

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item G, August 11, 2006
Water Resources Commission Meeting

Director's Report

I. Current Events

Current Water Conditions: In early to mid May temperatures throughout the state were up to 15 degrees higher than normal. As a result, mountain snowpacks began to melt. Soon, cooler temperatures and persistent rain showers arrived. While the last week of the month was wet throughout Oregon, much of the state was drier than normal.

While some months in water year 2006 (October 2005-September 2006) have been wetter or drier than normal, as of August 1 the water year looked pretty average. Since October 1, near average precipitation has fallen in all basins with the exception of the Owyhee, Malheur, Rogue and Umpqua. These basins have received better than average precipitation for the water year. Water supplies throughout the state appear to be adequate.

Association of Western State Engineers Spring Workshop: Oregon hosted the Association of Western State Engineers Spring Workshop on May 16-17, 2006. Fourteen of the nineteen western states were represented at this two-day meeting in Portland. Topics included future water supply planning, water banks, conjunctive use, water availability, and well construction licensing, enforcement, and continuing education. Roundtable discussions provided a forum for the group to report administrative and legislative changes and to share information and technical expertise in water resources practices. The origin of the Association of Western State Engineers came with the signing of the 1922 Colorado River Compact and evolved into a membership of water officials from 19 western states, including Alaska and Hawaii.

Western States Water Council (WSWC) Meeting: Director Ward attended the WSWC meeting in Breckenridge, Colorado on July 19-21, 2006. The meeting included a roundtable discussion with federal agency representatives.

Columbia River Basin: On June 9, 2006, representatives from state water management agencies in Oregon, Idaho, Washington, and Montana met in Seattle, Washington to discuss water management issues in the Columbia River Basin. Topics included Washington's Columbia River

Program, reservoir management, and state adjudications. On July 24, 2006, Director Ward moderated a panel discussion at the 8th Annual Agricultural Media Summit in Portland on “The Mighty Columbia: Tugs of War over a Limited Resource.” This panel was comprised of representatives from agriculture, energy, tribes, fisheries, and transportation. Commissioner Gary Reed participated in the panel.

Oregon Water Law Conference: On November 2 and 3, 2006, the Department will co-sponsor the 14th Annual Oregon Water Law Conference in Portland. Topics will include rulemaking and legislative updates, municipal water right extensions, urbanization, water reuse, and the Klamath Basin adjudication. The Department will post a link from its website to the conference agenda and registration when it is available.

Position Updates: Dave Jarrett, Field Services Administrator, retired in July after more than thirty years of service to the State of Oregon. The Department is in the process of filling his position. In the interim, Mike Ladd, formerly the North Central Region Manager, is acting Field Services Administrator. Elizabeth Klicker has joined the Department as the Endangered Species Act Recovery Planning Coordinator. Liz will be participating in recovery planning efforts throughout the state and developing the Department’s contributions to these plans. Sabrina White has accepted the position of Watermaster for District 20 in Oregon City. The Department is also excited to have April Snell join the Director's Office as a Sea Grant Natural Resources Policy Fellow. April recently graduated from the University of Oregon with a Master's in Public Administration. Over the next year, April will be helping to staff the Futures Subcommittee of the Commission and working on a number of other projects. The Department has also enjoyed the contributions of Amanda Owen, our summer intern and a senior at Oregon State University.

Website Update: The Department recently added to its website rule histories for each of the Department’s administrative rules. The information is available at <http://www.wrd.state.or.us/OWRD/LAW/oar.shtml>. As a result, this valuable information will be more readily accessible to the public and Department staff. In addition to rule histories, the Department has also added a link to basin maps and perennial streamflow charts for all of the basin plans.

Bureau of Reclamation Grant: The Department recently received \$28,000 grant from the Bureau of Reclamation to develop a guidebook to assist irrigation districts and other agricultural water suppliers to prepare a water management and conservation plans that meet Oregon and federal requirements. The grant is collaboration among the Department, Oregon Water Resources Congress, and Oregon State University. The guidebook will help agricultural water supplies describe their water systems, identify their sources of water, and identify ways to manage and conserve those supplies to meet present and future needs.

II. Commission Follow Up

Measure 37 Update: Since Measure 37 went into effect, the Department has received nine claims filed against its statutes and rules. The Department has issued final orders for eight of these claims denying them.

Funding Subcommittee Update: The Funding Subcommittee has held its first and second meetings, on July 16 and August 7, 2006 respectively. At these meetings, topics included what information gathering is needed, such as long-term funding, stakeholder buy-in, and funding composition. The subcommittee also brainstormed on several issues and explored the current fee structure.

