



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, November 30, 2007
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The new water year began October 1, 2007, with conditions around the state, especially east of the Cascades, very dry. Much of the west coast and Intermountain West saw a cool trend during the second week of October. Rains weren't widespread, the only significant precipitation (1-2 inches) occurring in the northern coastal reaches of California and extreme southwest Oregon. According to the National Drought Monitor, east of the Cascades trends range from "abnormally dry" to "severe drought." To the west of the Cascades, water conditions are normal. Most long term forecasts predict conditions wetter than normal for this winter.

Ethic Law Changes: The 2007 Legislature made some significant changes to the Ethics Law through HB 2595 and SB 10. These changes become effective January 1, 2008 and should be available in the form of Administrative Rules shortly. There are four primary areas of change that I bring to your attention so that a careful review of the Administrative Rules can be made when they are available.

- 1) Commission members are required to submit a Statement of Economic Interest (SEI) on a quarterly basis or face fines up to \$5,000 (\$10 a day x 14 days; \$50 a day thereafter).
- 2) Gifts that can be given and received are limited to \$50 per year per individual; no entertainment is allowed (tickets to the big game).
- 3) Policy on Gifts extends to the immediate family (spouse, children, others in the household).
- 4) A public official cannot receive benefit from a contract awarded while they were a public official during subsequent employment for two years (revolving door).

Additional information on this topic will be available after the first of the year following publication of the Administrative Rules by the Ethics Commission.

Marmot Dam: Portland General Electric (PGE) has removed Marmot Dam which was located across the Sandy River.

Dwight French attended the demolition ceremony that occurred on July 24, 2007.

Removal of Marmot dam is part of a plan to restore wild salmon and steelhead run, to protect habitat along the river, and to improve recreational opportunities.

A second dam on the Little Sandy River will be removed in 2008.

Economic Revitalization Team: Director Ward attended an Economic Revitalization Team (ERT) meeting on September 10, 2007. The focus of this meeting was to bring multi-agency directors together to re-cap the 2007 legislative actions affecting economic and community development and outlining the Governor's priorities for 2007-2009. Director Ward gave an update on the Department's behalf regarding department sponsored bills that have passed and some of the other legislation that did not. He also talked about how the Department is moving forward to implement the Oregon Water Supply and Conservation Initiative (OWSCI), which was included in the Governor's recommended budget and was largely funded by the legislature.

Benton County Commissioners Water Summit: On September 13, 2007 Director Ward and Debbie Colbert, Administrator of Field Services Division, were invited to speak at the Benton County Commissioners Water Summit. The topics of discussion were the Department's role concerning water supply, water use and the Department's plan for the future.

Association of Western State Engineers: The Association of Western State Engineers held their 80th Annual Conference September 16-19th in Klamath Falls, Oregon. Barry Norris hosted the conference with Engineers in attendance from 16 of the 19 Western States. Director Ward was in attendance and spoke regarding Water Issues in Oregon. Some of the Agenda items included Future Water Supply Planning, Impacts of Climate Change, and a field trip to the Klamath Basin and Crater Lake National Park. The conference was well attended and a lot of planning went into this conference to make it a success.

Ontario Chamber of Commerce: Director Ward was invited by the Ontario Chamber of Commerce, at the request of Representative Butler's office, to speak at a meeting on September 24, 2007. Director Ward spoke on topics including water, agriculture, and politics.

League of Oregon Cities Annual Conference: The 82nd Annual League of Oregon Cities Conference took place September 27-29, 2007 in Bend, Oregon. Director Ward was invited and attended this event on September 28, 2007 for the State Agency Directors Roundtables and luncheon that followed.

Economic Revitalization Team: On October 2-3, 2007 the Economic Revitalization Team Directors Field Trip took place in Coos County, Oregon. Director Ward was in attendance and was able to tour North Spit by boat hosted by the Port of Coos Bay. The tour also included North Bend Hotel and the central dock area waterfront developments in Coos Bay.

Western States Water Council: Director Ward attended the Western States Water Council meeting in Salt Lake City, Utah October 10-12, 2007. The meeting was entitled “Water Policies and Planning in the West: Ensuring a Sustainable Future.” Director Ward facilitated several break out sessions during the meeting. Some of the topics included; “The Role of Water Policy and Planning in Dealing with Growth” and “Climate Change and Water Planning.”

Meeting with The Confederated Tribes of the Umatilla Indian Reservation: On October 18-19, 2007, Director Ward traveled to Pendleton, Oregon for a meeting with The Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Westland Irrigation District and The Secretary of the Interior’s Office. This meeting was called to discuss topics such as “Objectives for 2008” and “What are the Priorities to be Accomplished for Negotiating a Settlement in 2009?”

Oregon Agriculture Education Foundation: On October 24, 2007 Director Ward attended the Oregon Agriculture Education Foundation (OAEF) Board Meeting. Some of the current active projects discussed at the meeting were Oregon Farm Bureau Memorial Scholarship, Oregon Century Farm and Ranch and Summer Ag Institute. Some other projects included Oregon Water Management and Agricultural Infrastructure.

