



# 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 5, 2006  
Water Resources Commission Meeting

#### Director's Report

#### I. Current Events

Current Water Conditions: Oregon received record amounts of precipitation this year. Precipitation measured at many Oregon Cascade sites set new records for total January precipitation. Snow pack across the state is well above normal, ranging from 108% of average in the lower Columbia to 163% of average in the Klamath. Average snow pack statewide for February 1 was 137% of average.

As a result of the record setting January precipitation, stream flows throughout the state were well above normal during February. Flooding of low lying areas in the Willamette Valley and Coast range has been common. West side flood control reservoirs continually filled and spilled in order to save room for continued winter and expected spring runoff. Water users across the state are expected to have adequate water supplies this year.

Western States Water Council Meeting: Director Phil Ward attended the Western States Water Council Meeting in Washington D.C. held from March 26-29. Topics included a workshop on "Water Needs and Strategies for a Sustainable Future", where a draft report was prepared in response to a request from western governors. The meetings featured a number of special guests such as Mark Rey, US Department of Agriculture Under Secretary for Natural Resources. While in Washington, Director Ward met with the natural resource coordinators in Senators Wyden and Smith's offices as well as the coordinator in Representative Walden's office.

Governor's State Employees' Food Drive: The Governor's Annual State Employees' Food Drive was hosted in February. This year Department staff raised more than \$3,100, which is the equivalent of more than 19,000 pounds of food for the Oregon Food Bank. The Department was part of a record-setting year with a total of 39 million pounds of food raised by participating agencies.

2006 Stewardship and Conservation Awards: Each year on behalf of the Commission, Department staff identify recipients for the Commission's Stewardship and Conservation Award. This award is given to individual citizens, groups, businesses or other partners that advance the Department's mission to serve the public by practicing and promoting wise long-term water management and for responsibly managing, conserving and restoring Oregon's water resources. Recipients of the award

show outstanding commitment to water conservation and implementation of water efficient operations.

2006 Stewardship and Conservation Awards will be presented to the City of Bend WaterWise Program, the Oregon Water Trust, and jointly to the Baker Valley Soil and Water Conservation District and Baker Valley Irrigation District.

- Baker Valley Irrigation District and Baker Valley Soil and Water Conservation District are being recognized for their outstanding efforts on the Powder River Water Quality Enhancement Project. This project has included installation of 12 miles of pipeline to consolidate stockwater diversions and replacement of six diversion dams with fish friendly rock weirs. The project improved water quality by removing cattle from the stream corridor and restoring riparian zone vegetation and extended fish passage year round through 9 miles of the Powder River.
- The City of Bend Public Works Department is being recognized for outstanding education and outreach efforts under their WaterWise Program. The program goals are to create informed water users who choose wise water use over waste, integrate and invest in the best conservation practices, both indoors and on the landscape, within their homes, businesses and daily practices.
- The Oregon Water Trust is being recognized for their leadership in working with over 200 landowners on 96 streamflow restoration projects. The Trust's voluntary efforts with landowners have restored 150 cubic feet per second of streamflow in nine different river basins in the state.

Position Updates: There are two new watermasters in the state. Kathy Smith recently filled the watermaster position in District 14 located in Grants Pass. Joel Clark recently filled the District 21 position located in Condon. In addition to these recent hires, Mike McCord has moved from the District 20 watermaster position in Oregon City to the District 16 watermaster position in Salem. Bill Ferber, previously watermaster in District 16, has accepted the position of West Region Manager.

## **II. Commission Follow Up**

Well Constructor Continuing Education: The Department has recently completed the annual road trip providing classes for continuing education for licensed well drillers. Classes were held in Salem, Wilsonville, Baker City, Pendleton, and Bend. There was good participation with an average of approximately 30 individuals at each location. The Department has received positive feedback from drillers regarding topics and overall presentation.

Measure 37 Update: On February 21, 2006, the Oregon Supreme Court issued its opinion that Ballot Measure 37 is constitutional, over-ruling a previous Marion County Circuit Court holding that the measure was unconstitutional. The State is again receiving claims after Ballot Measure 37 went back into effect on March 13, 2006. The Department has received seven claims to date and has issued final orders for six of these claims, denying the claims.

### **III. Rulemaking**

Contested Case Hearings, Rulemaking, and Public Records Requests (OAR Chapter 690, Divisions 1, 2, and 3): The Department has been working with a rules advisory committee (RAC) to update its rules related to contested case hearings (Division 1) to be consistent with the Attorney General's Model Rules of Procedure and to amend its rules related to rulemaking (Division 2) to reflect the latest version of the Attorney General's Uniform Rules. The Department is also proposing to adopt rules related to requests for public records and the processing of those requests (Division 3). The Department anticipates noticing a hearing draft of the rules on May 1. A rulemaking hearing is scheduled in Salem on May 25. The last day to submit written comments to the Department is June 8.

