

## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Paul R. Cleary, Director

**SUBJECT:** Agenda Item C, April 18, 2003  
Water Resources Commission Meeting

### I. Commission Follow Up

#### Klamath Update:

The Bureau of Reclamation, local water users, and other government agencies will be assessing the 2003 Klamath Project Pilot Environmental Water Bank this growing season. The 2003 pilot project was originally intended to provide 50,000 acre-feet of water for environmental purposes as called for in the NMFS Biological Opinion for threatened coho salmon. Because of irrigator response, sources of forbearance-generated water now include some 16,000 acres of idled cropland, estimated to make 39,000 acre feet of water available; and 25,000 acre feet of ground water substitution, for a total of over 60,000 acre feet of water.

The Bureau solicited applications to forego the use of surface water from willing participants within the area served by the Klamath Project. No irrigation will be allowed on lands accepted in the idling program. Participating landowners can expect to be compensated a minimum of \$187.50 per acre.

The Bureau also solicited applications from willing participants to substitute ground water irrigation for surface water irrigation. Land can be enrolled in either program, but not both. All selected applicants will be required to sign a contract with the Bureau for the period of March 24, 2003, through October 31, 2003. The Bureau will likely monitor the program with assistance from irrigation district managers and ditch riders.

## **II. Current Events**

### Klamath Basin - State of Oregon Amicus Brief:

The Pacific Coast Federation of Fishermen's Association (PCFFA), joined by a number of environmental organizations, filed a lawsuit in the U.S. District Court in Oakland, California seeking an order to send more water down the Klamath River to protect coho salmon in the lower Klamath and Trinity Rivers. Specifically, the suit seeks to order the U.S. Bureau of Reclamation to release water from Upper Klamath Lake to augment flows in the lower river. The Yurok and Hoopa Valley Tribes in California have asked to intervene in the suit. The tribal intervenors seek remedies related to the tribal trust responsibilities of the federal government to protect tribal fishing rights for a number of anadromous fish species, including coho salmon.

The Klamath Tribes and several counties, including Klamath County, have filed "friend-of-the-court" briefs (*amicus curiae*) — some in support of the plaintiffs, some in support of the defendants. Oregon also filed an amicus brief.

Oregon's amicus filing focused on: (1) providing the court with information on the history and current status of the adjudication, including the substantial progress we have made in resolving contests to claims (78% have been resolved to date); (2) preserving the state's authority to quantify water rights and confirm priority dates in the Klamath adjudication by requesting that any determination in the PCFFA case not attempt or purport to adjudicate or establish water rights that are being adjudicated by the state; and (3) encouraging that any remedy fashioned by the court take in to account the multiple interests in and influences on the waters of the Klamath Basin, and not impose a burden solely on the interests that rely on the waters of Upper Klamath Lake. The latter reflects the Department's longstanding position that the problems in the Klamath are basin-wide, so the solutions must be basin-wide as well, including the Lower Basin tributaries such as the Trinity River.

### Victor Point and Walnut Hills Ground Water:

In 2002 the rate of water decline in the Victor Point area increased. The city of Silverton is now seeking bids for an engineering design to extend their municipal water system to the Victor Point area. Construction of the extension is expected to begin this summer with water deliveries anticipated to begin in late fall; to date 60 residents have signed up to have their homes connected.

Water levels continue to decline in the Walnut Hills area. Department staff met with Yamhill County Commissioners in early March to brief them on the situation and solicit their input. Staff expect to return to the Water Resources Commission in June to seek authorization on a course of action.

Current Water Conditions:

Meetings of the Water Availability Committee and Drought Council are scheduled for Monday, April 14. Water shortages appear to be likely in all basins this spring and summer. Streamflow forecasts range from 17% of normal to 92% of normal. This results from the cumulative effect of two previous below-normal water years and the below-normal snow pack this year (35% to 69% of average as of March 1, 2003). Precipitation is also below average in every basin. Reservoir content for the 27 major irrigation reservoirs in the state is 67% of normal and 44% of capacity as of March 1, 2003.

