

## MEMORANDUM

**TO:** Water Resources Commission

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

**SUBJECT:** Agenda Item C, June 7, 2002  
Water Resources Commission Meeting

### Director's Report

#### **Commission Follow Up:**

*Community Water Supply Work Group:* At its April 11, 2002, meeting, the Commission was provided an overview and status report on the efforts of the Community Water Supply Work Group. Given the divergent stakeholder input, Chair Thorndike recommended a subcommittee of the Commission meet with staff and representatives of the work group to get “grounded” in the issues and to help develop a strategy for moving forward with rules for permit extensions and water management and conservation plans.

Since April, the Commission subcommittee has met with staff and stakeholders. In addition, Department staff have met with a number of state agencies to explore “carrots and sticks” other agencies may have to assist community water suppliers achieve gains in efficiency and conservation; resource issues that will be considered (or permitted) as these water right permits are developed over time; opportunities for permitting cross-compliance; and opportunities for technical and grant assistance for community water suppliers. Based on the input from these meetings staff are developing rules that will be noticed for public comment on July 1. Staff intend to request adoption of rules at the Commission’s October meeting.

*Instream Leasing:* As of June 1, 2002, there were 72 active leases resulting in 51 cfs being protected instream. The 2002 leasing season began with 40 active leases that were signed in 2001. Since then, the Department has received 69 standard lease applications and one split season instream use lease application. Thirty-two of the standard lease applications have been signed; the rest are undergoing public notice or are being processed. The average processing time is 29 days, including the time to provide weekly notice and the 21-day public notice period.

*Legislative Concepts:* The seven legislative concepts presented to the Commission at its April 11, 2002, meeting have been submitted to the Department of Administrative Services (DAS) and the Governor’s Office for consideration. Since the Commission’s last review, legislative concept 06 (water right transfer place-holder) has been developed and proposed language has been drafted and submitted.

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Legislative concept 06 proposes to modify the transfer processing statute, ORS 540.520. Under the current statute, the Department must provide notice upon the filing of a transfer application. Persons wishing to protest a proposed change must file a protest within 30 days of the last published notice. However, persons protesting an application are doing so based only on a proposed change and without any indication from the Department whether the change is allowable and/or what conditions might be attached to such a proposed change. Legislative concept 06 would modify the statute to provide for (1) an initial notice of a transfer application; (2) a preliminary determination by the Department; and (3) a second notice describing the Department's preliminary determination.

Staff continue to conduct cost analyses for legislative concept 01 (fee adjustments). An update on proposed fee adjustments and legislative concepts will be provided at the Commission's August meeting.

*Budget:* The Office of Economic Analysis released the June revenue forecast on May 28. The State Economist predicts that available General Fund revenues will be about \$551 million short of covering estimated expenditures. Other issues (Measure 13 failure, social services caseload increases, and ending balance needs) increase the estimated shortfall to some \$800 million, or 8.3% of the General Fund budget. If budget reductions only are used to address this shortfall, the Department faces a potential \$227,000 reduction in General Fund resources for each one percent cut in the General Fund. However, Governor Kitzhaber will likely call a Third Special Session of the Legislature in mid-June. In his remarks concerning the budget, the Governor suggested that programs have already been cut to undesirable levels and proposed an increase in revenues as the solution to the immediate budget problems and for deficits predicted for the next biennium. Proposed revenue increases include increasing the cigarette tax, enacting an income tax surcharge, delaying or disconnecting the Federal Economic Stimulus Act, and using unallotted Tobacco Settlement Funds.

While the current biennium shortfall is of major concern, we also have to prepare for the next biennium. A summary of policy option packages developed for the Department's 2003 - 05 budget request is presented in Attachment 1.

*Lakeview Groundwater:* At its April 12, 2002, meeting, staff briefed the Commission on federal, state, and local government actions to address ground water contamination in the Lakeview area. Since April, WRD staff continue to work with the Department of Energy staff to obtain data for the Department to use in developing special area well construction standards for the affected area.

### **Current Events:**

*Klamath River Compact Commission Ground Water Seminar:* On May 17, 2002, Department staff participated with California Water Resources Department staff in an all day briefing before the Klamath River Compact Commission (KRCC). The briefing included numerous interested citizens, local officials and consultants.

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The briefing included a presentation on ground water activities in the Klamath Basin. The presentation, which will be posted on the California Water Resources Department website (<http://www.dpla.water.ca.gov/nd/oregon/index.html>), focused on the following topics:

- basic geologic and ground water hydrology concepts,
- recent and current demand for developing more ground water,
- the Oregon ground water development grant program, and
- a status report on each of the ongoing ground water investigations in the basin including the Shasta View Demonstration Project, the Bonanza area ground water study, drought impact monitoring, city of Malin well interference, and the basin wide U.S.G.S. cooperative ground water study.

