



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, February 29, 2008
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: Snowpack has grown considerably throughout the state of Oregon since January 1, 2008. The February 1st snowpack was well above normal west of the Cascade crest and in the Deschutes basin. East of the crest, the February 1st snow-pack was near or above normal. Several low elevation Snowpack Telemetry (SNOTEL) sites were reporting record conditions as of February 1, 2008. As of February 1st most stream flow is expected to reach near average or above average conditions this coming spring and summer.

February 1st storage at twenty-seven major Oregon reservoirs was sixty-five percent of normal.

Oregon Water Resources Congress Annual Meeting: On November 28, 2007, Director Ward attended the Oregon Water Resources Congress Annual meeting in Hood River, Oregon. Director Ward was on the agenda and gave an update of current issues facing the Water Resources Department. He also presented the Governor's Proclamation for the Water Resources Congress.

Watermaster Reception Dinner: On December 6, 2007, Director Ward attended the reception and dinner for the Watermasters who were in Salem all week for the Watermaster Training session. Director Ward presented awards to the Watermasters at the reception.

Oregon Water Supply and Conservation Initiative: The Department has selected a private contractor, HDR Engineering, to manage two components of the Initiative, the demand assessment and conservation inventory.

Director Ward was present at the Oregon Water Supply and Conservation Initiative Kickoff meeting held on December 20, 2007. This meeting was held with agency staff and the private contractor HDR. Later in the afternoon external Stakeholders were invited to attend an informational meeting with the contractor.

During January, HDR developed its data collection methodology and met with stakeholder groups to further refine it. HDR and Department staff plan to hold additional meetings statewide during February and March 2008, as part of their informational outreach and data collection efforts; the

data collection phase should conclude in late April 2008 with final results due to the Department in June.

A third component of the Initiative involves the award of grant funding to communities who are engaged in long-term water supply planning. Additional details and the application form are available on The Department's web site. Applications are due in the Department's Salem Office on March 15, 2008.

Staff will present more details during the February 29th Commission Meeting.

Governor's H₂O Strategy Document: The natural resource agencies have been working on this document in response to the Governor's commitment to make water resources one of his priority issues over the next three years. The guiding principles set forth in the H₂O Document will provide the framework for the Governor's 2009 Water Policy Agenda. The Governor's Natural Resources Director, Mike Carrier, convened a meeting of agency directors during early February to determine next steps and plans to convene a meeting of representatives from the natural resources commissions as well.

Association of Oregon Counties, Water Committee: Director Ward met with the Association of Oregon Counties Water Committee again in January and the members promised to send a written response to Commissioner Thorndike's letter of invitation to the Commission's May 2008 meeting.

Ground Water Advisory Committee Meeting: The Ground Water Advisory Committee held a meeting on January 11, 2008. This was the first meeting since the November commission appointments. Director Ward welcomed the committee and briefed them on the Governor's H₂O Strategy Document. Tim Smith was elected Chair and Greg Kupillas as Vice-Chair of the committee. A staffer from the Ethics Commission provided an overview of public official responsibilities under the new ethics statute. Doug Woodcock provided an update on the Pete's Mountain and Eola Hills measuring tube and well construction rules, currently out for public comment. Several department managers and administrators presented overviews of activities within their sections. Chair Smith led a discussion on groundwater permitting issues in Harney County.

"Agriculture and Community Water Act" (SB 1069): SB 1069 was adopted on January 16, 2008 by the Senate Environment and Natural Resources Committee as a committee bill for the February 2008 session. SB 1069 is entitled the "Agriculture and Community Water Act," and would provide funding to communities who are conducting feasibility studies for water conservation, re-use, or storage projects. The Bill would also fund the Sand Hollow – Umatilla Basin Regional Aquifer Recovery Project, the first feasibility study identified for funding upon passage of the Bill.

The Department has posted a series of documents to its web site that describes in further detail the potential economic, hydrological, biological, and environmental benefits of the Sand Hollow-Umatilla Basin Regional Aquifer Recovery Project. The web site also houses the Department's initial technical assessment of the Sand Hollow-Umatilla Basin Regional Aquifer Recovery Project. Finally, the web site includes a document describing the Department's vision for a new mitigation bank in the Umatilla Basin. The formation of such a mitigation bank is a component of the 2008 Agriculture and Community Water Act.

Oregon Water Utility Council Meeting: Director Ward hosted a meeting for the Oregon Water Utility Council on January 10, 2008. The Department hosted the meeting as an outreach effort to the Oregon Water Supply and Conservation Initiative.

Pendleton Rotary Meeting: Director Ward traveled to Pendleton to speak to the Pendleton Rotary on January 14, 2008. Director Ward used this time to share the Department's vision for dealing with water shortage throughout the state and described projects that are being implemented to help deal with those issues.

