runoff and summer stream flows this year.

Since October 1 statewide precipitation totals are slightly below to near normal. Large storms in November, December, and February brought most of the precipitation Oregon had this winter. May 1 storage at 27 major Oregon reservoirs was 94% of average.

May through September inflow forecasts to many of the irrigation reservoirs east of the Deschutes are significantly below average. While current conditions appear close to average, much of the annual runoff has already occurred. Streamflow forecasts for this irrigation season range from a high of 92% of normal in the Willamette Basin to a low of 39% of normal in the Owyhee Basin.

Online Database Improvements: Since January the Department has been making an effort to provide more water right maps online to assist in processing new water right applications and transfers, assist field staff with their activities, and provide additional information to the public. During the past few months, we have added over 10,000 maps to our online repository and will continue a concerted effort through the end of the biennium. Of a total of approximately 80,000 maps, we currently have about 22,000 online.

Kernville Gleneden Beach – Lincoln Beach Water District and Lincoln City Supplemental Settlement Agreement: On September 8, 2005, a Supplemental Settlement Agreement (SSA) was entered into between a number of parties including the Department, Kernville Gleneden Beach –

Lincoln Beach Water District (KGBLB), Lincoln City, WaterWatch, and others. The SSA addressed a variety of water right matters in the Lincoln City area and is now in the implementation phase.

The SSA resulted in avoidance or resolution of approximately 20 water right protests. The Department has issued a variety of water right documents pursuant to the SSA. Lincoln City's request for the establishment of reservations of water for future economic development on Rock Creek, Side Creek, and Treat River, has been approved and is now reflected in administrative rule. A minimum bypass flow was included as a water right condition on certain Drift Creek diversions. Lincoln City commissioned an engineering study or studies to increase the efficiency of the City's water transmission and distribution system. Lincoln City will construct and put into operation an additional two million gallons of water storage by December 31, 2020. Lincoln City and KGBLB will facilitate participation by the Siletz Tribe in regional water supply planning through ORS 190.110. The City of Lincoln City has also submitted, and the Department recently approved, a water management and conservation plan. Following signature of the SSA, the Department, WaterWatch, and KGBLB signed a separate settlement agreement on a related water right application.

Governor's Food Drive: The Governor's Food Drive took place in February 2007. The Department and Oregon Watershed Enhancement Board jointly collected food and donations totaling more than \$4,800 which is equivalent to over 29,000 pounds of food.

Oregon Farm Bureau Events: Director Ward and Commissioner Charlie Barlow attended the Oregon Farm Bureau Mid-Year Conference held at the Salem Convention Center on March 21, 2007. The Director and Commissioner Barlow provided updates on the Department budget and legislation. Director Ward also attended the Polk County Farm Bureau Meeting on March 6, 2007 in Monmouth. Topics of discussion included water and land use issues and overlay zones.

Association of Oregon Counties: Director Phil Ward attended a meeting with the Association of Oregon Counties held at the Department on March 12, 2007. The topics of discussion included land use and water issues.

2007 Oregon Dam Safety Workshop: The Department hosted the 2007 Oregon Dam Safety Workshop in Wilsonville, Oregon on March 20, 2007. The workshop agenda included dam safety awareness, climate warming, and the US Army Corps of Engineers dike and levee inspection program. The workshop had more than 150 participants from about 13 states.

Representative Tom Butler's Radio Show: On March 28, 2007, Director Ward was an invited participant on Representative Butler's radio show. Questions included Department sponsored bills and other water related legislation.

Children's Clean Water Festival: The 14th Annual Children's Clean Water Festival was held on April 12, 2007, where fourth and fifth grade students gathered to learn about water and how it relates to our world. In attendance were classroom presenters, exhibitors, volunteers, and performers who explored water science and watershed ecology. The 2007 Children's Clean

Water Festival was an enormous success. This year there were approximately 1270 fourth and fifth grade children in attendance, from 50 classes in 29 different schools. There were 3 stage show performers, 60 exhibitors at 25 exhibits, 85 presenters in 33 classrooms, 50 organizations represented, and 60 volunteers. The festival was held at Portland Community College's Sylvania Campus. There was an exciting addition to the 2007 Clean Water Festival. This spring, Department staff applied for and received a \$1000 SPACE grant provided by East Multnomah Soil and Water Conservation District. SPACE grant funds were used to purchase educational resources for every teacher who attended the festival. In addition, the grant was used to support the stage show performances.

Land Conservation and Development Commission: On April 26, 2007, Director Ward spoke to the Land Conservation and Development Commission on April 26, 2007 about water supplies and links between land use and water law.

Surface Water Modeling Workshop: In April, the Department sponsored a four-day workshop in surface water hydraulics and hydrology. A total of 21 people attended the training, including 10 Department employees. Others included employees from Oregon Department of Transportation, Clean Water Services, the city of Salem and Washington Department of Ecology. Instruction centered around the use of computer programs developed by the Corps of Engineers for modeling surface water profiles and modeling storm water runoff. A dam safety grant through Federal Emergency Management Association was used to fund the workshop.

