



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director

**SUBJECT:** Agenda Item G, April 20, 2012  
Water Resources Commission Meeting

#### Director's Report

##### I. Current Events:

Current Water Conditions: On March 1, 2012, the Surface Water Supply Index (SWSI), indicated the majority of the state was at near average water conditions. The exceptions were the Klamath and Harney Basins, with SWSI indices less than -1.5, indicating low surface water supply. All basins were trending downward. By late March conditions had improved significantly. As an example, the Klamath Basin began March with a snow pack approximately 60% of normal. By late March conditions had improved to 90% of normal. In late March snowpack ranged from a low of 51% of normal in the Owyhee Basin to a high of 129% of normal in the Hood, Sandy and Lower Deschutes Basin.

Generally, storage reservoirs in Oregon were above average content on March 1. The exception to this was Clear Lake, serving Klamath Basin Irrigators, at 53% of normal. Cold Springs and McKay Reservoirs were also well below normal. Exceptional conditions in March improved conditions considerably.

On March 1 the NRCS streamflow conditions forecast for summer months predicted the southeast quarter of the state to be well below normal (25% to 70% of normal), the Northeast quarter and Southwest quarter to be below normal (70% to 90%), and the Northwest quarter to be near normal. Again, exceptional precipitation in March improved forecast conditions considerably.

##### II. Commission Follow Up

Update on Transfer Applications: ODFW Fish Hatchery Transfers (near the City of Cascade Locks) This is an update on two transfer applications that have been the subject of public comment at our last two Commission meetings.

ODFW filed two transfer applications (Files T-11108 and T-11249) to add two points of diversion for their fish hatchery near the City of Cascade Locks. The Department received approximately 4000 public comments during the period August 31, 2010 to October 14, 2010 for T-11108 and from May 31, 2011 to June 30, 2011 for T-11249. At the end of February, the Department issued Preliminary Determinations proposing to approve the two transfers.

A formal protest period ran from February 28, 2012 to March 29, 2012. The Department received one protest on each file.

Should the Department approve the transfers, ODFW will need to submit a Claim of Beneficial Use (COBU) for each of the transfers. The COBU for T-11108 will need to be reviewed and have a certificate issued before a pending Water Exchange (File T-11109) with the City of Cascade Locks can be processed.

Coastal Basin Rulemaking Update: The Department is conducting rulemaking during 2012 to revise the basin-program of the five coastal basins (North Coast, Mid-Coast, Umpqua, Rogue, and South Coast). Those basin programs have not been revised for more than two decades, and they contain language that has been superseded by subsequent legislation. Other minor changes to the language of certain sections will also be proposed to either streamline or clarify existing rules. A Rules Advisory Committee will be convened in late April. We anticipate that the Rules Advisory Committee will complete its work by early June, which will allow public hearings to be held in each basin during July (one Commissioner must attend each hearing). The public comment period will end approximately August 31, and we anticipate bringing the revised rules before the Commission at the November 2012 meeting.

Klamath Water and Power Agency and Bureau Reports: Water storage in Klamath Lake is close to the long-term average, but inflows have been below average. The Bureau of Reclamation and the Klamath Water and Power Agency (KWAPA) are concerned about this year's ability to meet both irrigation delivery and the obligation to release water downstream for ESA-listed anadromous fish. KWAPA received 80 applications from supplemental groundwater users in Oregon asking for financial assistance to pump groundwater under existing supplemental permits and emergency drought permits (if issued). These well users would forego their irrigation water delivery from surface water and utilize groundwater, making up the shortfall in project water.

Staff provided KWAPA with recommendations on which geographic areas to focus supplemental groundwater pumping to minimize well interference and groundwater supply issues. This summer, if needed, Department staff will assist KWAPA with a domestic well mitigation program to evaluate and remedy well interference impacts on domestic wells from nearby irrigation wells. Work continues with the USGS and KWAPA on developing an optimal groundwater pumping strategy as a backup in times of water shortage in Klamath Lake. This work is part of the On-Project Plan mandated by the Klamath Basin Restoration Agreement. The USGS Groundwater Flow Model Report for the Klamath Basin is now available on the Department's website, it can be found at: <ftp://ftpext.usgs.gov/pub/wr/or/portland/marshall/>. The file is very large at about 150 MB. If you would like to download the entire document, please point your windows explorer window to the website and then drag and drop into the zipped folder.

Willamette Basin Storage & U.S. Army Corps of Engineers Budget Update: A meeting between the Water Resources Department, US Army Corps of Engineers (COE) and stakeholders was held on February 15, 2012. The purpose of the meeting was for the COE to report on possible funding following the release of the Presidents budget.

Kevin Brice with the COE reported that the President's budget does include \$200,000 for Willamette study activity, a small scale allocation study limited to a 499 acre feet municipal contract. The result of this study will determine the steps which the COE will need to take to issue contracts for the use of water stored behind COE dams in the Willamette Basin.

The Commission's Willamette Storage Resolution has been distributed. A copy is attached.

Several stakeholders visited with Congressional in Washington D.C. the first week in March and shared the Resolution with Oregon's Congressional delegation. The stakeholders report that there is general support for the joint effort that is underway.

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

This case was heard in Clackamas County Circuit Court and was a petition for Judicial Review of an alternate reservoir application filed on a small (1 acre foot) existing reservoir. The Nobles raised issues regarding impacts to fish resulting from the reservoir. 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 opening brief has been filed. 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. The Department issued an order approving Symbiotics, LLC request to divert water for a hydroelectric generating unit in the Row River at Dorena Dam near Springfield. The Petitioner, John Steele, 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. On February 15, 2012, the Court issued a ruling affirming the Department's Order.

***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 discussions 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. Briefs are being filed in this 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.

<b>III. Commission/Board Schedules</b>	<b>Location</b>	<b>Date</b>
Fish and Wildlife Commission	Salem	April 20, 2012
State Land Board	Salem	June 12, 2012
Environmental Quality Commission	Newport	April 26-27, 2012
Board of Agriculture	Ontario	May 29-31, 2012
Board of Forestry	Newport	April 26-27, 2012
Oregon Watershed Enhancement Board	TBA	June 12-13, 2012
Land Conservation and Development Commission	Salem	May 10-11, 2012
Dept. of Geology and Mineral Industries	Portland	June 29, 2012
Parks and Recreation Commission	Prineville	June 20, 2012
Water Resources Commission	Salem	August 2-3, 2012

Attachments: Attachment 1: Willamette Storage Resolution

Attachment 2: Rulemaking Schedule

Attachment 3: At-A-Glance