



# 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, January 13, 2006  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events

##### Current Water Conditions

With only three months into the water year (October 1- September 30), it is premature to assess water conditions. However, snow accumulation is approximately normal thus far. The National Drought Monitor rates the conditions west of the Cascades as normal and east of the Cascades as drier than normal. Replenishing soil moisture and ground water aquifers will be essential to considering this a "good" water year, which would consist of normal to above normal precipitation.

##### Position Updates

Kelly Rise retired as Watermaster for District 4 in Canyon City after 15 years of service. Eric Julsrud, formerly Kelly's assistant watermaster in Canyon City, was promoted to Watermaster in District 4.

##### Technical Committee on Drilling Standards

The next meeting of the Technical Committee on Drilling Standards is scheduled for January 26, 2006. The key topic for the meeting will be development of an abandonment well log.

##### Idaho Water Users Water Law Conference

Barry Norris attended the Idaho Water Users "Water Law Conference" on December 2, 2005 as part of a panel discussion about conjunctive water management. Other panelists included representatives from Montana and Colorado. Similar to Oregon, both Montana and Colorado have statutory mandates to manage surface water and ground water conjunctively. However, their processes differ substantially from Oregon. Montana's approach is primarily focused on

administrative action with less emphasis on field activity and scientific investigation. In Colorado extensive resources are committed to near real-time monitoring of water resources. Regulatory actions normally begin as a result of court action brought about by water user groups. In comparison to these states, Oregon's approach to conjunctive water management is more proactive. We continue to study Oregon hydrology and use that data to support regulatory and administrative actions. We also have a science based application review process for new ground water uses that specifically considers the interaction between surface water and ground water.

#### Water-Related Conferences

From October through December 2005, Director Ward and Department staff participated in various water conferences. Staff gave a presentation at the 14<sup>th</sup> Annual Oregon Water Law Conference in Portland on 2005 water-related legislation on November 3rd. On October 26, Director Ward gave the keynote address on water supply in the 21<sup>st</sup> century to the U.S. Society for Irrigation and Drainage Professionals in Vancouver, WA. On November 4, Director Ward participated on a panel to discuss water pressures in the Northwest at the annual meeting of the Pacific Northwest Utilities Conference in Portland. On November 29, staff also participated in a roundtable discussion at the Agriculture at the Edge Symposium held by Metro (Portland's regional government) in Wilsonville to discuss growth and the tools needed to make sustainable communities. On November 30, staff participated in a panel discussion at the Oregon Water Resources Congress Annual Meeting in Hood River on topics such as water right transfers and injury.

#### Aquifer Storage and Recovery Tour

On November 8, 2005, Commissioner Jackson, Director Ward and Department staff attended an aquifer storage and recovery (ASR) project update and tour hosted by the Cities of Beaverton and Tigard. The agenda included an overview of each city's ASR program and their long-term ASR perspectives. These cities have used ASR to store water below ground and use that water when other supplies are limited.

#### Thompson's Mills Instream Transfer

On November 28, 2005, Director Ward and Department staff co-hosted a celebration with the Department of Parks and Recreation on the permanent instream water right transfer on the Calapooia River. Over seven years ago, the Thompson's Mills working group began in earnest to meet and discuss the sale of Thompson's Mills to the Oregon Parks and Recreation Department and the transfer of the Mills' 1858 water right to instream use. This was a complicated and sometimes arduous process involving a variety of interests. Hard work, dedication, and collaborative spirit led to a solution that provides greater certainty to water users and instream benefits to the Calapooia River.

#### Website Update

The Department continues to update and modify its website to allow greater ease of use for its customers. In December 2005, the Department added a new icon "Stay Informed" to its homepage. The new link and webpage consolidates a variety of public information including information for signing up for email alerts; electronic versions of current Commission minutes, staff reports, and agenda; the Department's weekly notice; and rulemaking activities. The new webpage can be accessed from the Department's homepage or can be found at:

<http://www.wrd.state.or.us/OWRD/PUBS/subscriptions.shtml>. This new webpage also includes on-line access to minutes from Commission meetings from 1992 to the present. The Department is currently scanning rulemaking histories for all of the Department's Administrative Rules. Commonly referred to as OARs (Oregon Administrative Rules), they encompass Division 001 through Division 521 and will be added to the webpage over the next couple of months.

## **II. Commission Follow Up**

### Klamath Follow Up

On October 27, 2005, the Commission hosted a workshop on activities in the Klamath Basin that included presentations from a broad range of water interests. Groups representing governmental interests, conservation interests, tribal interests, and irrigation user interests participated in the workshop. This spectrum of viewpoints provided the Commission with a good understanding of the basis for conflict and the complex nature of the path to resolution. Following the workshop the Commission spent an hour reflecting on what they learned. There was general consensus among the Commissioners that any long-term conflict resolution would need to come from local interests. Additionally, the Commission concluded the job of government is to facilitate resolution by providing data and good science as a solid basis for good decisions. The Commissioners raised several questions and asked staff to prepare a short white paper in response to their question. The Department provided its response to the Commission on December 9, 2005.

