



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Water Resources Commission Meeting
Agenda Item C, October 27, 2005

Director's Report

I. Current Events

Current Water Conditions

The water year (October 1 through September 30) ended below normal. Statewide, precipitation in the southeast quarter of the state was near normal. However, the rest of the state received approximately 80% of normal.

The Surface Water Supply Index (SWSI) is a measure of water availability and is calculated in 14 basins throughout the state. With a range from +4.1 to -4.1, "0" indicates normal water availability and "-4.0" indicates extreme dry conditions. Most of the state finished at near normal to below normal water availability conditions. The driest part of the state was north central Oregon including the Umatilla and Lower Deschutes basins. These basins finished the water year with a designation of severe drought. The SWSI designations compare closely with the US Drought Monitor, which designates north central Oregon as ranging from severe to extreme drought. In general, Oregon needs several above normal water years to replenish ground water supplies and fill reservoirs. The office of the State Climatologist is forecasting the 2006 water year to be more wet than normal.

Water Regulation

Water regulation activities varied statewide over the past water year. In the East Region, irrigators ended up with more storage than expected. Owyhee Reservoir was projected to peak at 250,000 ac-ft in March, but peaked at 600,000 ac-ft in May. Other reservoirs also gained a lot of storage from spring rains. Low streamflows in other areas of the East Region caused regulation activities to begin earlier than normal. One ranch on the Silvies River called for regulation for their 1883 water right before the season started. The Grande Ronde River had more regulation than normal. Shallow wells went dry in some areas of the region.

In the North Central Region, the Umatilla River was below 1977 levels for part of the year. The 1977 water year was one of the most severe droughts in recent history. Regulation began in March which is earlier than normal and affected more water users over the irrigation season. Regulation started on January 1 in the Willow Creek Basin. Regulation in the John Day Basin was about normal. In the Hood Basin and area streams, flows were below 1977 levels for part of the year.

In the South Central Region, the Deschutes River flowed about 25% below normal. Irrigation districts relied more on stored water to meet their needs. The Goose and Summer Lakes Basin had a fairly normal year. The Klamath Basin had a relatively normal year though the ground water system was quite low resulting in extremely low flows in the Sprague River in September.

The Southwest Region experienced an average year overall, but a few streams hit lows similar to 1977 streamflows. The Rogue Basin Corps of Engineers' projects filled, making management of the mainstem Rogue and Applegate Rivers straightforward.

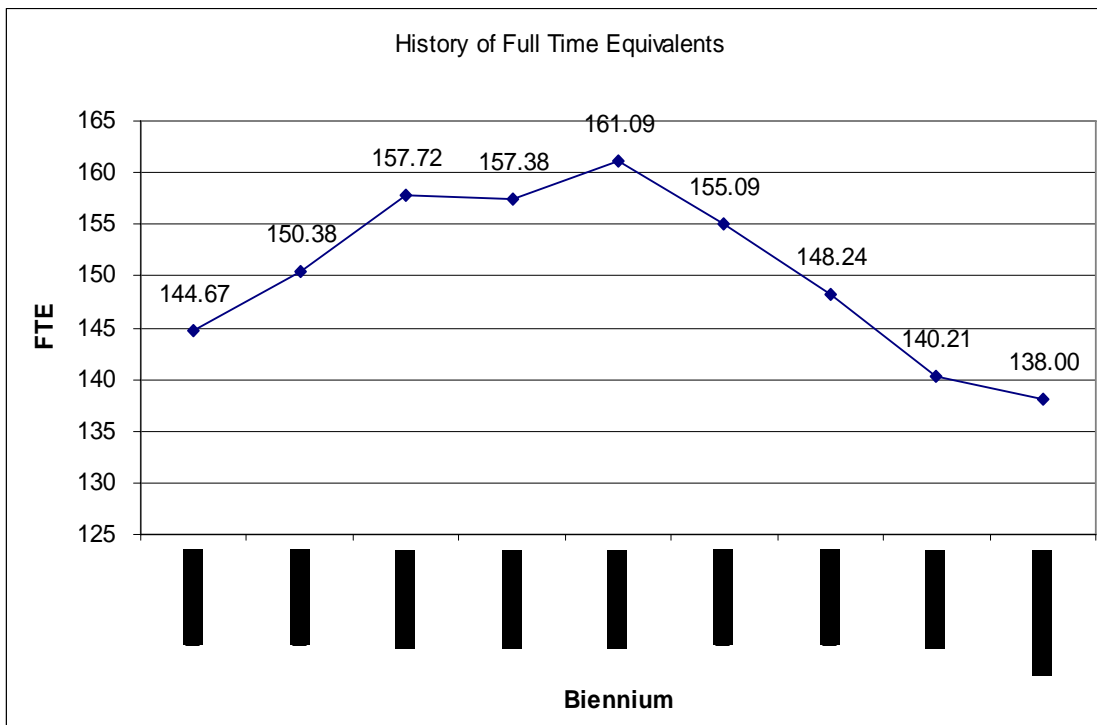
In the Northwest Region, watermasters began regulation activities in March. Then spring rains arrived and alleviated the need for early season regulation. Due to these spring rains, the Willamette Basin Corps of Engineers reservoirs filled and it was a relatively normal year for flow management. Shallow ground water users complained about water shortages in a few areas but these shortages were less than expected. Coastal streamflows were fairly average.

