



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 G, November 19, 2010
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The 2010 water year ended September 30, 2010. Current conditions and model forecasts indicate that cold conditions will last at least into spring 2011 in the Northern Hemisphere. The region will experience cooler and wetter than normal conditions in the coming months.

There is a greater than 50% chance of below normal temperatures later in the winter for North Dakota, northern Montana and Idaho, all of Washington, and northern and western Oregon.

Public Outreach and Presentations: The Department continues to host workshops and briefings for stakeholders and partners who are interested in the Integrated Water Resources Strategy. September outreach efforts included Oregon's Infrastructure Finance Authority and the Oregon Watershed Enhancement Board of Directors. In October, staff met with the IWRS Policy Advisory Group, Western State Engineers, and the Oregon Groundwater Association as part of OGWA's annual meeting. In November, the Department briefed attendees of the 19th Annual Oregon Water Law Conference.

The Oregon Legislature held interim committee meetings during late September and two committees, the Senate Environment and Natural Resources Committee and the House Environment and Water Committee, invited the Department to provide updates on the Integrated Water Resources Strategy. The House Environment and Water Committee also requested updates on the Umatilla Basin Aquifer Recovery Project.

The Department spent September and October meeting with partners and stakeholders to provide budget updates for both the current and next biennia. Department staff hosted more than a dozen meetings to review the Department and Commission's budget priorities, to review budget reductions in 2010, to describe the 2011-13 budgeting process, and to explore future funding options.

II. Commission Follow Up

Klamath Basin Drought Update: The Governor declared a drought in the Klamath Basin in March 2010. Upper Klamath Lake elevations were at record low levels and snow pack and stream flows above the lake were significantly below average. The Bureau of Reclamation (BOR) advised water users within the Klamath Project that water deliveries would be delayed and far less than normal.

The drought declaration by the Governor included special provisions, including the ability to request drought water right permits, available to water users. The Department received and processed 61 drought permit applications, resulting in the issuance of 58 drought permits allowing the supplemental irrigation of 32,600 acres.

Significant groundwater use with minimal impact to other uses was accomplished due to the cooperation of the irrigation districts, water users, Klamath Water and Power Agency (KWAPA), BOR and the State of California. Oregon and California are continuing to collect and share groundwater data. Staff will be compiling an end of irrigation season report.

Staff are also working closely with KWAPA on a cost share program to assist domestic well owners with well deepening and pump lowering. Additionally, KWAPA is providing funds to digitally produce a map layer of ground water rights in the Klamath Basin and for an assistant watermaster to be located in the Basin.

Implementation of Commission Delegation of Injunctive Relief:

Litigation Update: At the February 2010 Commission meeting the Department requested a delegation of authority to prosecute suits to enjoin violations of ORS 537.505 to 537.795 and to appear and become a party to any action, suit or proceeding in any court when it appears that the action, suit or proceeding might be in conflict with the groundwater policy as stated in 537.525. The Commission delegated that authority to the Director and further directed the Department to work with the Ground Water Advisory Committee in its implementation. The Department took the issue to GWAC at its May 7, 2010 meeting. GWAC passed a motion that the Department develop an internal guidance document clarifying that the new authority delegated by the Commission is to be used only after traditional enforcement actions have been undertaken. GWAC reviewed the internal guidance document at its October 22, 2010 meeting and found it satisfactory.

Water for Life, Inc., et al v. Oregon Water Resources Department, et al, Marion County Circuit Court

Water-For-Life has filed an action against the Department for its participation in the Klamath Basin Restoration Agreement (KBRA). (Marion County Circuit Court Case No. 096-23629). The Department has been a participant in the KBRA discussions, although not in a lead position. The Department role has been to ensure that any agreements resulting from the KBRA are consistent with Oregon Water Law. A small portion of the draft restoration agreement has the potential to resolve five or six of the remaining Contests associated with the Klamath Adjudication. Discussions associated with development of the KBRA have been underway for about four years. The Department does not believe that there is merit to the Water-For-Life lawsuit.

Late on December 31, 2009, the Department was served with a request for a Temporary Restraining Order (TRO) filed by Water-For-Life. The TRO requested that the Marion County Circuit Court restrain the Department from further participation in the KBRA process. Although a Marion County Circuit Court Judge issued a ruling denying the request for the TRO on January 7, 2010, this issue is not yet resolved. An additional Injunction Hearing scheduled for January 14, 2010 was subsequently cancelled following the Judge's ruling. A hearing on the merits of the case will be scheduled in the future.

The final version of the KBRA was released to the public on January 8, 2010. The Department believes that the current version of the KBRA is consistent with Oregon Water Law.

On August 20, 2010, Water For Life filed an amended complaint.

This case is still pending in Marion County Circuit Court. No court date has been set.

Deborah Noble et al v. Oregon Water Resources Department, et al (Lytle), Clackamas County Circuit Court

This case is filed in Clackamas County Circuit Court and is a petition for Judicial Review of a water right permit. An alternate reservoir application was filed on a small (1 acre foot) existing reservoir and the Nobles are raising issues regarding impacts to fish. The hearing is scheduled for the first full week of December.

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Oregon Water Resources Department v. William Cummings, Jr., Cummings Well Drilling, Lake County Circuit Court

The Water Resources Department filed an action in Lake County Circuit Court to enjoin William Cummings Jr. and Cummings Well Drilling from drilling wells. Mr. Cummings was formerly licensed as a well constructor with the State of Oregon, but his well constructors license was suspended several years ago for numerous infractions and for failure to pay an assessed civil penalty. This is the first use of this enforcement tool since the Commission delegated authority during its meeting February 19, 2010. No court date has been scheduled.

It was reported that Mr. Cummings has continued to contract with landowners to provide well construction services. The Commission, at its June 4, 2010 meeting, authorized the Director to take action under ORS 537.780(1)(i) to seize the well drilling rig. On July 15, 2010, the Criminal Justice section of the Attorney General's Office, in conjunction with the Water Resources Department, seized the well drilling rig. The rig was set up over a well on private property in Lake County. The landowners provided their full cooperation and allowed access to their property for the seizure. The watermaster is assisting the landowners in their efforts to have the well completed in compliance with Oregon Laws relating to well construction.

The Attorney General's Office, Criminal Justice Section is handling this matter in Lake County Circuit Court.

Wolfgang Nebmaier and Vajra Ma v. Water Resources Department and others

This case involves Judicial Review of a Final Order in a Contested Case. The contested case was the result of the Department receiving affidavits alleging forfeiture of water rights. The water use included domestic use and irrigation of 0.6 acre. The contested case resulted in a finding that the portions of the water rights in question had been forfeited. Nebmaier and Vajra Ma filed Exceptions with the Commission. The Commission denied the Exceptions. The case is now pending before the Oregon Court of Appeals.

III. Commission/Board Schedules

	Location	Date
State Land Board	Salem	Dec. 14, 2010
Environmental Quality Commission	Portland	Dec. 9-10, 2010
Dept. of Geology and Mineral Industries	TBA	TBA
Parks and Recreation Commission	TBA	TBA
Fish and Wildlife Commission	Portland	Dec. 3, 2010
Board of Forestry	TBA	TBA
Land Conservation and Development Commission	Salem	Dec. 1-3, 2010
Board of Agriculture	Portland	Dec. 1-2, 2010
Oregon Watershed Enhancement Board	Corvallis	Jan. 19-20, 2011
Water Resources Commission	Salem	TBA