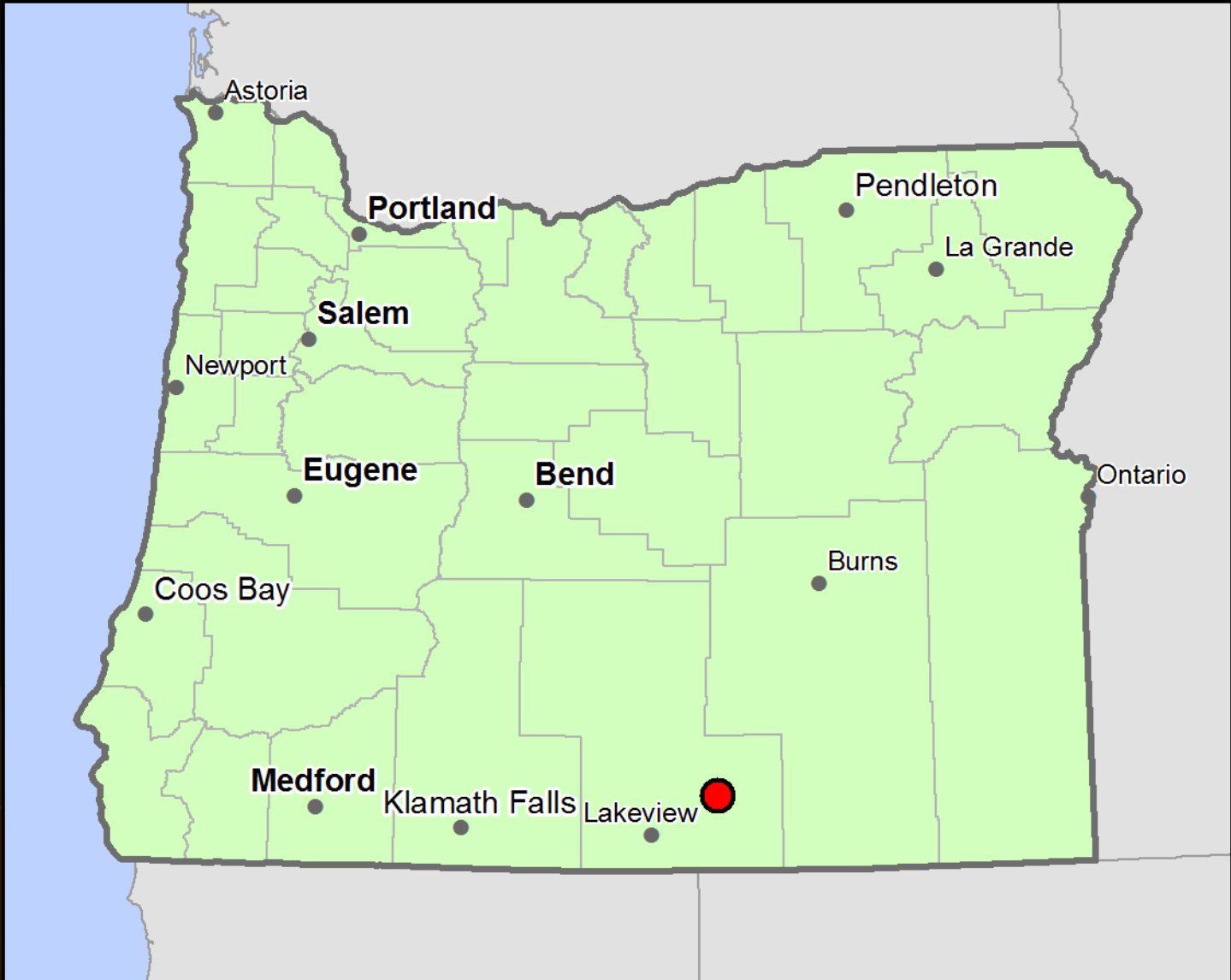


AGENDA ITEM M

Consideration of Exceptions and Issuance of Final Order

Juno Pandian

Well Construction & Compliance Section Manager



Background

- Two affidavits asserting nonuse of water right
 - Water Right Certificate 9451
 - Water Right Certificate 22209
 - Water Right Certificate 45409
 - Irrigation and livestock near Hart Lake in Lake County
- Issued three Notices of Proposed Cancellation

Background (continued)

- December 10, 2009, BLM filed protests to all three Notices of Proposed Cancellation
- April 20, 2010, site visit
- December 13-17, 2010, hearing held
- Record closed February 16, 2011
- Judge Allen issued a Proposed Order on March 31, 2011

Background (Continued)

- Judge Allen issued a Corrected Proposed Order on April 5, 2011, (Attachment 2) because the Proposed Order did not contain exception language
- Proponents filed over 27 exceptions to Corrected Proposed Order

BACKGROUND - Continued

- The Department responded to these exceptions and issued an Amended Corrected Proposed Order on November 14, 2011 (Attachment 4)
- Exceptions were filed (Attachment 5)

Proponent's Exceptions

- Proponents Argue: Evidence is sufficient to establish nonuse of water between 2001 and 2005
- Department's Response: Findings of Fact support that irrigation occurred during 2001 and 2006

Proponent's Exceptions – Cont.

- Proponent's Argue: Water is "available" when the elevation of Hart Lake is too low to reach the points of diversion
- Department's Response: Water was not available at the points of diversions as it pertains to ORS 540.610

Alternatives

- Issue a Final Order (Attachment 6) that is consistent with the Department's Amended Corrected Proposed Order confirming the responses to the exceptions (Attachment 5)
- Request staff gather additional information and report back to the Commission at its August meeting
- Request staff modify the draft Final Order in a manner requested by the Commission

Recommendation

- The Director recommends the Commission adopt Alternative 1- declaring the water rights evidenced in Certificates 9451, 22209, and 45409 have not been forfeit due to nonuse during the period in issue