Hermiston Meeting: Director Ward and State Engineer Barry Norris attended a meeting in Hermiston, Oregon on January 25, 2008 to brief local stakeholders on the content and purpose of SB 1069, and to discuss possible implementation timelines.

The Nature Conservancy: Director Ward and Senior Policy Coordinator Brenda Bateman met with staff of The Nature Conservancy (TNC) January 3, 2008. The Oregon Chapter of The Nature Conservancy is increasingly engaged in water policy issues, given the nature of the land that the Conservancy buys and preserves. In order to increase its own institutional understanding of Oregon's water policy, laws, and codes, the Conservancy has compiled a report that describes key definitions and processes related to water rights, instream rights, transfers, applications and more. Water Resources Department staff members have helped to proofread the document and the Conservancy hopes to publish a final version in February 2008.

Klamath Basin Settlement: The Klamath Settlement Group released the proposed (draft) Klamath Basin Restoration Agreement for public review on Tuesday, January 15, 2008. Negotiators representing the diverse communities of the Klamath Basin, along with federal, state, and county governments, negotiated the proposed agreement over the course of two years. The goal of the negotiation is to develop an agreement to rebuild fisheries, sustain agricultural communities, and resolve other long-standing disputes related to allocation of water resources in the basin. There is also a second, closely related draft document, a hydropower agreement that would remove four PacificCorp dams on the lower Klamath River. The Klamath Settlement Group hoped to conclude settlement discussions and finalize both documents in early February; however, they were not able to do so. Many of the parties to the Agreement continue to take public comment and the negotiations with PacificCorp are ongoing.

Transfer Application Backlog Elimination: In the last few years, the transfer program has worked to reduce the backlog of applications that had built up over the last decade, and to re-establish processing them in "first in, first out" order. Part of this effort has involved developing an inventory of pending applications. The Department has also developed new computer tools that use the water rights database more efficiently to research the affected water rights, produce documents, and track applications through the process. The Department has also effectively utilized the reimbursement authority to expedite processing through approved contractors. As a result of these efforts, the number of transfer final orders issued in each of the last several years has been greater than the number of new applications filed, reversing a decades-long trend. From January 2006 to January 2008 the number of pending transfers has been reduced from 532 to 431. If current trends continue, we anticipate the transfer backlog will be eliminated within the next three years and will be at a sustainable processing level for the Department to maintain.

Harney County Ground Water: The Department has increased public outreach activity in the Harney Basin in response to proposed new groundwater development. The last mill in Harney County closed in October 2007, resulting in the loss of more than 70 jobs. Much of the focus on economic growth in Harney County is on new irrigation for additional acres of alfalfa and grass hay. The Department has held several public meetings to help inform landowners about the water right permit process, and to assist them with application information. Additionally, Department groundwater staff are working to gain a better understanding of the hydrology of the Malheur Lakes Basin in order to more accurately review new groundwater applications.

Position Updates: Terry Holloway has joined the Department as the new Northwest Region Assistant Watermaster. She comes to us from Eastern Washington and is a graduate of the Spokane Community College Water Resources program. Josh Hackett is the new Hydrogeologist for the Department. He is working on completing his masters at Portland State University. The new Hydrographics Assistant for the Department is Codi Holmes. She has been working in this position since December 1, 2007. Arla Heare has been hired in the Executive Support Position for the Technical Services Division. Arla came from the private sector having had four years experience as an Administrative Assistant. Kody Thurgood has been hired as the Transfer Specialist for the South Central Region. He began working for the Department on December 10, 2007. Ned Gates has been hired to fill the position of Assistant Watermaster for the South Central Region. Ned began his duties on January 1, 2008. Kim French is the new Support Specialist for the Well Construction & Compliance Section. She began her new duties on January 28, 2008. Catie Owens will be starting as the District 10 Watermaster in Burns on March 3rd. Catie has a degree in Environmental Economics Policy Management from Oregon State University. JR Johnson will be starting as the Regional Assistant Watermaster in Burns on March 10th. JR has two degrees in Mechanical Engineering from Washington State University, and is currently working as a project management engineer for the Washington State General Administration.

II. Commission Follow Up

Sprague River Grant: Last October, the Bureau of Reclamation awarded funding for increased measurement in the Sprague River system. The Department has purchased equipment for three of the five gaging station sites on the Sprague River. Staff will be installing these systems this spring when the weather allows and purchasing and installing the rest this summer. The equipment is state-of-the-art technology available for monitoring stream flow. The Department has gotten expedited approval from the US Forest Service (USFS) through its special use permitting processes to place two of these stations on USFS land. Staff members have been working with the Sprague River Watershed council on outreach to find landowners willing to install measuring devices on diversions in that area.