### Greenberry Irrigation District Tour

On December 16, 2005, Director Ward and staff toured the South Benton County Water Project. Among other things, this project would allow the Greenberry Irrigation District (GID) to use City of Corvallis re-claimed water in lieu of water from the Willamette Reservoir System. GID and the City of Corvallis hope to update the Commission on their progress at a future meeting.

### GWAC Meeting

The next Ground Water Advisory Committee (GWAC) meeting is tentatively set for February 10, 2006, in Salem. Topics will include rulemaking activities related to pump test requirements, well constructor licensing changes, and modifications to water uses in ground water registrations. Other meeting topics will include water use by ground water heat pumps, review of a proposed new well log form, and Klamath Basin ground water issues.

### Department Performance Measures

Over the last several years, the Department has worked with the Legislature and the Oregon Progress Board to revise and update its performance measures. The goal has been to build a stronger link to our Oregon Benchmark (OBM79), our Department mission and goals, and high-level performance "outcomes." 2005 changes to the Department's performance measures include the addition of two new measures to track its water right and transfer application processing times, clarification of one measure related to promoting water supply solutions, and the addition of two new customer service measures. The full 2005 annual report is available at <http://www.wrd.state.or.us/OWRD/LAW/performance.shtml>.

With respect to the two new customer service measures, the Department has not completed surveys to measure overall satisfaction with the agency under these new measures. However, the Department completed a pilot customer service survey in 2004. The return rate of survey cards was 17%. Of these, 80% rated the Department's overall customer service acceptable or better. The Department is currently developing a new customer service survey based on Department of Administrative Services' guidelines, which will provide data for these new measures. The survey will be conducted in March 2006. During the fall, forty-seven Department staff attended customer service training presented by the Department of Environmental Quality. The topics included everything from handling angry clients to email etiquette. The consensus from staff was that it was one of the best trainings they ever attended.

### **III. 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") 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. 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. The public comment period began on September 29, 2005 and closes on January 16, 2006. No comments have been received to date. Staff will provide a report at the May 2006 Commission meeting summarizing the City's request and any 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.

#### Pump Testing of Nonexempt Wells, OAR Chapter 690, Division 217

The Department is proposing to amend rules related to pump testing of nonexempt wells (OAR Chapter 690, Division 217) which would implement changes that would waive the pump test requirement for permits and certificates with priority dates prior to December 20, 1988, unless required by the Director. This rulemaking will also reduce the requirements for well owners or operators to conduct follow-up testing of wells, unless required by the Director. The Department will publish notice of the rulemaking in the Secretary of State Bulletin on February 1, 2006. A public hearing is scheduled in Salem on February 17, 2006. Public comment will close on March 10, 2006. The Department anticipates proposing rules for adoption at the May 2006 Commission meeting.

#### Well Construct Licensing and Bonding, (OAR Chapter 690, Divisions 200, 205, 220, 225, 240)

The Department is proposing to amend rules relating to Water Supply Well Constructor and Monitoring Well Constructor licensing and bonding (OAR Chapter 690, Divisions 200, 205, 220, 225 and 240). These proposed amendments are to implement statutory changes from the 2001 legislative session. This rulemaking will adjust the well constructor licensing rules by creating a single well constructor's license instead of the two licenses that the Department currently issues. By adopting a single license the drillers who currently maintain two licenses will only be required

to carry a single license with endorsements that indicate what type of wells they are authorized to construct. The Department will publish notice of the rulemaking in the Secretary of State Bulletin on February 1, 2006. A public hearing is scheduled in Salem on February 22, 2006. Public comment will close on March 8, 2006. The Department anticipates proposing rules for adoption at the May 2006 Commission meeting.

#### **IV. 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. The Department is going to trial the week of January 17, 2006.

*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 reached an 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 withdrew the petition 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. This matter was also filed with the Court of Appeals. No date has been set with the Court of Appeals.

#### **V. Commission/Board Schedules**

	<b>Location</b>	<b>Date</b>
Environmental Quality Commission (EQC)	Portland	March 2-3
Oregon Watershed Enhancement Board (OWEB)	Otter Rock	January 24-25
Land Conservation and Development Commission (LCDC)	Salem	Feb. 1-3
Parks and Recreation Commission	Champoeg	January 19
Fish and Wildlife Commission (ODFW)	Salem	February 9-10
State Land Board	Salem	February 14
Board of Forestry	Salem	March 8
Board of Agriculture	West Salem	March 1 & 2
Dept. of Geology and Mineral Industries (DOGAMI)	Salem	February 7