

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item C, January 15, 2004
Water Resources Commission Meeting

Director's Report

I. Commission Follow Up

Willamette Falls Hydroelectric Project: Over the past year, the Department has been participating in settlement negotiations to reauthorize the Federal Energy Regulatory Commission's (FERC) hydroelectric license for the Willamette Falls Hydroelectric Project (Project). The Project is located between Oregon City and West Linn in Clackamas County and is the oldest hydroelectric generating facility in the West. Under the terms of the proposed settlement, Portland General Electric (PGE) will improve migration opportunities for juvenile salmonids and Pacific lamprey through spillway modifications and by installing a controlled flow structure at the apex of Willamette Falls. Additionally, funding will be provided for upgrades and on-going maintenance of the fish ladder for adult fish migration; and for a study of Pacific Lamprey at the Project and measures to increase or maintain current levels of Pacific Lamprey.

The settlement agreement will be distributed for signatures in mid-January 2004 and submitted to FERC for adoption into a new 30-year license. Signatories include PGE, various federal and state agencies, several tribes, and a number of non-governmental organizations.

Sustainability Efforts: As follow-up to Commission discussion and public comment at the November 2003 Commission meeting, the Department provided public notice of its draft Sustainability Plan on December 22, 2003. The Department is accepting written comments on the plan through January 9, 2004. Final plans must be submitted to the Sustainability Board by January 16, 2004.

II. Current Events

Current Water Conditions: According to the National Drought Monitor, water conditions west of the Cascades are normal while drought conditions east of the Cascades range from abnormally dry in the north to extreme drought in the southeast corner of the state due to the dry summer and fall conditions.

As of December 31, snow pack water content is 106% of normal statewide compared to 64% of normal this time last year. Conditions west of the Cascades are somewhat better than conditions east of the mountains. Snow pack in the Mt. Hood area is 121% of normal and 116% of normal in the Rogue Basin. East of the mountains conditions range from 90% of normal in the north to 117% of normal in the Owyhee Basin. It is still early in the snow year to make seasonal predictions. Reservoir content continues to be a main concern for agriculture. Most reservoirs were well below normal at the beginning of the water year, and a good snowpack will be essential to provide water for storage.

Notice and Concurrence Work Group: During the 2003 Legislative Session, a lot of energy was spent on various bills aimed at addressing water right "ownership." With the session behind us, the Department is committed to making progress on the issue underlying the water right ownership bills, namely who should receive notice and who needs to concur in initiating a water right transaction with the Department that involves an irrigation district or other shared delivery system. To this end, the Department has assembled a work group with diverse representation that will look at issues of "notice" and "concurrence" as they relate to voluntary water right cancellations, allocations of conserved water, and water right transfers. The first meeting of the work group was held December 19, 2003. The next meeting is being planned for late January 2004.

OWRC Annual Meeting Conference: The Oregon Water Resources Congress (OWRC) hosted its annual meeting in Seaside on December 2-5, 2003. Department staff participated on panels discussing urbanization impacts on water management, working with public officials, long-term water supply and management, and water right transfers.

Quarterly Tri-State Meeting: On December 10, 2003, Paul Cleary participated in the quarterly Tri-State Meeting of the Oregon Water Resources Congress, Washington State Water Resources Association, and Idaho Water Users Association. Cleary's presentation at the meeting focused on the effects of urbanization on irrigation districts and related water delivery and transfer issues.

Regulatory Streamlining Report and Action Plan: Governor Kulongoski's Regulatory Streamlining Executive Order (EO 03-01) directs all state agencies that regulate business activities to review their regulations and regulatory processes, and to identify opportunities to

streamline those processes to reduce regulatory burdens without compromising regulatory standards. As part of this effort, in March 2003 the Department provided the Governor's Office of Regulatory Streamlining a report describing streamlining projects already completed and currently underway. Recently, the Department has updated its Regulatory Streamlining Report and developed a Regulatory Streamlining Action Plan. The Department's regulatory streamlining initiatives and action plan are attached.

