



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item G, November 16, 2012
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: The temperature outlook indicates enhanced changes for above normal temperatures across most of the western half of the lower 48 states, and for northern and central Alaska, and enhanced chances for below-normal temperatures over the Florida Peninsula. The precipitation outlook indicates an increased likelihood for below-median precipitation for the Pacific Northwest, Northern sections of both California and Nevada, most of the Alaska Panhandle, and across middle and upper portions of the Mississippi Valley and adjacent eastern plains

For Oregon: November through January - Below normal precipitation statewide. Equal chance of above and below normal temperature statewide.

December through February - Below normal precipitation statewide. Equal chance of above and below normal temperature statewide.

January through March - Below normal precipitation in the northwest part of Oregon. Equal chance of above and below normal precipitation in the rest of the state. Equal chance of above and below normal temperature statewide.

New Eastern Region Manager: We are pleased to announce we have filled the East Region Manager position in Baker City with Jason Spriet, a 17-year employee of the Department. Jason is a long-time resident of Baker City and in his capacity as a Water Restoration Specialist has worked closely with OWEB. Jason has worked as an acting Watermaster in Wallowa County and is the lead staff on work conducted under the Pacific Coast Salmon Restoration Fund and the Commission's Significant Diversion Measurement Program.

New District 18 Watermaster: We are pleased to announce that Cole Beaman, former Assistant Watermaster for District 18 is the new Watermaster. Cole brings 18 years of experience in the Tualatin Basin to this position.

Pilot Program for Regional Farm and Forest Land Conservation: As the result of 2012 legislation and executive order, the Department of Land Conservation and Development is convening natural resource agencies to assist three Southern Oregon Counties—Jackson, Josephine, and Douglas Counties—as they consider a new, regional approach to what lands must be planned and zoned for farm or forest uses. DLCD will seek input from the Water Resources Department, Department of Agriculture, and Department of Forestry in developing the proposed criteria. To the extent possible, DLCD may provide funding to the other agencies involved in this effort using some of the \$350K in funds made available under SB 5701 (2001) or other funds appropriated for that purpose by the Oregon Legislature. Interagency meetings on this topic are scheduled to begin later in 2012.

Statewide Total Maximum Daily Load (TMDL) Policy Committee: The Oregon Departments of Environmental Quality, Agriculture, and Forestry have formed a Statewide Total Maximum Daily Load (TMDL) Policy Committee to obtain input on policy matters related to the development and implementation of TMDLs and on water quality standards issues related to TMDLs. The agencies intend to use the committee's input to help shape policies and set priorities for the state's TMDL work, especially pertaining to implementation-ready TMDLs. The committee is scheduled to meet in early November and then quarterly thereafter. Brenda Bateman will be participating in this group on behalf of the Water Resources Department.

II. Commission Follow Up

2010/2011 Deschutes Mitigation Annual Report: In accordance with the Deschutes Groundwater Mitigation Rules, the Department provides an annual evaluation of the Program to the Commission. Staff is currently in the process of developing the annual evaluation of the Mitigation Program, which will be provided to the Commission in writing. Department staff is also in the process of developing a five year evaluation of the Mitigation Program and will present this to the Commission in 2013. The purpose of the five year evaluation is to take a look at how the program is doing, how streamflows are responding, and whether or not the 200 cubic feet per second (cfs) cap on new groundwater use should be lifted or otherwise modified.

Klamath Adjudication Status Update: The Adjudication Section is preparing the Final Order of Determination and expects to deliver it to the Klamath County Circuit Court no later than June 30, 2013. This is a very complex document that requires the Department to provide the Court the Department's final recommendation on each of 730 separate claims in the adjudication. The Klamath Basin Adjudication started in December of 1975. Upon completion, staff will schedule an informational presentation to the Commission.

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. A time extension has been requested to submit the response brief. 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. The Court denied a request filed by Nebmaier for reconsideration.

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. The Court of Appeals heard oral argument on 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.

III. Commission/Board Schedules	Location	Date
Parks and Recreation Commission	Tillamook	November 7, 2012
Board of Forestry	John Day	November 7-8, 2012
Land Conservation and Development Commission	Newberg	November 14-16, 2012
Board of Agriculture	Portland	November 28-29, 2012
Environmental Quality Commission	Portland	December 6-7, 2012
Fish and Wildlife Commission	Portland	December 7, 2012
Dept. of Geology and Mineral Industries	Portland	December 7, 2012
State Land Board	Salem	December 11, 2012
Oregon Watershed Enhancement Board	Cottage Grove	January 16-17, 2012
Water Resources Commission	TBA	TBA

IV. Upcoming Rulemaking Schedule

None at this time.