Futures Subcommittee Update: The “Futures” Subcommittee of the Commission held its first meeting via conference call on August 1, 2006. At this meeting, members of the subcommittee and OWRD staff discussed the vision, objectives, and guiding principles of this effort. The Subcommittee is planning to meet again in September to further develop and refine the group’s focus. The Subcommittee will also present findings to the full Commission in November.

Reimbursement Authority Program: The Department’s Reimbursement Authority Program continues to grow. The program allows an applicant to enter into a voluntary agreement with the Department for expedited agency action on an application. Under such an agreement, the applicant pays the full cost for the additional services. The Department has established three “pools” of pre-qualified private contractors that are available to permit reimbursement authority work and prepare draft documents for the Department. Since the program was established in 2003, the Department has entered into agreements to expedite processing of 134 water right transfers, 92 water right certificates, and 37 permit extensions.

III. Rulemaking

Mid-Coast Basin Program, OAR Chapter 690, Division 518: On September 20, 2005, the Department received a request by Lincoln City for three reservations of unappropriated water for multipurpose storage for future economic development on two waterways tributary to Devils Lake and a tributary of the Salmon River north of Lincoln City. On May 5, 2006, the Commission approved initiation of rulemaking in response to Lincoln City’s request. The Department published notice of the rulemaking in the Secretary of State Bulletin on July 1, 2006 and will publish it again on September 1, 2006. The Department will hold a public hearing in Lincoln City on October 4, 2006. The last day to submit written comments to the Department is October 18. The Department anticipates proposing rules for adoption at the November 2006 Commission meeting.

Water Rights Application Processing and Water Use Authorizations, OAR Chapter 690, Divisions 310 and 340: The Department is initiating a rulemaking to amend Divisions 310 and 340 to implement two regulatory streamlining bills passed in 2005. HB 2083 eliminated the water use registration process under ORS 537.015 to 537.032. Since 1993, the water use registration process has become obsolete with the elimination of the water right application backlog, the addition of statutory timelines for processing applications, and new statutory tools such as limited licenses and alternative reservoir process. Sections of Division 340 will be proposed for repeal to reflect this recent statutory change.

HB 2178 established an expedited process to obtain a water right permit to use water stored in a reservoir, provided no public interest issues are identified during the public comment process.

Proposed rule amendments in Division 340 will describe this new application process, while amendments to Division 310 will specify minimum application requirements for applications to use stored water. Proposed amendments to Division 310 will also correct a clerical error under 690-310-0280.

To develop the hearing draft of the rules, the Department has met with several state and federal agencies and stakeholder groups. The Department will publish notice of the rulemaking in the Secretary of State Bulletin on September 1, 2006. The public hearings will be scheduled in September 18 in Salem. The last day to submit written comments to the Department will be October 2. The Department anticipates proposing rules for adoption at the November 2006 Commission meeting.

IV. Litigation Update

Harrington v. Oregon Water Resources Department: There are three cases involved in this litigation.

Harrington I is related to the denial of water right applications requesting to store water. Harrington has constructed reservoirs within the Big Butte Creek basin. The basin was classified for the exclusive use of the City of Medford by the Oregon Legislature. The Jackson County Circuit Court ruled in the Department's favor. Harrington has appealed to the Oregon Court of Appeals.

Harrington II relates to the Watermasters action to regulate due to water being stored without the necessary water right. The Jackson County Circuit Court again ruled in the Department's favor.

Harrington III is a new filing in the U. S. District Court (Oregon) Court. No court date has been set at this time.

Additionally, two criminal cases have been filed against Harrington in Jackson County. Harrington pled guilty to the first, the second is still pending.

Charles Noble, Deborah Noble and David Hillison v. Oregon Department of Water Resources et al: The Nobles and Hillison are seeking Judicial Review in Clackamas County Circuit Court of the Department's final order approving a water right permit to store water. No court date has been set at this time.

Fort Vannoy Irrigation District v. Water Resources Commission and Ken-Wal Farms, Inc.: This case presents the question of whether an irrigation district may veto a proposed change in the points of diversion of water for irrigation if the change will not result in injury to any other water right. The Department of Justice is in the process of drafting the State's response brief.

V. Commission/Board Schedules	Location	Date
Environmental Quality Commission	Salem	August 10
Oregon Watershed Enhancement Board	Bend	September 19-20
Land Conservation and Development Commission	Salem	September 13
Parks and Recreation Commission	Tillamook	August 17
Fish and Wildlife Commission	Reedsport	September 7-8
State Land Board	Salem	October 10
Board of Forestry	Salem	September 6
Board of Agriculture	Boardman	September 6-7
Dept. of Geology and Mineral Industries	Klamath Falls	September 8