Instream Water Rights, OAR Chapter 690, Division 77: In January, 2006, the Department convened a RAC to provide input on potential amendments to Division 77 related to instream water rights. The RAC has concluded, and the Department is preparing a hearing draft for public notice on May 1. Rulemaking hearings are scheduled on May 24 in Salem and May 25 in Bend. The last day to submit written comments to the Department is June 8.

Water Right Transfers and Ground Water Modifications (OAR Chapter 690, Divisions 380 and 382): The Department has recently concluded a RAC to provide input on rules to implement House Bill (HB) 2123 (Chapter 614, 2005 Oregon Water Laws). HB 2123 requires the Commission to adopt rules defining the process and standards for recognizing changes in the place of use, type of use, or point of appropriation for claims to appropriate ground water registered under ORS 537.610. The process and standards for recognizing modifications to ground water registrations is proposed in a new division of rules, Division 382. HB 2123 also modifies the statute to provide greater flexibility for surface water to ground water point of diversion transfers. The proposed rule amendments in Division 380 implement provisions of HB 2123 related to surface water to ground water transfers and also clarify other provisions related to water right transfers. The Department anticipates noticing the hearing draft of the rules on May 1. A rulemaking hearing is scheduled in Salem on May 22. The last day to submit written comments to the Department is June 9, 2006.

District Water Right Transfers, OAR Chapter 690, Division 385: The Department has just concluded work with a RAC to develop rules to implement HB 2875 (Chapter 401, 2005 Oregon Water Laws). HB 2875 provides the opportunity for certain districts to temporarily (for one irrigation season) change a point of diversion for a water right in the event an emergency prevents the district from diverting water from its authorized point of diversion. The hearing draft of the rules will be public noticed on May 1. A rulemaking hearing is scheduled in Salem on May 23. The last day to submit written comments to the Department is June 9.

### **IV. Litigation Update**

Brayman et al v. Lewis et al: In January, the Department entered into a settlement agreement with a majority of the parties involved in this litigation. A trial was held with the remaining parties in the Harney County Court. The Court accepted the settlement agreement and issued a ruling in the Department's favor following the trial. Department staff are working with the water users to implement the settlement agreement.

Fitzgerald Ranch Inc., et al v. Oregon Water Resources Department: This case involved water users around Hart Lake and the Adel Irrigation District. A settlement agreement was crafted between the water users and the District and supported by the Department. The water users, District, and Department submitted the agreement to the Lake County Circuit Court. The Court accepted the agreement. This case is now closed.

Harrington v. Oregon Water Resources Department: There are three case involved in this litigation.

Harrington I is related to the denial of water right applications requesting to store water. Harrington has constructed reservoirs within the Big Butte Creek basin. The basin was classified for the exclusive use of the City of Medford by the Oregon Legislature. The Jackson County Circuit Court ruled in the Department's favor. Harrington has appealed to the Oregon Court of Appeals.

Harrington II relates to the Watermasters action to regulate due to water being stored without the necessary water right. The Jackson County Circuit Court again ruled in the Department's favor.

Harrington III is a new filing in the U. S. District Court (Oregon) Court. No court date has been set at this time.

Additionally, two criminal cases have been filed against Harrington in Jackson County. Harrington pled guilty to the first, the second is still pending.

Water for Life et al v. Oregon Water Resources Department: Water for Life has withdrawn the petition seeking judicial review of the Commission's order extending the irrigation season in the Donner und Blitzen basin in Harney County. Water for Life also withdrew their filing with the Court of Appeals related to season extension.

Charles Noble, Deborah Noble and David Hillison v. Oregon Department of Water Resources et al: The Nobles and Hillison are seeking Judicial Review in Clackamas County Circuit Court of the Department's final order approving a water right permit to store water. No court date has been set at this time.

**V. Commission/Board Schedules**

	<b>Location</b>	<b>Date</b>
Environmental Quality Commission	TBD	April 27-28
Oregon Watershed Enhancement Board	TBD	May 16-17
Land Conservation and Development Commission	Roseburg	May 3-5
Parks and Recreation Commission	Banks	June 8
Fish and Wildlife Commission	Burns	May11-12
State Land Board	Salem	June 13
Board of Forestry	Salem	June 7
Board of Agriculture	Gold Beach	May 31- June 1
Dept. of Geology and Mineral Industries	Salem	TBA