



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, May 30, 2008
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: All basins in the state were reporting abundant snowpack on April 1. Record snow water was recorded at twenty-one Snowpack Telemetry (SNOTEL) sites in Oregon on April 1. As of April 1, the Willamette basin had the largest accumulation at 195 percent of normal. Lake County had the least accumulated snow at 114 percent of normal.

Statewide, stream flow forecasts for spring and summer range from a low in Lake County of 91% of normal to a high of 160% of normal in the Rogue Basin. With the exception of a portion of Lake County and a portion of Harney County, stream flow is expected to be above to well above normal this summer.

Western States Water Council: Director Ward attended the Western States Water Council Meeting in Washington, D.C. March 3-7, 2008. Some topics of discussion included Climate Change and its relationship to water, the Federal Farm Bill and status of the Regional Water Enhancement Program. While at the Western States Water Council Meeting, Director Ward met with several congressional staff regarding Oregon's water issues and updates, including: Sarah Bittleman from Representative Hooley's Office, Nathan Rea from Representative Walden's Office, Valerie West from Senator Gordon Smith's Office, and Michelle Miranda from Senator Wyden's Office.

Oregon State University Watershed Education Meeting: On March 12, 2008, Director Ward attended an OSU Watershed Education Meeting at the invitation of Vice Chair Jay Rasmussen. Some key topics of discussion included the Commission and Department's efforts to plan for Oregon's future water needs, the Oregon Water Supply and Conservation Initiative and the Governor's H₂O Initiative.

Global Warming Commission Meeting: Director Ward attended the Global Warming Commission Meeting held in Portland on March 17, 2008. This group formed at the request of Governor Kulongoski, and is chaired by Angus Duncan of the Bonneville Environmental Foundation. The goals of this group are to reduce and mitigate climate change, as well as adapt to its physical and economic consequences in a way that positions Oregon as an environmental, economic, and policy leader.

Oregon State University's Institute for Water and Watersheds Advisory Board Meeting: On April 4, 2008, Director Ward attended the Institute for Water and Watersheds Advisory Board Meeting in Corvallis. Some of the topics of discussion included Climate Change and Water Resources and water resources research priorities.

Oregon Public Broadcasting "Think out Loud": Director Ward was featured on OPB's radio show entitled "Think out Loud" on April 15, 2008. "A Drop To Drink" was the topic for this "Think Out Loud" series hosted by Emily Harris. Director Ward was joined by several other guests to respond to questions about managing Oregon's water resources. The discussions ranged from the prior appropriation doctrine to exempt wells, the importance of water conservation, and instream needs. You can get to the audio link through the Department's website:

http://www.oregon.gov/OWRD/news/opb_adroptodrink.shtml.

Oregon Realtors Association Legislative Conference: Director Ward participated in the Oregon Realtors Association Legislative Conference on April 16, 2008 in Portland. Key topics of discussion included long-term water planning, county land-use planning, state and local collaboration, and recent legislative successes in area of water conservation and supply.

Meeting with Stakeholders regarding 2009 Legislative Concepts: Director Ward gave the welcoming remarks at the Department's stakeholder meeting on April 22, 2008. The Department hosted this meeting to discuss its proposed 2009 Legislative Concepts. Extensive feedback on these comments was received.

Oregon State University Career Day: On April 23, 2008, Oregon State University held its annual Career Day, co-hosted by the School of Agricultural Sciences and School of Animal Sciences. Brenda Bateman was invited to attend and represent Water Resources Department. She was one of about 25 potential employers invited to attend, and spent the day interfacing with OSU students about potential careers in Water Resource Management.

American Water Works Association Conference: Director Ward spoke at the American Water Works 's Pacific Northwest Section conference on April 30, 2008, in Vancouver, Washington. His topics of discussion included Oregon's water supply and the challenges facing the state regarding water needs. He noted that the Oregon Water Supply and Conservation Initiative will provide a key source of information for the future of Oregon's water conservation and supply needs. He also talked about SB 1069, passed during the February 2008 Legislative Session, and how it will be used to help with the water supply issues and specifically those in the Umatilla Basin. He spoke about the Governor's H₂O (Headwaters-to-Ocean) Initiative and what that will mean in the coming years for the state's water supply, water quality, drinking water resources, and aquatic habitats.

Water Management and Conservation Plans Guidebook: In 2002, the Department partnered with League of Oregon Cities, Special Districts Association of Oregon, and Oregon Water Utilities Council to develop a guidebook to assist municipal water suppliers in developing WMCPs. A private consulting firm lead the project under the direction of a review committee of municipal water professionals and department staff. The final project not only provided a step-by-step guide to developing a WMCP but also two sample plans. The project team completed the book in 2003, printing 500 copies and making an electronic version on the League of Oregon Cities' website. The Department continues to experience a great demand for the hard copies of the guidebook and decided to reprint a second addition to be made available to municipal water suppliers at no cost.

