



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Water Resources Commission Meeting
Agenda Item C, July 27, 2005

Director's Report

I. Current Events

Solemn Event: On June 24, 2005, Dick Bailey, Water Rights and Adjudications Administrator, died after a protracted battle with cancer. He served the Department with distinction for 10 years and will be greatly missed.

Commission Appointments: On May 25, 2005, the Senate confirmed four new Commissioners (John Jackson, Cornelius; Mary Meloy, Bend; Charlie Barlow, Nyssa; and Gary Reed, Hermiston) and two returning Commissioners (Jay Rasmussen, Newport and Susie Smith, Springfield).

Position Updates: On July 5, 2005, the Deputy Director position was filled by Tom Paul, former Administrator of Field Services. Dave Jarrett, formerly the Northwest Region Manager, will serve as Field Services Administrator while Tom Paul is serving as Deputy Director. Adam Sussman, after ably serving the Department for over 13 years, joined CH2M Hill in Corvallis. Debbie Colbert has accepted the position that Mr. Sussman vacated as Senior Policy Coordinator.

Western States Water Council (WSWC) Meeting: Director Ward attended the WSWC meeting in Boise, Idaho from April 20 through April 22, 2005. The agenda included an update on the USGS Cooperative Water Program and the Walla Walla River Basin Feasibility Study. Barry Norris attended the most recent WSWC meeting in Seattle, Washington from July 13 through 15. The agenda included the USGS Cooperative Water Program that funds streamflow gaging stations. There was also considerable discussion on sustainability issues and future water supply.

Current Water Conditions: As of July 1, 2005, statewide drought, predicted in early spring to be one of the worst on record, has turned out to be a spring and early summer that ranges from slightly below normal to above normal. However, precipitation for the water year, especially snow, has been well below normal. As we progress into summer, live flow in our rivers and streams is expected to drop to well below normal in many parts of the state. This is already evident in many locations east of the Cascades including the Deschutes Basin and the Umatilla Basin.

Spring and early summer rain increased storage reservoirs significantly. Additionally, many irrigators who normally depend on stored water have not needed to draft their reservoirs yet, so most of the irrigation reservoirs in Oregon should have sufficient supply through the summer.

Areas that are currently the most water short include the Umatilla Basin and the Lower Deschutes Basin. Other areas also include the South Coast Basin, Klamath Basin and the Grande Ronde Basin.

Oregon Plan Ceremony: On May 18, 2005, the Department partnered with six state agencies, the Governor's Natural Resources Office, and the Oregon Plan Outreach Team to celebrate "Oregonians Working for Healthy Watersheds," an annual recognition event created to honor members of the community who have made exemplary efforts to preserve and protect our natural resources. These individuals and groups from across the state have overcome obstacles and found solutions that support the Oregon Plan for Salmon and Watersheds' vision of a sustainable and profitable Oregon. Governor Kulongoski, Senate President Courtney, and Speaker of the House Minnis participated in the event. There were a total of 35 awards presented by agency directors. The Department presented awards to Port of Portland, Farmers Irrigation District, and the Confederated Tribes of the Grand Ronde Community of Oregon.

Hydrographics Software: The Department has purchased new software that will be used for processing "raw" stream gaging data into mean daily flow information. The software was purchased from Kisters, a German software company that markets their product worldwide. Water Information Systems Kisters or "WISKI" is a comprehensive hydro met database including tools for editing, displaying, graphing and reporting data. Key to this system is the automated process for developing and displaying rating curves, previously a complicated and time consuming step in working hydrographic records. Another important part of the new software is the centralization of all record work, including field offices, into a central data base that can be quality assured from a central location. Staff estimates a 33% to 50% time saving in processing records once everyone is trained and up to speed.