III. Rulemaking

Repeal of Divisions 3, 11, and 26; and Amendment of Divisions 310 and 340: The Department has initiated a public rulemaking proposing to repeal rules that are outdated or no longer necessary due to statutory changes. The Department is also proposing to amend a number of rules in order to implement laws adopted by the 2003 Legislature. Specifically, the Department is proposing to repeal OAR Chapter 690, Divisions 3, 11, and 26 relating to time lines for processing applications, water right application map requirements, and filing spring water use registrations. Statutory changes over time have made these rules outdated and unnecessary. Several rules under Division 310 are proposed for amendment in order to implement Senate Bill 82 (2003 Oregon Laws) regarding requirements for easements on state-owned lands and House Bill 2268 (2003 Oregon Laws) regarding statutory fees. Rules in Division 340 regarding water use under a limited license are proposed for amendment in order to adjust the examination and recording fee.

A public hearing on the proposed rules is scheduled for January 27, 2004. The written comment period closes February 10, 2004. The Department anticipates presenting the proposed rules to the Commission at its May 2004 meeting.

Lakeview Area Special Area Standards: The written comment period closed on December 12, 2003, for the proposed rules creating special area well construction standards (OAR Chapter 690, Division 200). Specifically, the proposed special area standards would apply to the alteration, conversion or deepening of any well in the sedimentary units (clay, sand, silt, gravel) in a specified area to the north of the Town of Lakeview in Lake County. Two sets of comments were received. Staff will likely present final proposed rules at the Commission's March 2004 meeting.

Transfer Rulemaking: Senate Bill 820, passed during the 2003 Legislative Session, contained provisions allowing greater flexibility to change a point of diversion from surface water to ground water in the Deschutes Ground Water Study Area. It also contained provisions to allow temporary changes in place of use and type of use from irrigation to municipal use in the Deschutes River Basin. To implement these statutory provisions, the Department and a Rules Advisory Committee developed amendments to OAR Chapter 690, Division 380, relating to water right transfers. Written comments on the draft rules will be accepted through January 23, 2004. The Department will hold a public hearing on the rules in Bend on January 9, 2004, and will present final proposed rules at the Commission's March 2004 meeting.

IV. Litigation Update

Marks v. Water Resources Department

Umatilla County Circuit Court - In May 2002, legal action was filed in Umatilla Circuit Court against the Department challenging its regulation of a water user for using water without a water right. A trial is set for April 2004. While legal action is still pending, the landowners have deepened an existing well and filed water right and transfer applications to cover lands that have been irrigated.

Brayman et al v. Lewis et al

Harney County Circuit Court - This involves several legal challenges to the watermaster's regulation of water in Foley Slough, a distributary channel of the Silvies River in Harney County. The parties are currently involved in mediation.

Zyryanoff v. Water Resources Commission

Polk County Circuit Court - This case involves the Judicial Review of a Department Final Order issuing a "remaining right certificate" as part of a water right transfer. No trial date has been set.

Fitzgerald Ranch, Inc., et al v. Oregon Water Resources Department

Lake County Circuit Court - Petitioner Fitzgerald Ranch, Inc., et al is seeking judicial review of a water right certificate the Department recently issued to Adel Irrigation District. The Department is in the process of preparing a response to the Court.

William R. McCormack v. Oregon Water Resources Commission

Oregon Court of Appeals - In August 2002 William McCormack, the protestant to instream water right application IS-70606 on Bear Creek, tributary of the Crooked River, submitted a petition seeking judicial review of the Commission's final order approving the instream water right. At its April 2003 meeting the Commission withdrew its final order for reconsideration. The final order on reconsideration was filed with the Court on June 23, 2003. Following the Department's June filing, Petitioner McCormick let the case go to default and the Court, on its own motion, dismissed the judicial review in its entirety.

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). Petitioners submitted their opening brief on June 26, 2003. The Department filed its brief on November 5, 2003; and WaterWatch et al filed their reply brief on December 9, 2003. Oral argument before the Court will likely be this spring.

V. Commission/Board Schedules	Location	Date
Environmental Quality Commission (EQC)	TBA	Feb. 5 and 6, 2004
Oregon Watershed Enhancement Board (OWEB)	TBA	Jan. 2004
Land Conservation and Development Commission (LCDC)	Salem	Jan. 29 & 30, 2004
Parks and Recreation Commission	Salem	Feb. 26, 2004
Fish and Wildlife Commission	Portland	Feb. 6, 2004
Board of Agriculture	TBA	TBA
State Land Board	Salem	Feb. 10, 2004
Board of Forestry	Salem	March 3, 2004
Dept. of Geology and Mineral Industries (DOGAMI)	TBA	TBA

Attachment:

WRD Regulatory Streamlining Action Plan