



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 C, February 7, 2013
Water Resources Commission Meeting

Director's Report

I. Current Events:

Current Water Conditions: Last fall El Nino conditions indicated a below normal water year for the long-range forecast. El Nino conditions relate to water temperatures in the Pacific Ocean. However, conditions began to improve to what is now considered a neutral condition. This means that, in the northwest, there is an equal chance of above and below normal temperature and precipitation.

By January 1, the mountains had received above normal snowpack for most of Oregon. Eastern Oregon had ample early winter precipitation, but the snowpack remained below average as of January 1. With several more winter months ahead there is still time for recovery in the drier basins.

As of January 1, most streams and rivers around the state were forecast to flow near normal through the summer. However, some streamflow forecasts in southeast Oregon are below normal. The autumn rains responsible for wetting the soils prior to snowfall might give summer streamflows a bit of a boost. Snowpack ranges from 79 percent of normal in the Owyhee and Malheur Basins to 136 percent in the Rogue and Umpqua drainages. Last year at this time snowpacks ranged from 30 percent of normal to 65 percent of normal across the state. January 1 storage at 26 major Oregon reservoirs was 86 percent of normal.

Southeast Oregon is currently lagging behind the rest of the state in water conditions. Even though the snowpack level is the lowest in the state, it is still significantly higher than last year at this time. Currently, reservoirs in the Owyhee and Malheur basins are 68 percent of normal. Last year at this time reservoirs were storing almost twice as much water, but the snowpack was in much worse shape. The April through September forecasts range from 74 percent of normal for the Malheur River near Drewsey to 103 percent of normal for the Owyhee River near Rome.

II. Commission Follow Up

Klamath Adjudication Status Update: As of this writing, the Department is planning to deliver the Final Order of Determination (FOD) for the Klamath Basin Adjudication to the Klamath County Circuit Court on or about March 1, 2013. The FOD will include the Department's

analysis of all 730 claims that were filed in the adjudication. Once the FOD is filed with the court, our District 21 Watermaster, Scott White, can regulate water rights according to Oregon Water Law. Also, any claims that have been denied will no longer be able to use water under their claim and will not be allowed to use water unless their use is covered by another water right. The regulation can be “stayed” on a basin wide or stream system basis if a party files a “stay bond” with the court.

Action at the court is expected to last at least two years and possibly much longer. When the court enters a final decree, two important things will finally be able to happen: 1. The Department will issue certificates that conform to the decree. 2. The water users recognized in the decree will be able to file transfers.

Klamath Basin Restoration Update: Various amendments to the Klamath Basin Restoration Agreement (KBRA) were approved by all 42 signatories to the agreement just prior to the end of 2012. Of particular note was the approval of an amendment that extended the KBRA deadline for federal legislation. As originally drafted, the KBRA provided that the agreement would terminate if Congress did not pass authorizing legislation by December 31, 2012. Congress was not expected to act (and in fact, did not) before the KBRA’s self-imposed deadline, and as a result, signatories to the agreement were asked and did approve an amendment to extend the deadline to December 31, 2014.

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.

Nebmaier has now filed documents with the Oregon Supreme Court.

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. This case has been dismissed.

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. We are now waiting for a ruling from the court.

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
State Land Board	Salem	February 12, 2013
Land Conservation and Development Commission	Salem	February 25, 2013
Board of Agriculture	Salem	March 5-7, 2013
Board of Forestry	Salem	March 6, 2013
Fish and Wildlife Commission	Salem	March 8, 2013
Oregon Watershed Enhancement Board	Salem	March 12-13, 2013
Environmental Quality Commission	Portland	March 20-21, 2013
Dept. of Geology and Mineral Industries	Portland	March 22, 2013
Parks and Recreation Commission	Baker City	May 8, 2013
Water Resources Commission	Salem	May 9-10, 2013

IV. Upcoming Rulemaking Schedule

Please see the attached Rulemaking Schedule.

Water Resources Department Anticipated Rulemaking (2013)

Rule Division	Topic	Lead Staff	Rules Advisory Committee Anticipated	GWAC Input Anticipated	Target WRC Date	Status
Division 340	Adjust the Limited License and Road Water Registration fees	Dwight	Yes	TBD	November 2013	Preparation will await close of 2013 Legislative Session
Division 20	Minor changes to improve clarity and specificity of dam safety rules	Barry/Keith	Yes	No	November 2013	Preparation will await close of 2013 Legislative Session
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