



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director

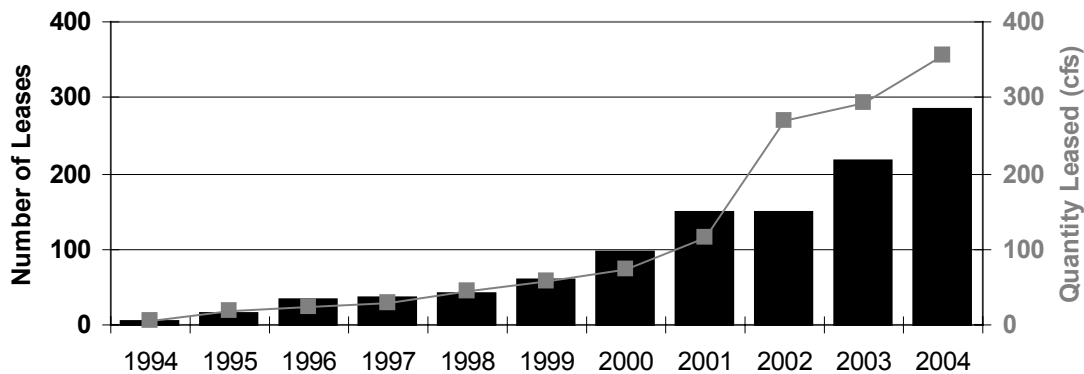
**SUBJECT:** Water Resources Commission Meeting  
Agenda Item C, April 14, 2005

### Director's Report

#### I. Commission Follow Up

Instream Leasing: As shown in the graph below, the instream lease program continues to grow since the program's inception in 1994. In 2004, there were 285 active leases with 355 cubic feet per second (cfs) leased instream (excluding supplemental water rights). 136 of these leases were signed in 2004. The number of active leases increased over 30% from last year. Most of this increase came from the Deschutes Basin. However, there was also a significant increase in leases in the Klamath Basin.

**Statewide Instream Lease Activity**  
(Excludes Supplemental Rights)



The Department has a number of key partners involved in the instream leasing program. The Deschutes River Conservancy/Deschutes Water Exchange, Oregon Water Trust, and Klamath Basin Rangeland Trust submitted 68% of the active leases in 2004. Approximately 9% of all leases are involved in the Farm Services Administration Conservation Reserve Enhancement Program (CREP).

The following table lists the instream leasing activity by basin in 2004. The Deschutes, Umpqua, Willamette, John Day, South Coast, Rogue and Klamath Basins had the most leasing activity,

with the most water being protected instream in the Klamath, Deschutes, and John Day Basins.

<b>Instream Lease Activity in 2004</b>			
<b>Basin Number</b>	<b>Basin Name</b>	<b>Number of Leases</b>	<b>Quantity Leased (cfs)</b>
1	North Coast	2	0.7
2	Willamette	27	23.5
3	Sandy	0	0
4	Hood	4	1.6
5	Deschutes	149	115.9
6	John Day	25	39.0
7	Umatilla	8	2.7
8	Grand Ronde	2	0.9
9	Powder	0	0
10	Malheur	1	0.9
11	Owyhee	1	0.4
12	Malheur Lake	0	0
13	Goose & Summer Lakes	0	0
14	Klamath	9	126.6
15	Rogue	12	10.0
16	Umpqua	31	16.8
17	South Coast	14	16.3
18	Mid Coast	0	0
	<b>Total</b>	<b>285</b>	<b>355.1</b>

Klamath Basin Adjudication Update: The Klamath Basin Adjudication consists of 730 total claims. Contested case proceedings have been completed on 489 of those claims, leaving 241 in progress or yet to be completed. According to the current schedule of the Office of Administrative Hearings (OAH), these remaining hearings will be completed and rulings delivered by the end of 2007.

## **II. Current Events**

Current Water Conditions: Water conditions last winter were looking fairly decent through January 2005 but were followed by the driest February on record. Dry conditions continued through the first half of March, and water resource experts were predicting the possibility of a drought that would likely be the most severe on record. Although there will be severe water shortages this summer, spring rain has helped mitigate the dry conditions considerably. In only one week of heavy rainfall, streamflow conditions changed in many locations from record lows to record high flows. For example, on March 18, 55% of the 102 gage stations that were monitored were showing record low flow conditions. By March 28, 20% of the sites were reporting record high daily flow conditions. However, these gains are only short-term. The state

is well behind in snow pack, total precipitation, and accumulated runoff from our rivers and streams.

Statewide water conditions are approximately 50% of normal for the water year, and forecasted summer streamflow conditions are expected to range between 35% and 70% of normal. Many irrigation reservoirs will not fill. So, both stored and live flow water will be in short supply, and watermasters will be regulating back junior water users much earlier than normal. Additionally, ground water conditions statewide are showing the effects of a series of below normal water years with water levels dropping significantly.

Drought Readiness: In 2001 the Department received 100 applications for emergency drought permits. In an attempt to insure that this year's additional workload does not cause a negative impact to other workloads in the Water Rights and Adjudication Division, a temporary staff person has been hired and trained to do the majority of drought application processing. In addition, one of our two extension staff has been trained in the process in case additional help is needed. As of April 6, four applications for emergency drought permits have been received and three have been issued.

