



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 H, August 3, 2012
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The National Drought Monitor indicates portions of south central and southeast Oregon, with Malheur Basin in the center, range from severe drought to abnormally dry. The rest of Oregon has near normal water supply conditions. Although water conditions are much better than January 1 of this year, water supply is very short in the Lost River Basin (Klamath County), and the Malheur Basin. Streamflow in these areas is well below normal, while streamflow in the rest of the state east of the Cascades is near normal, and streamflow west of the Cascades ranges from normal to above normal. Reservoir content for the state ranges from slightly below normal to above normal content. A major exception is Clear Lake in the Lost River Basin (Klamath County) at 43% of normal. Forecasts for the rest of the irrigation season indicate that dry conditions in the south central and southeast portions of Oregon will intensify. Long range forecasts indicate Oregon water conditions next summer to be below normal.

Columbia River Task Force: In June, Governor Kitzhaber established the *Columbia River-Umatilla Solutions Task Force* as an Oregon Solutions project. The purpose of this project is to cooperatively address water needs in the Umatilla Basin, building on the success of the Umatilla Aquifer Recovery Project.

Named to the task force were local, tribal, federal and state leaders including WRD Director, Phil Ward. The effort is co-chaired by Umatilla County Commissioner Dennis Doherty and Governor's Natural Resource Advisor Richard Whitman. The task force is charged with developing a set of near-term actions and longer term recommendations that can help the agricultural economy in this region while also benefitting endangered fish species and depleted aquifers. The Governor has asked that an initial set of recommendations be developed by December of this year.

Western States Water Council: At its recent summer meeting in Seattle, the Western States Water Council (WSWC) named Oregon Water Resources Director Phil Ward as Chair. Ward had previously served the organization as vice chair, secretary/treasurer, and water resources committee chair.

The WSWC is an organization of governor-appointed senior water leaders from 17 western states. It was created in the 1960's by the Western Governor's Association as a forum for investigating

and resolving interstate water issues, and for influencing federal water-related activities and policy.

Director Ward is the first Oregonian elected Chair of this organization and will serve two years in that position.

II. Commission Follow Up

U.S. Army Corps of Engineers Update: The Department and US Army Corps of Engineers have continued to work together on issues regarding the Willamette Basin. Staff will continue to be involved in the Willamette BiOp processes and the Willamette Basin Review (also known as the Willamette Basin Reservoir Study). Two meetings with both water user and environmental stakeholders have occurred. In May the Corps hosted a meeting to discuss the model being used to estimate project impacts based on environmental and consumptive needs. Although funded by the BiOp budget, the results of the model outcome will have important implications for the Basin Review. The June meeting concentrated on the Basin Review. There is good news, funding for the Basin Review is in the President's Budget and mark ups for both the House and Senate. The work plan for FY 13 and to some extent FY 14 were outlined. Both meetings have had important information exchange and have been helpful to maintain progress.

Budget Update: The Department has managed within both its General Fund and Other Funds successfully for the first year of the biennium and can report that reductions in both revenue sources did not result in deficit spending, primarily due to aggressive management actions early on in the biennium when it became apparent that resources were going to be less than anticipated. The financial status is stable enough to allow the filling of some positions that had been vacant for an extended period: NC Well Inspector, Oregon City Watermaster, NW Region Assistant Watermaster, SW Region Hydrotech, Water Availability Technician, and Accounts Payable Specialist.

The Department is taking actions to conform with the passage of HB 4131 which mandates that state agencies of greater than 100 staff achieve a Supervisor to Staff ratio of 11 to 1 over the course of time. The penalty for not achieving incremental ratio change is a prohibition on hiring of management staff. The Department has removed supervisory responsibility from three staff to increase its ratio to 1 to 7 and will be expected to take additional steps in the coming year.

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. On June 27, 2012, the Court of Appeals affirmed the case without Opinion.

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 regarding this case. No Court date has been scheduled.

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 scheduled oral argument for September 10, 2012.

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	Salem	August 3, 2012
State Land Board	Salem	August 27, 2012
Environmental Quality Commission	TBD	August 23-24, 2012
Board of Agriculture	TBD	TBD
Board of Forestry	Salem	Sep. 5, 2012
Oregon Watershed Enhancement Board	TBA	Sep. 11-12, 2012
Land Conservation and Development Commission	TBA	Sep. 20-21, 2012
Dept. of Geology and Mineral Industries	TBD	TBD
Parks and Recreation Commission	Salem	August 29, 2012
Water Resources Commission	Salem	Nov. 15-16, 2012

Attachments: Attachment 1: Rulemaking Schedule

Attachment 2: At-A-Glance

Water Resources Department Anticipated Rulemaking (2012)

Rule Division	Topic	Lead Staff	Rules Advisory Committee Anticipated	GWAC Input Anticipated	Target WRC Date	Status
Divisions 501, 515, 516, 517, 518	Revision of five coastal basin programs (North Coast, Mid-Coast, Umpqua, Rogue, and South Coast)	Dwight/Tim	Yes	No	November 2012	A Rules Advisory Committee is scheduled to be convened in July, 2012
New Division 96	Implementation of HB 3369 provisions related to net environmental public benefits and peak and ecological flows for storage projects.	Barry	Yes	No	TBD	Internal discussion regarding recommended approach
Division 5	Update rules to reflect current statutory provisions and internal processes....[state agency coordination ...land use planning.]	Dwight/Ruben	Yes	Yes	TBD	Internal discussion regarding recommended approach

**At-A-Glance
WRC-Related Action Items
2012**

April 19-20, 2012

- WRC Meeting
- Debrief Spring IWRS Input
- Make SB 1069 Grant Awards
- Legislative Concepts & Budget Building
- Possible rule adoption – Division 5, agency coord./land use

August 2-3, 2012

- WRC Meeting
- Possible IWRS Adoption
- SB 1069 Grant Awards – Second Tier

November 15-16

- WRC Meeting
- Possible rule adoption – HB 3369 implementation
- Possible Rule Adoption – 5 Coastal Basin Programs
- 2010-2011 Annual Report Regarding Deschutes Mitigation