II. Rulemaking

Hydroelectric Rulemaking: On August 1, 2005 the Department published notice in the Secretary of State Bulletin of a rulemaking to repeal OAR Chapter 690 Divisions 50 and 74. OAR Chapter 690 Divisions 50 and 74 were superseded in 1986, with the adoption of OAR Chapter 690, Division 51 -Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications. OAR 690-51-0020(3) specifies that rule divisions 690-50 and 690-74 apply only to hydroelectric projects defined in Section 27, Chapter 569, Oregon Laws 1985. Those projects were specified as projects greater than 25 megawatts for which funding was approved by a city before May 15, 1985. Since no such projects are pending, OAR Chapter 690 Divisions 50 and 74 are proposed to be repealed. All hydroelectric projects will be reviewed under OAR 690 Chapter 51. Public hearings are scheduled in Salem on September 12. Public comment closes on September 23, 2005. The Department anticipates proposing rules for adoption at the October 2005 Commission meeting.

Water Right Permit Extensions: The Department is proposing to amend rules related to water right permit extensions (OAR Chapter 690, Division 315) and to implement statutory changes from the 2005 legislative session (HB 3038). This rulemaking will adjust the standards the Department uses to review applications for extensions of time filed by holders of municipal use permits and clarifies that holders of municipal permits may not develop additional water under their permit until the Department approves a water management and conservation plan. A Rules Advisory Committee will meet on August 1 to provide input on the proposed rules and public hearing will be held in Salem on August 17, 2005. Public comment closes on September 1, 2005. Proposed adoption of the rules will be at the October 2005 Commission meeting.

Water Rights Adjudications: The Department is proposing to amend rules related to contests in the adjudication of water rights (OAR Chapter 690, Division 30). The proposed rulemaking would allow claimants in an adjudication proceeding to add or change points of diversion to water uses covered under a claim so long as the change does not cause injury to another claimant or water right holder and so long as the new diversion points are downstream of the original diversion point. A public hearing is scheduled for August 16, and the comment period closes on August 18, 2005.

III. Litigation Update

Brayman et al v. Lewis et al: Harney County Circuit Court – This matter involves several legal challenges to the watermaster’s regulation of water in Foley Slough, a distributary channel of the Silvie River in Harney County. As part of settlement discussions, the Department developed a water management plan that outlines regulatory and management actions. The court recently ruled that not all of the water users impacted by the plan were served notice of the plan; therefore, the court set aside the plan. All aspects of the case remain in effect.

Fitzgerald Ranch, Inc., et al v. Oregon Water Resources Department: Lake County Circuit Court – Petitioner Fitzgerald Ranch, Inc. and others are seeking judicial review of a water right certificate the Department recently issued to Adel Irrigation District. The parties have reached a tentative agreement to resolve this case.

Harrington v. Oregon Water Resources Department: Jackson County Circuit Court – This involves two separate petitions for judicial review. In May 2004, Petitioner Harrington sought judicial review of final orders denying reservoir permit applications. In October 2004, the Jackson County Circuit Court ruled in favor of the State’s Motion for Summary Judgment and found the Department had properly denied the Applicant’s Request for Reconsideration under ORS 183.484. We are waiting for the court to schedule a hearing date on the second case. In a related matter, Harrington pled guilty to a criminal charge of using water without a water right.

WaterWatch et al v. Oregon Water Resources Commission: Oregon Court of Appeals – In November 2002, WaterWatch of Oregon and thirteen other individuals, businesses, and organizations filed a petition for judicial review of the Commission’s Deschutes Ground Water Mitigation rules, and Mitigation Bank and Mitigation Credit rules (OAR Chapter 690, Divisions 505 and 521). Briefing by the parties was completed in December 2003. Oral argument before the court took place in May 2004. The court issued a ruling in favor of WaterWatch. The stakeholders are seeking legislation relating to the mitigation program in the Deschutes. This legislation (HB3038) recently passed both houses and has gone to the Governor for signature.

IV. Commission/Board Schedules

	Location	Date
Environmental Quality Commission (EQC)	Eugene	Aug 11-12
Oregon Watershed Enhancement Board (OWEB)	Jordan Valley	Sept 13-14
Land Conservation and Development Commission (LCDC)	Salem	Aug 4-5
Parks and Recreation Commission	Brookings	Aug 4
Fish and Wildlife Commission	Salem	Aug 5
State Land Board	Salem	Aug 9
Board of Forestry	Warm Springs	July 28-29
Dept. of Geology and Mineral Industries (DOGAMI)	Portland	Aug. 2