

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item I, May 21, 2004
Water Resources Commission Work Session

Director's Report

I. Commission Follow Up

Sustainability Plan: On April 16, 2004, Deputy Director Ward testified before the Joint (Senate and House) Agriculture and Natural Resource Committee. Ward described the actions identified in the Department's sustainability plan and implementation of the plan to date. As follow up to the presentation, the Committee has requested that agencies provide information on the cost and cost savings associated with developing and implementing sustainability plans. The Department is coordinating with the Governor's office to prepare a response to the Committee.

Notice and Concurrence Work Group: The Department and the stakeholder Notice and Concurrence Work Group continue to evaluate issues of "notice" and "concurrence" as they relate to voluntary water right cancellations, allocations of conserved water, and water right transfers. The Department's objectives in establishing the work group are to ensure the protection of existing water rights; develop policies, legislative concepts or administrative rules that unify the water user community; and to establish clear, efficient, and equitable processes and procedures for the various transitions. The full work group has met four times since December 2003. In addition there are two work group subcommittees making progress toward developing administrative rule and legislative concepts.

Deschutes Instream Flow Restoration Work Session: On April 2, 2004, the Department and the Deschutes Resources Conservancy (DRC) held a work session to discuss current and potential instream flow restoration applications. The work session focused on instream transfers, instream leases, and allocations of conserved water projects. The Department and DRC committed to weekly conference calls to assist both the DRC and the Department work through the various applications being submitted by the DRC.

Woahink Lake: The Department met with community members from Dunes City on April 20 and May 6, 2004, to discuss water right issues at Woahink Lake. The City has made significant

progress in resolving water right issues for its residents. The majority of residents who lacked water rights or had only domestic water rights (approximately 200 individuals) have signed up to use the City's existing water right. The City has conducted a survey to locate the new pumps and has awarded a contract for installing water meters to monitor usage. The City intends to file a permit amendment with the Department in the near future.

Pelton - Round Butte Hydroelectric Project Relicensing: An "agreement in principle" has been reached among the parties to the Pelton - Round Butte hydroelectric facility relicensing. The project is located on the Deschutes River and owned by Portland General Electric (PGE) and the Confederated Tribes of the Warm Springs Reservation. The state unified position has been coordinated by the Department in cooperation with the Oregon Department of Fish and Wildlife (ODFW), Department of Environmental Quality (DEQ), State Marine Board, Public Utility Commission (PUC), and Oregon Parks and Recreation Department (OPRD). Parties to the agreement include the owners of the facility, federal fisheries and tribal trust agencies, state agencies, and conservation organizations including WaterWatch and American Rivers. Specifics of the agreement remain confidential until finalized. A formal signing ceremony is anticipated in July 2004.

Basin Program Exceptions: At its March 2004 meeting, the Commission discussed its role in considering basin program exceptions. As follow-up, Director Cleary offered to provide information on prior basin exception requests. There have been eight basin program exception requests since the Commission received its statutory authority to grant exceptions in 1989. The Commission has allowed all requests, and all applicants have ultimately been issued a permit. Eighty-eight percent of the applicants have requested exceptions to the Willamette Basin program, and 62 percent of the requests were based on an extreme hardship. The eight exception requests are described in greater detail in the Attachment.

II. Current Events

Current Water Conditions: The Surface Water Supply Index is trending upward around the state, except in a few coastal basin areas. Statewide, streamflow is slightly below normal but ranges from a forecast of 40 percent of average in Lake County to 102 percent of normal in the Clackamas Basin. Precipitation statewide is 90 percent of average for the water year. The long-range forecast (through July) is for normal precipitation and slightly above-normal temperatures. The southeast corner of the state has the lowest accumulation of precipitation and remains designated as "extreme drought" by the National Drought Monitor. Snow pack has decreased significantly over the last several months with a season high of 130 percent in early March decreasing to 78 percent of average by the end of April. Nearly all of the remaining snow pack occurs above 5,000 to 6,000 feet elevation. Reservoir content on April 1 was 81 percent of average and 62 percent of storage capacity – a significant increase since March 1.

Budget Update: Due to austerity measures implemented early in the biennium, the Department's budget trend lines remain in the black. Much of the credit for these trends goes to the many staff members who have shouldered the load as positions were held open to generate savings. Also, the improving state economy has generated additional revenues, making further cuts unnecessary.

