



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item G, January 27, 2012
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The surface water supply index (SWSI) is a numerical index computed for the 14 major water basins in Oregon. The index ranges from + 4.0 indicating extremely wet conditions to - 4.0 indicating extremely dry conditions. An index of 0 would indicate normal conditions. The index is computed monthly and generally considers snowpack, rainfall, irrigation reservoir content and average monthly streamflow. On December 1, 2011 the indices in the 14 basins ranged from -1.5 in the Klamath Basin to +1.6 in the Deschutes Basin. According to the SWSI, water conditions in Oregon are generally below normal and trending downward.

On January 9, 2012 snowpack conditions range from a high of 55 percent of normal in the Grande Ronde, Powder, Burnt and Innaha Basin Basins to a low of 19 percent of normal in the Owyhee Basin. Generally, snowpack is currently well below normal after 3.5 months into the water year. We normally experience the bulk of our snowpack accumulation in December, January and February. Total precipitation for the water year ranges from a high of 69 percent of normal in the Grande Ronde, Powder, Burnt and Innaha Basins to a low of 44 percent of normal in the Lake County/Goose Lake Basin.

Storage carryover in the major irrigation reservoirs puts them at near normal capacity.

The northwest is still under the influence of La Niña conditions and continues to be forecasted for below normal temperatures and above normal precipitation over the winter period. However, these conditions have not been consistent with the moving three month forecast. Storms have been consistently pushed to the north, leaving the state with below normal water conditions.

II. Commission Follow Up

Update on Past Basin Program Exceptions: At the September meeting, the Commission asked for updates on previous basin program exceptions.

The Commission has granted 21 basin program exceptions. The first one was reviewed and granted in June of 1995. There was a five-year period of no exception requests from 1998 through 2002. Our busiest year was 2007 with four requests.

All of the applications have received final orders (19 approvals and 1 application withdrawn), except for the last one which was reviewed at our September 2011 meeting.

Application for Federal Grant: The Department will be seeking permission from the January 19, 2012 meeting of the Interim Joint Committee on Ways and Means to apply for a federal grant from the Bureau of Reclamation for a “WaterSmart, Water and Energy Efficiency Grant for FY 2012” in the amount of one million dollars.

If successful in obtaining the grant, the Water Resources Department proposes to partner with the United States Geological Survey (USGS) to develop a groundwater model of the alluvial aquifer system in the critical groundwater areas of the Umatilla Basin. This alluvial aquifer system is also the location of the recharge area for the Umatilla Basin Recharge Project. Entering into a cooperative agreement with USGS allows the partners to leverage additional resources that are not directly available to the Department. The grant funds will be used to: 1) develop tools necessary for monitoring and managing water that is treated on a large scale in native basin sediments for storage within deep basalt aquifers, 2) increase water available for irrigators 3) to augment and protect groundwater inflow to the Umatilla River during critical periods.

The managing tools will be in the form of a transitory groundwater model, MODFLOW, which will provide the ability to increase water supply for irrigators, provide environmental benefits, and manage natural treatment opportunities using natural filtration. Environmental benefits include flushing of nitrates in the soil and augmenting flow in the Umatilla River during critical times. Return flow from this activity will be protected (retained in stream) to the Columbia River.

The Department intends to use existing resources and funding that is being expended to develop Umatilla Basin critical groundwater storage projects described in Section 17, HB 3369 (2009) for the 50 percent match requirement. This federal grant will provide an effective means of modeling and managing the 25 percent of groundwater, which is designed to be left in the aquifer to provide net environmental public benefits or in-stream benefits.

Klamath Adjudication Update: The Klamath Adjudication, which began in 1975 is nearing completion. 730 claims were submitted, resulting in the filing of 5,664 contests to those claims. Many of the contests were resolved through stipulated agreements. Others were resolved through Contested Case hearings. The Contested Case proceedings are nearing the end. An Administrative Law Judge recently issued Proposed Orders in six of the remaining eight cases. The cases deal with the Tribes’ claims. The Proposed Orders issued by the Law Judge are generally favorable to the Tribes’ claims. Each of the Proposed Orders is subject to review and potential modification by the Adjudicator prior to issuance of the Final Order of Determination. Proposed Orders on the remaining two cases involving the Tribes’ claims to upper Klamath Lake and instream flow on the Klamath River are scheduled to be issued in mid-April of this year.

The stipulated agreements, Proposed Orders, and a mountain of information will be considered by the Adjudicator as he prepares the Final Order of Determination which is scheduled to be filed with the Klamath County Circuit Court in late 2012 or early 2013. Once the Final Order is filed with the Court, the Department will be able to enforce the provisions of those water rights. Please see Attachment 2 for the Klamath Adjudication Schedule.