Port of Morrow Meeting: Director Ward, Barry Norris and Brenda Bateman attended a meeting at the Port of Morrow in Boardman, Oregon on October 29, 2007. The purpose of the meeting was to begin discussions with local stakeholders about possible above and below-ground storage projects that could help meet the region’s long-term water supply needs.

Oregon Progress Board Meeting: Director Ward and Brenda Bateman attended the Oregon Progress Board Meeting on October 25, 2007. Director Ward represented the Water Resources Department and spoke regarding the Department’s role in managing the waters of the state and how the policies and programs implemented by the Department closely relate to the goals of Oregon Shines. Oregon Shines is a group of both elected officials and the public that focuses its efforts on setting goals for the state to retain and improve the quality of life in Oregon.

Upper Klamath Lake Dike Removal Project: On October 30, 2007, the Nature Conservancy ignited 100 tons of explosive to remove two miles of dike that for over 50 years separated the Upper Klamath Lake from productive farm ground. After careful analysis and study, this approach to removing the dike and inundating approximately 2500 acres of land was the most effective, safe and expedient. The removal of the dike will create wetlands on about one third of the ground the Nature Conservancy has acquired on the Williamson River Delta since 1996. These new wetlands will act as a refuge for the endangered short-nosed and Lost River suckers. This project is supported by a broad range of basin stakeholders and complements the ongoing removal of Chiloquin Dam on the Sprague River which will open up 60 miles of stream habitat for these suckers.

16th Annual Oregon Water Law Conference: On November 1-2, 2007 the Seminar Group, Water Resources Department, and two law firms co-sponsored the 16th Annual Oregon Water Law Conference, in Portland, Oregon. Director Ward was in attendance and was a keynote speaker on

the topic “Key Challenges in Water Resource Management in the 21st Century.” Debbie Colbert, spoke on behalf of the Department and provided a review of the 2007 Legislative Session. Commissioner John Jackson and several staff from the Department were also in attendance at the conference. The conference topics included Water Use Measurement, Regulation of Exempt Wells and Columbia River Withdrawals (Oasis Project).

Battle Creek Update: Battle Creek Golf Course, in South Salem, has submitted a water right application and a permit could be issued upon compliance with the agreement and stipulated final order. Due to aquifer characteristics and conditions in the proposed permit, the course owner is concerned that water may be an issue in the future. The golf course is within the City of Salem and could be serviced by the City upon City approval. Battle Creek Golf Course has requested a zoning change and neighbors to the golf course are contesting the zoning change with water as one of the issues identified. OWRD has provided water right information to the course owner and City of Salem Planning Commission. The Planning Commission has held two hearings on the zoning change request and is scheduled to hold the final hearing December 4, 2007.

Sprague River Grant: BOR has awarded a grant to OWRD for up to \$100,000 for increased measurement in the Sprague River system. The grant application included 5 new gaging stations in the Sprague River with one that will have a bank operated cable system to measure the river at high flows. This part of the project will require \$70,000.

The remaining \$30,000 is awarded for cost share funding for voluntary installation of measuring devices on diversions in the Sprague River. The grant funds can be matched at 50% cost share.

The Klamath Tribes is a great partner and is willing to match additional funds (up to \$25,000 this year).

Agricultural Water Management and Conservation Plans: Last year, the Department partnered with the Oregon Water Resources Congress (OWRC) on a grant from the U.S. Bureau of Reclamation (BOR). The grant funded the development of a new guidebook for Agricultural Water Management and Conservation Plans.

The guidebook provides an educational tool to district managers, board members, and patrons so that they can develop a better understanding of their water supplies, use, and delivery systems. This, in turn, will enable districts to use this information to plan, design, and implement changes to their system to better manage and conserve water and meet future supply challenges.

The Department and the OWRC provided a workshop on using the new guidebook at the OWRC Water Law Conference on October 19, 2007 which was attended by 35 participants.

The guide and outreach materials are available on the Department website:
http://www.wrd.state.or.us/OWRD/mgmt_ag_wmcp.shtml

Position Updates: Tiffany Goetz started working for the Department on August 16, 2007. She is our new part-time receptionist. Sandy Todd has joined the Department as the new Fiscal Manager,

for Administrative Services Division on October 22, 2007. She comes to us from Employment Department with a background in management and accounting. Another addition to the Department is Brenda Bateman, Ph.D. She began working for the Department on October 22, 2007. She comes to us from Tualatin Valley Water District and is our new Senior Policy Coordinator, in the Director's Office. She has an extensive background in water policy as well as some legislative and rulemaking background. Patricia McCarty joined the Department, in the Water Rights Division, on October 29, 2007, as the Protest Program Coordinator. Patricia has many years experience as a natural resources attorney. Her experience in mediation and public policy issues will be a great asset to the Department. Ruben Ochoa will begin working for the Department on December 6, 2007. Ruben will be the new Policy Analyst in the Director's Office. He comes to us from Texas. Ruben's extensive experience in public policy, rulemaking, and writing will be a great asset to the Department.