The Department is currently building the budget for the 2005-2007 biennium and has been directed to develop 10 percent and 20 percent budget cut scenarios as part of the budget development process. Staff will also be proposing enhancements to the agency's current budget including restoration of some cuts taken in recent years. Budget proposals for the 2005-2007 biennium are due to the Department of Administrative Services on August 1, 2004.

Well Constructors Continuing Education Committee: The Well Constructors Continuing Education Committee met on April 13, 2004, to review and approve continuing education courses submitted by course sponsors and individual well drillers. The Committee is tentatively scheduled to meet again on June 15, 2004.

Reimbursement Authority: House Bill 2551 (2003 Oregon Laws) establishes a pilot project that provides the Department the authority to enter into a voluntary agreement with an applicant for expedited agency action on an application or other request for regulatory action. Under such an agreement, the applicant pays the cost to hire additional temporary staff; contract for services; or provide additional services to the applicant not otherwise available. The bill sunsets January 2, 2006.

Since enactment of the bill, the Department has developed the program and established three "pools" of pre-qualified contractors that are available to perform reimbursement authority work and prepare draft documents reflecting appropriate agency action on water right transfers, water right permit extensions, and water rights certificates. Since the contractor pools were established in late March 2004, the Department has entered into agreements to expedite the processing of six water right transfers, two water right certificates, and one permit extension.

Regulatory Streamlining (Customer Service Survey): As part of its activities under the Governor's Regulatory Streamlining Executive Order (EO-03-01), the Department has developed and is initiating a Customer Service Plan. Among other plan elements, the Department is assessing customer service satisfaction through mail-in surveys provided with final decision documents and an on-line survey of individuals assessing the Department's Internet web page.

The mail-in "transaction survey" was initiated mid-February 2004 and is on going. To date, 42 responses have been received. The on-line web page survey ran for approximately one week in April 2004 and yielded 770 responses. Over 60 percent of on-line survey respondents indicated that "most of the time" they can find the information they are looking for. The greatest interests of survey respondents were well log information, water rights information, and interactive

mapping. Data from the on-line survey will be used to improve the existing web page; the web page redesign should be completed over the next 8 months.

Nile River Basin Countries: In April 2004, Department staff participated in a tour with a group of 21 water and energy ministers from eight Nile River Basin Countries. The tour, organized by the U.S. Bureau of Reclamation and Oregon State University's Partnership for Transboundary Waters, was held in Monroe, Oregon. The site visit to Monroe was to learn from Oregon examples for building local level support and involvement in meeting federal mandates regarding water and aquatic habitat quality, including initiatives such as the Oregon Plan For Salmon and Watersheds.

Governor's Food Drive: The Governor's Food Drive came to a close in March 2004. Department staff contributed a total of \$3,700 in food, payroll deductions, and cash donations – an equivalent of 22,000 pounds of food.

Umatilla Basin Ground Water: At the April 2004 meeting of the Umatilla County Critical Ground Water Task Force, the Department presented a panel discussion of Aquifer Storage and Recovery and Artificial Recharge. The presentation included state agencies directly or indirectly involved in permitting or developing these projects and offered the Task Force an opportunity to interact with all the interested agencies at one meeting. The panel consisted of our Department, ODFW, Department of Land Conservation and Development (DLCD), DEQ, and a private consultant with experience in these projects. The discussion also included Columbia River water availability, source water quality, and various project scenarios. The Task Force Chair extended his appreciation to the Department and other agencies for the panel organization and Task Force support.

PLSO Convention – Redmond: In March 2004, Department staff participated in the Public Land Surveyors Organization's (PLSO) annual convention in Redmond. Staff made two presentations to over 100 land surveyors and Certified Water Rights Examiners regarding Oregon water law and water right transfers.

National Academy of Sciences Columbia River Study: In April 2004, the National Academy of Sciences (NAS) released its 170 page report titled "Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival." The report concluded that, given a number of factors and uncertainties, additional withdrawals from the Columbia River during low flow periods would pose substantial additional risk to salmon survival. The report recommended that the region explore water markets, cost-shared water conservation, and transfers to meet water demands.