Hard copies are now available and can be obtained by calling the Department or League of Oregon Cities.

The Department credits the guidebook and sample plans in producing the high quality WMCPs that are being submitted today. Better quality plans also mean a faster review process. During the past two years, the Department's average time to review plans has decreased by 44 percent. In 2007, the Department was able to meet its 90 day review goal for all but two plans submitted that year (compared to review times of a year or more prior to 2003). This joint effort with League of Oregon Cities and others was such a success that the Department recently teamed up with the U.S. Bureau of Reclamation and Oregon Water Resources Congress on a grant to fund a similar guidebook for Irrigation District Plans.

Oregon Water Resources Department Commissioner gets "Leadership in Conservation"

Recognition: Oregon Water Resources Commissioner Charlie Barlow, was recognized at the Annual Agriculture Progress Awards Dinner hosted by Oregon Department of Agriculture for his efforts in improving water efficiency, soil conservation, and nutrient management on his family's land near Nyssa, Oregon. Also recognized for their efforts were Mike and Ellis Barlow, brothers of Charlie, and brother-in-law Ralph Hadley. They have converted their furrow irrigation system to a 600 acre sprinkler irrigation system in order to minimize the amount of water they are using on their crops. The result was 30 percent less water usage. Congratulations!

Position Updates: Jen Woody has been hired by the Department in the limited duration Aquifer Storage and Recovery position. This position funded as part of the 2007 Oregon Water Supply and Conservation Initiative. Jen is a graduate of Oregon State University. Also, Jake Johnstone has been hired by the Department as Jackson County's Assistant Watermaster. He had previously been working for the Department as a Project Specialist in the Jackson County Watermasters Office. Travis Kelly has been hired to fill the position as the Well Inspector for the SW Region. He had previously been working for Jackson County Sanitation as an inspector. Lorraine Ramsey has accepted the position of Northwest Region Well Inspector. She had previously worked for Oregon Department of Fish and Wildlife and Oregon Department of Agriculture. Tyler Martin and Kara Morris have been recently hired in the Data Center and are a part of the Data Tech Workgroup. They will be working on getting instream transactions into the Water Rights Information System database and addressing some of the backlog work as well.

II. Commission Follow Up

Update on the Oregon Water Supply and Conservation Initiative: Funded during the 2007 Legislative Session, the Oregon Water Supply and Conservation Initiative (OWSCI) represents the initial data gathering and grant-making steps the Department will use to build a state-wide integrated water conservation and supply plan. The Department has both a private contractor and internal staff working to complete components of the initiative, and has updates to report in four areas since the February 2008 Water Resources Commission meeting.

- Demand Assessments. HDR Engineering and WRD staff completed four stakeholder workshops throughout Oregon during March 2008, briefing communities on OWSCI and soliciting water-use data using a survey. The first survey deadline has passed (March 31), and the project team extended the deadline to May 16 to accommodate results from more municipal and agricultural water users. HDR continues to compile results and has shared preliminary results with the peer technical review group and stakeholders during April and May. HDR will finish its portion of the project in July, including the development of water demand forecasting scenarios. Department staff will conduct data quality checks and will prepare the results for an interactive web format so that county planners and other organizations can see projected water demands by county and by administrative basin on-line by the end of 2008.
- Inventory of Conservation Opportunities. HDR Engineering is also leading the work in this area for the Department and has asked municipal and agricultural water users, as part of the survey previously mentioned, to identify water conservation opportunities that have not yet been implemented. In addition to the project basics (i.e., location, potential water savings, downstream effects, projected costs, etc.), the project team was particularly interested in whether there are any institutional, regulatory, or financial barriers that are keeping conservation projects from moving forward. The Department will prepare the survey results for an interactive web format available to the public by the end of 2008.
- Inventory of Potential Storage Opportunities. WRD staff members are collecting information about potential above and below-ground storage sites around the state. They are looking at sites that may be new or expanded beyond their present capacity. The Department is interested in feasibility studies or data, even if the site ultimately proved unfeasible. This collection of studies from Federal, state, local, and private entities will help communities avoid duplicating previous work as they move forward with potential storage plans. The Department will post available information on-line during 2009.
- Award of Community Grants. In April, the Oregon Water Resources Department awarded grants to 11 communities for use in their water supply planning efforts. Commission Vice Chair, Jay Rasmussen, participated in the selection process. These awards total \$155,000 and are meant to help communities that are taking a regional approach to meeting their current and future water needs. Applicants were eligible for up to \$20,000 per project and had to provide at least an additional 25 percent cost share. More than 30 applicants responded, requesting more than \$600,000 in total. The communities receiving grants represent diverse locations across the state, as well as a mix of counties, cities, and districts. The list features a wide variety of water supply projects, ranging from water conservation, banking, storage, and transmission, to policy road-maps, instream (environmental) issues, and out-of-stream (municipal and agricultural) demand forecasts. The recipients of 2008 Oregon Water Supply and Conservation Grants are listed below, with a brief description of each proposed project.