Budget Update

The Department's Legislatively Approved Budget (LAB) for 2005-2007 is detailed below:

2005-2007 LAB	General Fund	Other Funds	Federal Funds	Total Funds
Personal Services	15,961,825	3,701,575	93,324	19,756,724
Service & Supplies	4,525,757	1,989,745	486,020	7,001,522
Capital Outlay	-	12,718	-	12,718
Debt Service	-	645,638	-	645,638
Special Payments	75,041	821,378	558,080	1,454,499
Total Funds	20,562,623	7,171,054	1,137,424	28,871,101

As shown in the following graph, the full time equivalent (FTE) counts for the Department have historically declined in recent budgets. The LAB continues this trend, however, not as sharply as the prior three biennium:



Position Updates: The Department has made a number of recent staffing changes. Dwight French became Water Rights and Adjudication Division Administrator. Tim Wallin was hired as new Water Rights Section Manager. Kimberly Grigsby was hired as the Water Resources Policy Analyst in the Director’s Office. Vern Church, formerly the District 21 watermaster in Condon became the water manager in District 17 in Klamath Falls.

Western States Water Council (WSWC) Meeting

Director Ward attended the WSWC meeting in San Antonio, Texas from October 19 through October 21, 2005. The agenda included issues associated with water quantity/quality interrelationships.

II. Commission Follow Up

Ground Water Concerns in Marks Prairie, Clackamas County

As follow up to the Marks Prairie shallow well issue presented at the Commission meeting in April 2005, it is reported from a Marks Prairie resident that landowners have not experienced well problems this summer. In April an informational Department report stated that the gravel aquifer in the vicinity of Marks Prairie was beginning to show signs of stress. Staff have continued to work with residents and report that ground water levels in the area are higher this year than in recent summers. This is likely due to a combination of the wet spring, modification of water use, and conversion to drip irrigation by a local nursery. The Department and local residents continue water level monitoring in the area. No new wells have been drilled nor have any of the shallow wells been deepened in the area since the April 2005 Commission meeting. A letter from the Ground Water Advisory

Committee (GWAC), on behalf of the Marks Prairie residents, was sent to the Clackamas County Soil and Water Conservation District alerting them to the resident's water concerns and requesting financial support if available.

GWAC Meeting

Over the next year staff will be discussing the possibility of adopting a term limit policy for the Ground Water Advisory Committee (GWAC). GWAC is a legislatively authorized committee established to advise the Water Resources Commission on ground water issues. There are nine members who each serve a term of three years. In the past there have been no guidelines as to the number of 3-year terms committee members could serve. Recently interest in serving on the committee has increased, and staff believe it would be beneficial for the committee to consider limiting members to a maximum of two consecutive 3 year terms.

II. Rulemaking

Mid-Coast Basin Program, OAR Chapter 690 Division 518

Pursuant to a September 8, 2005 Supplemental Settlement Agreement, the City of Lincoln City ("Lincoln City") has submitted a request to initiate rulemaking to establish three reservations as authorized by ORS 537.356 and 537.358. The City has requested reservations of water for multipurpose storage for future economic development on Rock Creek and Side Creek, tributaries to Devils Lake, and Treat River, tributary to Salmon River. The proposed Side Creek reservation would reserve water solely for future application by Lincoln City. The Rock Creek and Treat River reservations would reserve water for any future applicant. Lincoln City's reservation request includes a Letter of Support signed by all of the protestors that were part of the Supplemental Settlement Agreement, including WaterWatch of Oregon, Oregon Council of Trout Unlimited, Northwest Environmental Defense Center, Confederated Tribes of Siletz Indians of Oregon, Salmon Drift Creek Watershed Council, MidCoast Watersheds Council, Paul Katen, Wayne Hoffman, and Diane Henkels.