The drought transfer process is another tool to assist to address water needs in declared drought areas. The Department has reviewed statutes, rules and policies regarding the filing and processing of drought transfers, and a staff person in the Field Services Division has been identified to be the primary contact to answer questions and process drought transfer applications.

Dam Safety Conference: In March 2005, the Department sponsored a dam safety conference at the Sweetbrier Inn in Tualatin. Dam Safety conferences have been sponsored by the Department on a two-year cycle since the mid 1980's. This year approximately 190 people attended, including about a dozen Department field personnel who assist in the Dam Safety Program. The conference lasted a full day and included presentations on issues related to design, construction, and maintenance of major hydraulic structures. The Department provided an overview of the dam safety program and its recently developed flood frequency analysis tool. Consultants provided presentations on case histories of projects in Oregon they have managed. Continuing education credits for engineering license renewal were awarded to attendees.

State Waterway Permitting Workshop: As part of the Department's Oregon Plan efforts, in April 2005 the Department co-hosted an interagency natural resource waterway permitting workshop. The goal of this two-day workshop was to provide a venue for state employees to learn about state waterway permitting programs and to improve interagency coordination. The Department provided presentations on Oregon water law and its related authorizations and participated in breakout sessions featuring interagency case studies and interagency application review processes. There were over 120 participants in the two-day workshop.

Reimbursement Authority: Reimbursement Authority: House Bill 2551 (2003 Oregon Laws) established 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 full cost for the additional services.

Since enactment of the bill, the Department has developed the program and established three “pools” of pre-qualified private 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 49 water right transfers, 26 water right certificates, and 15 permit extensions. To date, the range in cost for the transactions has been from \$630 for development of a certificate to \$2160 to process a complex transfer. The time to complete a water right transfer through the reimbursement authority program has been between 1 and 5 months.

HB 2186, introduced by the Governor on behalf of the Department, removes the January 2, 2006 sunset on this program and establishes a half-time position, supported by reimbursement authority funds, to manage reimbursement authority agreements. To date, HB 2186 has passed out of the House Water Committee and is in the Ways and Means Committee awaiting further action.

Technical Committee on Drilling Standards: The Department hosted the first meeting of a Technical Committee on Drilling Standards on March 11, 2005 in Salem. The committee developed a list of items in the State’s well standards that are of concern to committee members. Committee members will discuss prioritizing this list for the next meeting scheduled for May 20, 2005 in Salem.

Deputy Director Position: On March 9, the Department advertised the Deputy Director position. Twenty-nine applications were received by the time the position closed on March 30. The Human Resources Section is currently reviewing the applications for qualifications.

#### **IV. 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 Silvies River in Harney County. As part of settlement discussions, the parties developed a water management plan that outlines regulatory and management actions. The plan, which was finalized and issued after reviewing written comments, has been appealed to the Circuit Court. In January and March 2005, the Department hosted meetings in Burns to work with Foley Slough/Silves River water users to explore developing a locally-based water management solution.

*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. In November 2004 the Department participated in a mediation session on the matter; to date no resolution has been reached. The matter remains before the Lake County Circuit Court. Trial is currently set for September 2005.

*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.

In June 2004 Petitioner Harrington sought judicial review of final orders related to water use regulation. There currently is no court action on the petition regarding water use regulation; however, the parties have met to discuss possible resolutions.

*Hood River Valley Residents Committee and Friends of Mt. Hood v. Water Resources Department:* Oregon Court of Appeals – In September 2004 the above named organizations petitioned for judicial review of a final order approving a permit extension for Meadows Utilities LLC. The parties are currently negotiating; filing of the record with the court has been postponed.

*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.

*WaterWatch of Oregon v. Oregon Water Resources Commission and Coos Bay North Bend Water Board:* Oregon Supreme Court – This case involves judicial review of a January 17, 2001, Commission final order approving a water right permit application for Coos Bay North Bend Water Board. Upon review, the court reversed the Commission’s order approving the application and remanded the matter back to the Department. In September 2004, the Oregon Supreme Court accepted the Department’s petition for review and also accepted the petition for review filed by Coos Bay North Bend Water Board. The Supreme Court also granted petitions by League of Oregon Cities, the Special Districts Association of Oregon, Oregon Association of Water Utilities, and the Oregon Water Resources Congress to submit *Amici Curiae* briefs on the merits of the case. Oral argument was held before the Supreme Court in January 2005.

<b>V. Commission/Board Schedules</b>	<b>Location</b>	<b>Date</b>
Environmental Quality Commission (EQC)	Boardman	April 21 - 22, 2005
Oregon Watershed Enhancement Board (OWEB)	TBA	May 25 - 26, 2005
Land Conservation and Development Commission (LCDC)	Salem	April 27 - 29, 2005
Parks and Recreation Commission	Heppner	April 21, 2005
Fish and Wildlife Commission	Salem	April 15, 2005
Board of Agriculture	TBA	June 1 - 2, 2005
State Land Board	TBA	June 14, 2005
Board of Forestry	TBA	April 28 - 29, 2005
Dept. of Geology and Mineral Industries (DOGAMI)	TBA	TBA