**Recipients of the 2008 Oregon Water Supply and Conservation Initiative
 Community Water Supply Planning Grants**

Grant Recipient	Brief Project Description
1. Baker County	Undertake hydrologic analysis of the Powder River Basin, including storage of winter water.
2. Benton County	Conduct a county-wide water analysis and demand forecast.
3. Central Oregon Cities Organization (COCO), with the Deschutes Basin Board of Control and the Deschutes River Conservancy	Market the Deschutes Water Alliance Water Bank.
4. Clackamas River Water Providers	Model streamflows in the Clackamas River, including the effect that releases from Timothy Lake may have on water quality and quantity.
5. Crook County	Determine how unallocated water in the Prineville Reservoir can be utilized, while maintaining existing reservoir uses.
6. East Valley Water District	Identify potential pipeline routes, for water delivery
7. Southern Willamette Valley Municipal Water Providers, led by Eugene Water and Electric Board (EWEB)	Develop a plan to address technical and policy obstacles to using U.S. Army Corps of Engineers reservoirs in the Willamette Basin for municipal and industrial purposes.
8. Northwest Coastal Water Supply Task Force, led by the City of Seaside	Forecast water demands at the municipal and county level in Clatsop County.
9. Oregon Water Trust in Jackson County	Assess the possibility of a water bank in Jackson County.
10. Polk County and Lincoln County	Study water needs in Polk and Lincoln counties; conduct feasibility study of a storage project on the Upper Siletz River
11. Umatilla County	Map potential beneficiaries of a project to replace ground water rights with available surface water.

Update on Results 2008 Legislative Session. SB 1069 from the February 2008 Legislative Session contained two parts:

- The first provided \$1.75 million in grant monies to a state-wide program for feasibility studies. The Department is currently in a rule-making process to draft rules that govern this grant program and will have final proposed rules available to bring before the Water Resources Commission on May 30.
- The second provides \$750,000 for the Department to conduct a feasibility study of the Umatilla Basin Aquifer Recovery Project. On April 14, 2008 the Department signed a \$750,000 contract with an Oregon-based consortium led by IRZ Consulting, GSI Water Solutions, and HDR Engineering to conduct the feasibility study and pilot project in the Umatilla Basin. The Umatilla Basin Aquifer Recovery Project will investigate the potential

for withdrawing surface water when it is available during the winter months, and delivering that water for storage in below-ground aquifers for use during the irrigation season. The project will identify any existing infrastructure as well as any new infrastructure necessary to implement such a project. Finally, the project will pilot test potential underground storage sites, under a limited license from the Water Resources Department. Other state agencies—the Department of Fish and Wildlife, Department of Environmental Quality, and Department of Human Services—have been involved as project design partners with the Water Resources Department and their continued participation will be critical to the success of the project.

2009 Proposed Budget and Legislative Concepts: The Department has drafted its budget “policy option packages” (new items only) and legislative concepts in advance of the 2009 Legislative Session, vetting these proposals internally and externally and receiving comments and suggestions. The Department will present updates for both the budget and legislative concepts to the Water Resources Commission on May 30 and will have an opportunity to finalize both during the Summer of 2008.

H2O Initiative: The Governor's office continues to develop an H₂O (Headwaters-to-Ocean) Initiative, planning a series of stakeholder briefings throughout Summer 2008. The Initiative, meant to encompass water quantity, quality, drinking water, and environmental/habitat issues, will likely emerge during the 2009 Legislative Session as request for a dedicated funding source. As a follow-up the Governor's office plans to propose a set of budget policy option packages funded with this dedicated source, during the 2011-13 Biennium.

AOC: The Association of Oregon Counties (AOC) has requested that the Commission set aside time for "local government comment" as a standing agenda item during each Commission meeting. In addition, the Water Resources Department plans to invite representatives from AOC to participate in the August 2008 Commission meeting, as part of a local government forum.

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 asking 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 Water Resources 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 Water Resources 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 does 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 nor the Department agree with the Court's ruling. The Attorney General's Office petitioned the Oregon Supreme Court for review. Oral arguments took place on May 13, 2008 in Enterprise, Oregon.

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. The Harringtons (?) subsequently filed an appeal 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 Department 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.

VI. Commission/Board Schedules

	Location	Date
Board of Forestry	Salem	June 3-4, 2008
Fish and Wildlife Commission	Salem	June 6, 2008
State Land Board	TBA	June 10, 2008
Land Conservation and Development Commission	Damascus	June 18-20, 2008
Environmental Quality Commission	Medford	June 19-20, 2008
Parks and Recreation Commission	Baker City	July 17, 2008
Oregon Watershed Enhancement Board	The Dalles	Sept. 16-17, 2008
Board of Agriculture	TBA	TBA
Dept. of Geology and Mineral Industries	TBA	TBA