Umatilla Ground Water Workshop:

The Water Resources Department, U.S. Geological Survey, and 14 other local, state, tribal and federal cosponsors hosted a workshop April 3 in Pendleton entitled “The Future of Ground Water Supplies and Management in the Umatilla Basin.” This workshop was the first step to develop a comprehensive basin-wide ground water study to collect data and assess alternatives regarding ground water resources in the Umatilla Basin. The workshop was attended by approximately 100 people, giving them the opportunity to share their knowledge and voice their concerns about ground water supplies in the Basin. The Department will be seeking partners to help coordinate and fund the proposed cooperative ground water study.

Bureau of Reclamation Grant:

Since 1998 the Department has been partnering with the Bureau of Reclamation to streamline the transfer process within irrigation districts. The goal has been to provide more accurate records for managing districts while at the same time reducing the time necessary to maintain those records. A pilot project with Swalley Irrigation District in Central Oregon has expanded to include several other irrigation districts in that area. And the Department recently received \$75,000 from the Bureau to introduce the program to four irrigation districts in the Umatilla Basin. During the next 6-9 months staff will be working with those districts to create the necessary digital maps and train them on the new process.

**III. Rulemaking:**

Over the next several months the Department intends to initiate two rulemakings — one in the Willamette Basin and one in the Deschutes Basin.

Willamette Basin – The Willamette Basin Program, OAR Chapter 690, Division 502, was adopted by the Commission in 1992. In that rulemaking the Commission established several “Ground Water Limited Areas” to address concerns about declining ground water levels. As

part of the rulemaking process, the Commission established a cut-off date of October 4, 1991, for pending ground water applications. Applications pending as of October 4, 1991, were processed according to the classifications in effect on the date the application was filed. However, the Commission's rules for these permits limited the permit tenure to a period not to exceed five years. The permits are renewable if the Director determines the ground water resource can support additional use. The Department issued approximately 45 permits that fall into this category.

Over the last several years, a number of the holders of "five-year permits" have argued that the ground water resource in their area is stable and that a "normal" conditioned permit should be allowable. The proposed rulemaking would likely modify the Willamette Basin Program to allow the holders of these five-year permits to make an application for a new permit without the five-year limitation, subject to all the current application processing rules and review requirements.

Deschutes Basin – The Commission adopted Deschutes Basin Ground Water Mitigation and Mitigation Bank and Credit rules in September 2002. As part of the rulemaking, in order to address the concerns about the short-term nature of instream leases, the Commission limited mitigation projects and credits associated with instream leases and time-limited transfers to mitigation banks. Under the Mitigation Bank and Credit rules, a bank assigning mitigation credits from instream leases or time-limited transfers is required to hold in reserve an amount of mitigation credits equal to those assigned.

During rule implementation it has become apparent that limiting the use and requiring "double coverage" of time-limited transfers in the same manner as instream leases may not be necessary under certain circumstances. For example, in the Basin there may be a number of opportunities for a municipality and an irrigation district to enter into an agreement over a mitigation project that involves a time-limited instream transfer of 20 years or more. Given the fact that such a mitigation project involves two public entities and the terms are for a long duration it seems unduly restrictive to limit it to mitigation banks and to require a double coverage reserve. The Department will likely propose rules that, under certain circumstances, increase the flexibility to use time-limited transfers for mitigation.

#### **IV. Litigation Update**

##### *WaterWatch of Oregon et. al. v. Water Resources Department*

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). The Department submitted the rulemaking record to the court and the parties in December 2002. In January 2003 the Petitioners submitted a Motion to Correct the Record of Judicial Review, requesting the record

from the first ground water mitigation rulemaking initiated in August 2001. This information has been provided to the court and the parties. A briefing schedule should be set shortly.

<b>V. Commission/Board Schedules</b>	<b>Location</b>	<b>Date</b>
Environmental Quality Commission (EQC)	Portland	May 8-9
Oregon Watershed Enhancement Board (OWEB)	Salem	May 15-16
Land Conservation and Development Commission (LCDC)	Portland	May 8-9
Parks and Recreation Commission	Eugene	May 1
Fish and Wildlife Commission	Portland	May 9
Board of Agriculture	Silverton	May 28-29
State Land Board	Salem	June 10
Board of Forestry	Salem	April 24-25