II. Commission Follow Up

Measure 37 Update: The Department recently received a new Measure 37 claim. This claim was filed by Mr. and Mrs. Lloyd Piercy. The claim is focusing on the restrictions resulting from the establishment of a Critical Ground Water Area in Umatilla County. The State's response is not due until early next year. Additionally, two of the Department's denials have been appealed to circuit court, but neither case has been heard.

III. Litigation Update

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. Fort Vannoy then filed a request for judicial review with the Court of Appeals.

The Court of Appeals issued a ruling on July 11, 2007. The Court concluded that an irrigation district in whose name a water right certificate is issued is the holder of a water use subject to transfer. The Court noted that the district whose name is on the certificate may seek a change in a diversion point under ORS 540.510. The Court further concluded that Fort Vannoy Irrigation District was not the applicant for the proposed changes to Certificates 8942 and 8943. The case was reversed and remanded for reconsideration.

The Appellate Division of the Attorney General's office filed a petition with the Oregon Supreme Court requesting that the Court review the decision of the Court of Appeals. We have not received word from the Supreme Court as to whether it will accept the review of this case.

Harrington I (Oregon Court of Appeals) This case is related to the denial of water right applications requesting permission 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. The Court of Appeals has issued a ruling affirming Circuit Court decisions on Harrington I and II.

Harrington II (Oregon Court of Appeals) This case is related to actions of the watermaster in regulating the water stored in the Harrington reservoirs without benefit of a water right. The Jackson County Circuit Court ruled in favor of the Department. This case was also appealed to the Oregon Court of Appeals, which affirmed the Circuit Court decisions.

Harrington III (Federal Court) The Federal District Court issued a ruling which grants the State's motions for Summary Judgment. This was a "1983" discrimination filing. Harrington alleged that the Department acted to discriminate against him in his efforts to obtain legal authorization for the reservoirs that are on his property. The Department invested considerable staff hours responding to requests of discovery. Additionally, several staff members were deposed. Oral arguments on the State's motion for Summary Judgment were heard on August 1, 2007. Federal Magistrate granted the state's motion of Summary Judgment on September 27, 2007. The Attorney General's Office submitted a claim of \$158,000.00 for costs and attorney fees.

Harrington has appealed the Courts decision to the 9th Circuit Court.

Micke v. WRD (Marion County Circuit Court) This case relates to the storage of water in a reservoir without benefit of a water right permit. The reservoir in question is located within the Goose and Summer Lake Basin in Lake County. In 2002, the watermaster determined that water was being stored in the reservoir without benefit of a water right. He contacted the Mickes and instructed them to release the water from the reservoir. The Water Resources Department subsequently received a water right application to store water in the Micke's reservoir. The Lakeview Water Users Association filed a protest to the water right application's Proposed Final Order (PFO). The protest has not been resolved. Mickes are working with the protestants to resolve the protest.

In March of 2007, it was discovered that Mickes were once again storing water in the reservoir. The Mickes were served with a Notice of Violation (NOV) for storing water without benefit of a water right. The Mickes filed for Judicial Review of the Notice of Violation in Marion County Circuit Court. After this action was filed but before it was served on the Department, a Notice of Assessment of a civil penalty was issued.

Noble v WRD (Lytle) (Clackamas County Circuit Court) The Nobles are seeking Judicial Review of several water right applications (and permits) for some small reservoirs in the Beaver Creek basin in Clackamas County. Three different owners are involved in three similar cases. The Department filed a motion to consolidate the cases; the motion was denied by the Circuit Court. The Department has responded to public information requests, requests for depositions of several Department staff, and has participated in settlement discussions with the Nobles and the applicants. The parties in the Martin case have entered into a settlement agreement and that case has been dismissed by the Circuit Court. The parties in the Vityuk case have also entered into a settlement agreement and the case has been dismissed by the Circuit Court. No trial date has been set to deal with the Lytle case.

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)

Webber v. WRD et al (Federal District Court)

The latest litigation suit filed in Federal District Court is a Civil Rico and Civil Rights Complaint and Demand for Jury Trial of all Claims filed by John Carl Webber, Jr. of Prineville, Oregon. Mr. Webber was found irrigating more than one-half acre of non-commercial lawn and garden from a well without the benefit of a water right. He continued using the water on the 3.0 plus acres following the issuance of a Notice of Violation, which resulted in the assignment of a civil penalty.

IV. Commission/Board Schedules

	Location	Date
Environmental Quality Commission	Portland	December 13-14
Oregon Watershed Enhancement Board	Astoria	Jan. 16-17 2008
Land Conservation and Development Commission	Beaverton	Jan. 24-25, 2008
Parks and Recreation Commission	TBA	TBA
Fish and Wildlife Commission	Salem	Dec. 7
State Land Board	TBA	Dec. 11
Board of Forestry	Salem	Jan. 9, 2008
Board of Agriculture	TBA	Dec. 10-11
Dept. of Geology and Mineral Industries	TBA	TBA