Litigation Update: *Deborah Noble et al v. Oregon Water Resources Department, et al (Lytle), Oregon Court of Appeals*

This case is filed in Clackamas County Circuit Court and was 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 was held the first full week of December 2010. The Judge ruled that the Department's Final Order, authorizing the issuance on the Lytle alternate reservoir, was issued in violation of statutory provision. The ruling states that the information and data contained in the application was insufficient to meet the statutory eligibility criteria. However, the Judge concluded that a reasonable person could agree with the agency's conclusions in the Final Order and permit.

Noble has appealed the ruling of the Clackamas County Circuit Court in relation to the merits of the case. The Court of Appeals has not scheduled oral arguments as of this date.

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's 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.

John Steele v. Water Resources Commission, Water Resources Department and Symbiotics, LLC

This is a petition for Judicial Review of a Final Order of the Commission regarding a hydroelectric license. This matter is before the Oregon Court of Appeals. This is an appeal from a final order issued by the Department, approving a water right permit for Symbiotics, LLC to divert water for a hydroelectric generating unit in the Row River at Dorena Dam near Springfield. Symbiotics also sought a license for a hydroelectric project. The Petitioner, John Steel, seeks to have the final order granting both the water right and license set aside on the grounds that it was issued contrary to Oregon Law and was not supported by substantial evidence in the record. The Department believes that its actions are supported by law.

Oral argument before the Oregon Court of Appeals was held on May 24, 2011. The Court has not issued a written opinion at this time.

John M. Mosby v. Scott Runels, Margie Runels and the Oregon Water Resources Department

Mosby filed a motion to make inactive defendant (OWRD) an active defendant.

This case involves a dispute between Mosby and Runels regarding the division of water. The place of use is within the Klamath Basin and involves water right claims within the Klamath Adjudication and water rights acquired through the water right permit process. The Case was initiated in the mid-90s. A former OWRD employee acted as a Special Master for the Klamath County Circuit Court and established a temporary regulation process until such time as the Klamath Basin Adjudication is enforceable. The Klamath County Circuit Court dismissed OWRD as a defendant at that time.

A hearing was held in Klamath County Circuit Court on August 9, 2011 to hear arguments regarding the motion to reactivate OWRD as a defendant. The Court ruled against Mosby and did not reactivate OWRD as a defendant.

WaterWatch v. Oregon Water Resources Department (City of Brookings)

WaterWatch filed a petition for Judicial Review of a final order in other than a contested case relating to an order approving an extension of time for a permit held by the City of Brookings. This case is filed in Marion County Circuit Court. WaterWatch, The City and the Department are in talks to dismiss this case.

WaterWatch v. Oregon Water Resources Department (City of Cottage Grove)

The City of Cottage Grove filed an application to extend a water right permit issued in its name. WaterWatch protested the order approving the extension of time. Following a Contested Case Hearing the Department issued a Final Order granting the extension to the City.

WaterWatch filed a petition with the Oregon Court of Appeals for Judicial Review of the Order issued in a contested case. The Court of Appeals has not scheduled the date and time of oral argument at this time.

WaterWatch v. Oregon Water Resources Department (Lower Clackamas Water Districts)

This case stems from several applications for extensions of time. It involves several water districts that divert water from the lower portion of the Clackamas River. WaterWatch protested the approval of the various extensions of time. Since the issues were similar, the eight cases were consolidated into a single contested case. Following the contested case hearing, the Department issued orders approving the extensions of time. WaterWatch filed three petitions for Judicial Review with the Oregon Court of Appeals. Department staff prepared and filed the record with the Court of Appeals. To date, the Court has not scheduled a date and time for oral argument.

Rulemaking Updates: Please refer to the attached Anticipated Rulemaking Schedule.

At-A-Glance Updates: Please refer to the attached At-A-Glance.

III. Commission/Board Schedules

	Location	Date
Fish and Wildlife Commission	Astoria	Feb. 3, 2012
State Land Board	Salem	Feb. 8, 2012
Environmental Quality Commission	Portland	Feb. 16-17, 2012
Board of Agriculture	Salem	March 6-7, 2012
Board of Forestry	Salem	March 7, 2012
Oregon Watershed Enhancement Board	Salem	March 13-14, 2012
Land Conservation and Development Commission	Newport	March 14-16, 2012
Dept. of Geology and Mineral Industries	Portland	March 20, 2012
Parks and Recreation Commission	Medford	April 4, 2012
Water Resources Commission	Salem	April 19-20, 2012

Attachments: Attachment 1: Rulemaking Schedule

Attachment 2: Klamath Adjudication Schedule - BIA Tribal Claims

Attachment 3: At-A-Glance