The report was commissioned by the Washington Department of Ecology as part of its Columbia

River Initiative. The goal of the initiative is to develop water management strategies for processing future and backlogged Columbia River water right applications. Ecology is currently developing rules based, in part, on the NAS Study for public comment this summer. In the interim, Ecology will be convening a meeting of Columbia Basin state water resource directors to discuss the draft Columbia River rules.

Presentation to WISE Project Subcommittees: Department staff gave a presentation on the allocation of conserved water program to subcommittees of the Water for Irrigation, Streams, and Economy (WISE) project in Jackson County on May 11 and 12, 2004. The WISE project is a proposed water management project to improve the Bear Creek and Little Butte Creek watersheds in Southern Oregon. The subcommittees are interested in the conserved water program because improving reliability and efficiency of water delivery and streamflows are goals of the project.

Association of Oregon County Planning Directors (AOCPD) Meeting: On May 19, 2004, Department staff gave a presentation at the monthly AOCPD meeting in Pendleton. The presentation described statutes, rules, and case studies related to water and land use coordination.

Western States Water Council (WSWC) Meeting: Deputy Director Ward attended the WSWC meeting in Las Vegas, Nevada on March 31 through April 2, 2004. The agenda included updates on relevant federal legislation, relationships between water quality and quantity, and water right takings cases. The Department is hosting the next WSWC meeting on July 14 through 16 in Newport, Oregon.

Oregon Coastal Coho Salmon Listing: On February 24, 2004, the Ninth Circuit Court of Appeals dismissed an appeal from a 2001 District Court decision finding the listing of Oregon coastal coho salmon was arbitrary and capricious. In September 2001, in *Alsea Valley Alliance v. Evans*, the District Court remanded NOAA Fisheries' listing of the Oregon coastal coho salmon as threatened species. The Court ruled that NOAA Fisheries could not list wild-bred coho salmon under the Endangered Species Act (ESA), while excluding hatchery-bred fish, since the two are part of the same distinct population segment of salmon species. NOAA Fisheries is currently reviewing its listing policy for addressing hatchery and wild-bred coho and is expected to release a draft for public comment within the next few weeks.

III. Rulemaking

District Water Right Transfers: In November 2003, the Department assembled a Rules Advisory Committee (RAC) to assist in the development of rules to implement district transfer sections of Senate Bill 820 (2003 Legislative Session). Among other things, SB 820 increased flexibility for districts to temporarily transfer water rights on a seasonal basis. The legislation also established a pilot project to explore alternative methods for conducting water right transfers within district

boundaries. The Department expanded this rulemaking to address all elements of district water right transfers. The RAC has held five meetings to review and discuss draft rules for district water right transfers. Staff filed the notice of rulemaking with the Secretary of State's Office on May 14, 2004. The Department will hold a public hearing in Bend and in Salem at the end of June and anticipates presenting rules for Commission consideration in October 2004.

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. The parties have settled and the petitioner has moved for dismissal.

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 Silvies River in Harney County. As part of settlement discussions, the parties have developed a water management plan that outlines regulatory and management actions. The plan was finalized and issued after reviewing written comments on the draft plan.

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 is set for May 24, 2004.

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.

WaterWatch of Oregon v. Oregon Water Resources Commission and Coos Bay North Bend Water Board Oregon Court of Appeals – This case involves judicial review of a January 17, 2001, Commission final order approving Coos Bay North Bend Water Board's water right application. Upon review, the court reversed the Commission's order approving the application and remanded the matter back to the Department.

V. Commission/Board Schedules	Location	Date
Environmental Quality Commission (EQC)	Hermiston	May 20 – 21, 2004
Oregon Watershed Enhancement Board (OWEB)	Lakeview	May 26 - 27, 2004
Land Conservation and Development Commission (LCDC)	K. Falls	June 10 - 11, 2004
Parks and Recreation Commission	Coos Bay	June 17, 2004
Fish and Wildlife Commission	Baker City	June 11, 2004
Board of Agriculture	Maupin	May 24 - 25, 2004
State Land Board	Salem	June 8, 2004
Board of Forestry	Salem	June 9, 2004
Dept. of Geology and Mineral Industries (DOGAMI)	TBA	TBA