Position Updates: In May 2007, Mike Auman, Administrative Services Administrator, accepted a position with the Department of Energy. Tracy Loudon was subsequently hired as the new Administrative Services Administrator. Tracy joins us from the Employment Department, where he has spent the last 22 years. Debbie Colbert, Senior Policy Coordinator, has accepted the position of Field Services Administrator. She will be responsible for overseeing field activities along with the Transfer Section. She will begin her new position as of July 1, 2007. Mike Ladd has been Acting Field Services Administrator for the past year. Jerry Rodgers, Eastern Region Manager, has accepted the Technical Services Administrator position effective July 1, 2007. He will be replacing Barry Norris who will be officially retiring and moving to half time as of July 1, 2007.

II. Commission Follow Up

Measure 37 Update: Since Measure 37 went into effect, the Department has received 12 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.

III. Litigation Update

Flesch v. WRD (Benton Co.) (Filed Nov. 2006) Request for Judicial Review of a Notice of Violation (NOV) (final order) issued by a watermaster. The NOV was issued after the watermaster attempted to gain voluntary compliance. Mr. Flesch was irrigating 1.5 acres from a

well without benefit of a water right. Mr. Flesch claims that he does not need a water right since he never irrigates more than ½ acre at any given time.

Our attorney filed a Motion for Summary Judgment. The hearing of arguments regarding the Summary Judgment motion was held on May 11, 2007. The Judge ruled in our favor on the motion.

Fort Vannoy Irrigation Dist. v. WRC (Oregon Court of Appeals) This case stems from a contested case on a water right transfer that was protested by Fort Vannoy Irrigation District. The Commission denied Fort Vannoy's exceptions to the Proposed Order on July 29, 2005. Subsequent to the Commission's denial, Fort Vannoy filed a request for judicial review with the Court of Appeals. Oral arguments before the Court of Appeals were heard on April 12, 2007. A decision is expected by the end of the summer.

Harrington I (Oregon Court of Appeals) This case is related to the denial of water right applications requesting to store water in the Big Butte Creek basin in southern Oregon. This basin was classified for the exclusive use of the City of Medford by the Oregon Legislature in 1925. The Jackson County Circuit Court ruled in the Department's favor. Subsequently, an appeal was filed with the Oregon Court of Appeals. No date for argument has been scheduled.

Harrington II (Oregon Court of Appeals) This case is related to actions of the watermaster in regulating the water being stored in the Harrington reservoirs without benefit of a water right. The Jackson County Circuit Court again ruled in favor of the Department. This case has also been appealed to the Oregon Court of Appeals. No date has been scheduled for oral argument before the Court.

Harrington III (Federal Court) This is a "1983" discrimination filing in Federal Court. Harrington is alleging that the department has acted to discriminate against him in his efforts of obtaining legal authorization for the reservoirs which are on his property. The Department has invested considerable staff hours responding to requests of discovery. Additionally, several staff have been deposed. No court date has been set at this time.

Micke v. WRD (Marion County Circuit Court) The Department has not been officially served in this case. The reservoir in question is located within the Goose and Summer Lake Basin in Lake County. Micke's were served with a Notice of Violation (NOV) for storing water without benefit of a water right. Micke's filed a water right application to store water however, the application has been protested. At this time, a permit has not been issued.

Miller LaGrande Ranches Inc. v. WRD (Union County Circuit Court) Miller LaGrande Ranches LLC. filed several water right applications to use ground water for irrigation. A review of the wells determined that the ground water was in hydraulic connection to the Grande Ronde River. It was determined that water right permits could not be issued for the quantity of water which the Ranch was requesting. Crops were planted and water was diverted from the wells and used for irrigation without benefit of a water right. The watermaster issued a Notice of Violation

(NOV) for using water without a permit. The Ranch filed for and received a Temporary Restraining Order against the watermaster from Union County Circuit Court.

The Ranch filed a new water right application requesting water from the deeper basalt aquifer which is not in hydraulic connection to the Grande Ronde River. Upon review, it was determined that this application could be approved. A Final Order proposing to approve a permit for use of the basalt aquifer was issued on May 10, 2007. Indications are that any further court action will be dismissed.

Noble v WRD (Lytle) (Clackamas County Circuit Court) Noble's are seeking Judicial Review of several water right applications (and permits) that proposed to approve the permitting of some small reservoirs in the Beaver Creek basin of Clackamas County. Three different ownerships are involved. The issues between the three cases are similar. We filed a Motion to consolidate the cases which was denied by the Court. The Department has responded to public information requests, requests for depositions of several Department staff and participated in settlement discussions with the Noble's and the applicants. The court hearing on the Martin case is scheduled to begin on Tuesday June 19. No trial dates have been set to deal with the Lytle or Vityuk matters.

Noble v WRD (Martin - Beaver Lake Nursery) (Clackamas County Circuit Court)
(See Noble Lytle)

Noble v WRD (Vityuk) (Clackamas County Circuit Court)
(See Noble Lytle)

IV. Commission/Board Schedules	Location	Date
Environmental Quality Commission	Portland	June 21-22
Oregon Watershed Enhancement Board	LaGrande	Sep. 18-19
Land Conservation and Development Commission	Salem	June 14-15
Parks and Recreation Commission	Honeyman State Park	July 12
Fish and Wildlife Commission	Salem	June 8
State Land Board	TBA	June 12
Board of Forestry	TBA	June 5-6
Board of Agriculture	Pendleton	Sep. 10-11
Dept. of Geology and Mineral Industries	Klamath Falls	September 6