As required by ORS 537.356(2), the Department, on behalf of the Commission, has requested comments from local governments and watershed councils within the geographic area or basin affected by the request. Notice was also provided to a number of other interested individuals, tribes, and groups. The public comment period began on September 29, 2005 and ends January 16, 2006. The current public comment period does not begin a formal rulemaking process. At a future Commission meeting (most likely the May 2006 meeting), staff will provide a report summarizing the City's request and public comments generated by the notice. At that time, as required by the Supplemental Settlement Agreement, staff will recommend that the Commission initiate and approve the rulemaking as requested by the City. The Commission will then decide whether to initiate the formal rulemaking process.

Water Rights Adjudications

The Department is proposing to amend rules related to contests in the adjudication of water rights (OAR Chapter 690, Division 30). The proposed rulemaking would allow claimants in an adjudication proceeding to add or change points of diversion to water uses covered under a claim so long as the change does not cause injury to another claimant or water right holder and so long as the new diversion points are downstream of the original diversion point. The comment period on the proposed rulemaking closed on August 18, 2005. Six oral and written comments were received. The Director is responsible for adopting and amending rules related to water right adjudications.

III. Litigation Update

Brayman et al v. Lewis et al: Harney County Circuit Court – This matter involves several legal challenges to the watermaster’s regulation of water in Foley Slough, a distributary channel of the Silvies River in Harney County. As part of settlement discussions, the Department developed a water management plan that outlines regulatory and management actions. The court ruled that not all of the water users impacted by the plan were served notice of the plan; therefore, the court set aside the plan. All aspects of the case remain in effect.

Fitzgerald Ranch, Inc., et al v. Oregon Water Resources Department: Lake County Circuit Court – Petitioner Fitzgerald Ranch, Inc. and others are seeking judicial review of a water right certificate the Department recently issued to Adel Irrigation District. The parties are close to reaching a tentative agreement to resolve this case.

Harrington v. Oregon Water Resources Department: Jackson County Circuit Court – This involves two separate petitions for judicial review. In May 2004, Petitioner Harrington sought judicial review of final orders denying reservoir permit applications. In October 2004, the Jackson County Circuit Court ruled in favor of the State’s Motion for Summary Judgment and found the Department had properly denied the Applicant’s Request for Reconsideration under ORS 183.484. The Court has not scheduled a hearing date on the second case. In a related matter, Harrington pled guilty to a criminal charge of using water without a water right.

Water for Life et al v. Oregon Water Resources Department: Water for Life is seeking judicial review of the Department’s order extending the irrigation season in the Donner und Blitzen Basin in Harney County. The order extending the irrigation season was the result of a negotiated settlement of a protested water right application. No court date has been set.

Measure 37: To date, the Department has received seven claims pursuant to Ballot Measure 37. During September, the Department issued final orders on two of these claims:

Donald Schneider filed a claim (M120295) for compensation in the amount of \$100,000 for the reduction in fair market value of his property near the City of Damascus in Clackamas County as a result of five-year renewable permit requirement. The claimant alleged the Willamette Basin Program (OAR 690 Division 502) restricted the use of his property. The Department denied the claim for the following reasons: 1) the Department's administrative rules are not "state land use regulations" as provided in Ballot Measure 37; 2) the state has not taken an action to enforce a land use regulation against the use of the claimant's property; and 3) renewal of the claimant's five-year permit is not an action to enforce an existing state land use regulation addressed by Measure 37.

James and Mollie Siri filed a claim (M120411) for compensation in the amount of \$325,000 for the reduction in fair market value of their property near the City of Damascus in Clackamas County as a result of ground water limited area classifications. The claimants alleged that OAR 690-502-160 and 0180 restricted the use of their property. The Department denied their claim because these administrative rules are not "state land use regulations" as provided in Ballot Measure 37, and the state has not taken an action to enforce a land use regulation against the use of the claimants' property.

IV. Commission/Board Schedules

	Location	Date
Environmental Quality Commission (EQC)	Portland	October 21
Oregon Watershed Enhancement Board (OWEB)	TBA	January 25-26
Land Conservation and Development Commission (LCDC)	Medford	Nov 30-Dec 2
Parks and Recreation Commission	Grand Ronde	October 27
Fish and Wildlife Commission (ODFW)	St Helens	November 3
State Land Board	Salem	December 13
Board of Forestry	Salem	October 27-28
Dept. of Geology and Mineral Industries (DOGAMI)	Coos Bay	October 17