Eola Hills: The Department is pursuing the Commission's direction on the Eola Hills Ground Water Limited Area provided at the November 30, 2007 WRC meeting. Progress on the four items of direction are as follows: Two of the items concern rulemaking for special area well construction standards. The standards propose to require measuring tubes in all new wells and casing and seal to within 100 feet of the bottom of new and deepened basalt wells. One public hearing was held in Canby on February 12th, and one is scheduled in West Salem on March 4th. The public comment period remains open until March 10, 2008. The Department anticipates bringing the proposed rules forward for adoption at the May WRC meeting. The Well Water Education and Voluntary Water Use and Measurement Program is being outlined to assess hiring needs for this project. Hiring is

anticipated for this spring. Lastly, the continued monitoring of the limited area is proceeding and the Department is planning additional water level measuring in wells for March and April, coinciding with State Observation Well measurements and permit holders water level obligations.

III. Rulemaking

Special area standards for water supply well construction and maintenance (OAR Chapter 690, Divisions 200, 210 and 215): The Department is proposing administrative rules that establish special area standards for water supply well construction and maintenance in the Eola Hills Ground Water Limited Area and Pete's Mountain Area. Currently there are two rulemaking hearings scheduled, the first took place on February 12, 2008 at 6:00 p.m. at the Canby Adult Center, 1250 S. Ivy, Canby, OR 97013. The second will take place on March 4, 2008 at 6:00 p.m. at the NW Viticulture Center, 215 Doaks Ferry Rd. NW, Salem, OR 97304.

IV. Litigation Update

Fort Vannoy Irrigation Dist. v WRC (Oregon Court of Appeals) A landowner within Fort Vannoy Irrigation District filed a water right transfer application requesting to change the point of diversion from a diversion point(s) managed by the district to a new point of diversion on property owned by the applicant. The transfer application included five separate water rights, two of which are evidenced by water right certificates issued in the name of the District.

The Department reviewed the water right transfer application and determined that the proposed change in point of diversion would not result in injury to existing water rights. The Department issued an Order approving the change. The District protested approval of the transfer, resulting in a contested case hearing. The Hearings officer issued a proposed order upholding the Department's approval of the transfer. The District then appealed to the Commission. The Commission considered and subsequently rejected the District's arguments and issued a final order approving the transfer.

The District appealed the Commission's Final Order approving the water right transfer to the Oregon Court of Appeals. The Court of Appeals issued a ruling in July of 2007 reversing the Commission's decision and remanding the matter back to the Commission. The Court concluded that if a water right certificate is issued in the name of a district then the district is the holder of the water right. Additionally, the Court concluded that the holder of the water right is the entity who is authorized to request changes to water rights. The Court did not recognize the landowner as the water right holder unless the right is issued in the name of the landowner. Neither the Oregon Attorney General's Office nor the Department agree with the Court's ruling. The Attorney General's Office petitioned the Oregon Supreme Court for review. The Department was recently advised that the Oregon Supreme Court has scheduled oral arguments on this matter for May 13, 2008.

Harrington I (Oregon Court of Appeals) This case is related to the Department's 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 has defaulted on the additional time the Court granted in which to petition for appeal.

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. The 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 Court's 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 parties recently met to resolve the issues. A tentative agreement has been reached.

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, the Mickes received their Notice of Assessment of a civil penalty. We expect this matter to be withdrawn with the resolution of the protest.

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 as defendants 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. The Department reconsidered an order issued to the Lytles for a storage permit. The Department has subsequently issued a new Order. The Noble's have filed a new action for Judicial Review relating to the Lytle Order in Clackamas County Circuit Court.

Noble v WRD (Martin – Beaver Lake Nursery) (Clackamas County Circuit Court)

(See Noble v WRD (Lytle) above)

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

(See Noble v WRD (Lytle) above)

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

(See Noble v WRD (Lytle) above)

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. This case is continuing to generate significant time and expense for the Department. To date, no hearing date has been scheduled.

V. Reports Available

Annual Performance Report: The Department submitted its annual performance measurement report to the Oregon Progress Board during January 2008. The document focuses on 14 Key Performance Measurements that track the agency's performance in areas such as protection and measurement of water resources, application processing times, agency efficiency, and customer service. The report covers Fiscal Year 2006-07 and shows improvement in four areas, with a decline in one area. The report will be posted to the Department of Administrative Services web site.

2006-2007 Field Activities Report: The Department has been working on the 2006-2007 Field Activities Report which is now available. Please see the attached report.

VI. Commission/Board Schedules

	Location	Date
Environmental Quality Commission	Portland	April 24-25, 2008
Oregon Watershed Enhancement Board	Medford	Mar. 19-20, 2008
Land Conservation and Development Commission	Ashland	Mar. 19-21, 2008
Parks and Recreation Commission	Portland	Mar. 13, 2008
Fish and Wildlife Commission	North Bend	Mar. 20-21, 2008
State Land Board	Salem	Mar. 19, 2008
Board of Forestry	Salem	Mar. 5, 2008
Board of Agriculture	TBA	TBA
Dept. of Geology and Mineral Industries	TBA	TBA