*BLM Workshop:* On May 6, 2002, Department staff participated in the Bureau of Land Management's (BLM) water rights training course in Prineville. The audience included approximately 75 BLM staff that handle acquisition, development and perfection, and/or management of water rights on public lands. Topics covered by WRD staff included water law, adjudications, tools for restoring streamflows, and computer-based information. The Department plans to arrange similar training presentations for staff at the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture, and the National Marine Fisheries Service.

*Joint Natural Resources Subcommittee on Stream Restoration and Species Recovery:* On May 20, 2002, Tom Paul updated the Joint Natural Resources Subcommittee on Stream Restoration and Species Recovery on Department activities related to water use and stream flows in the vicinity of the Thompson Mills in Linn County.

*Western Governors' Association:* On April 25, 2002, Paul Cleary participated in the Environmental Summit on the West II of the Western Governors' Association. Cleary's presentation at the summit focused on meeting growing and competing demands for water as demonstrated by the Klamath Basin experience. A copy of Cleary's remarks is provided in Attachment 2.

*Government to Government:* On May 2, 2002, Paul Cleary and Reed Marbut participated in the 5<sup>th</sup> Annual Government-to-Government Summit involving some 30 state agencies and Oregon's nine federally recognized tribal governments. The summit provides a forum to share successes and problems and work together to achieve mutual goals.

*Transboundary Water:* On May 15, 2002, Paul Cleary participated in a consortium of international water experts assembled by Oregon State University to address transboundary water conflicts and sustainability needs. Cleary gave an overview of the complexities of the Klamath Basin and learned of conflict resolution efforts occurring in both domestic and international settings.

*Board of Agriculture:* On May 29, 2002, Paul Cleary participated in the Oregon Board of Agriculture's Klamath Falls meeting and tour of Klamath Project water features, farms,

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and production facilities. Cleary updated the Board on the Department's federal funding request, water management activities, ground water monitoring, and adjudication status.

*Willamette Valley Ground Water Workshop:* The Willamette Valley Ground Water Workshop is tentatively scheduled for September 24, 2002 in Salem. Staff from WRD and the Department of Land Conservation and Development (DLCD) are jointly developing the agenda for the workshop and will be soliciting input from planning directors from Willamette Valley counties.

### **Committee/Task Force Updates:**

*Senate Bill 710 Work Group:* The Senate Bill 710 Work Group met on May 24, 2002, and is scheduled to meet again on June 24, 2002. The Work Group is studying the impacts of municipal ground water users on nonmunicipal users and has focused its efforts to date on identifying existing tools for addressing these ground water issues. The Work Group is scheduled to report its findings to the Joint Natural Resources Committee on September 4, 2002.

*Task Force on Water Supply and Conservation (Senate Bill 93 Task Force):*

The Senate Bill 93 Task Force held its 11<sup>th</sup> meeting on May 21, 2002. The Task Force continues its work to develop final recommendations and legislative concepts for the Seventy-second Legislative Assembly. The Task Force's next meeting will be in late June or early July.

### **Rulemaking:**

*Well Construction:* The Department continues work to update rules for well construction standards and for continuing education requirements for well constructors (Divisions 205 and 240). The Department will hold a public hearing on the proposed rules for well construction standards in Salem on June 24 and plans to ask the Commission to adopt rules at its August 2002 meeting. Proposed rules for continuing education for well constructors are undergoing internal review, and the Department anticipates proposing rules for adoption at the October 2002 Commission meeting.

*Transfers:* The Transfer Rules Advisory Committee (Transfer RAC) continues to make progress on proposed modifications to the transfer rules (Divisions 15 and 21). The Transfer RAC met on May 8, 2002, to review the discussion draft of updated water right transfer rules. The committee will meet again on June 27, 2002, to continue work on the rules. The June meeting will focus on developing criteria to guide determinations of whether proposed transfers will injure other water rights.

*Deschutes Mitigation:* The Department released a revised hearing draft of the Deschutes Groundwater Mitigation and Mitigation Bank Rules for public comment on April 1, 2002. The revised rules were developed as two divisions: Division 505 for the Deschutes Groundwater Mitigation Rules and Division 521 for the Mitigation Bank Rules. This was done to eliminate confusion over rulemaking needs under 1995 amendments to the Scenic Waterway Act (Senate Bill 1033) and rulemaking to implement House Bill 2184 (Chapter

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659, 2001 Oregon Laws), authorizing the creation of mitigation credits and mitigation banks. The public comment period on the revised rules was originally scheduled to close May 7, 2002. However, based on written requests and public hearing testimony, the Department extended the comment period until June 5, 2002. The Department is scheduling a special Commission meeting in September for the Commission to consider adoption of the proposed rules. In the meantime, staff are identifying key issues, developing options, and continuing discussions with Basin stakeholders, conservation interests, and state resource agencies.

### **Litigation Update:**

#### *United States v. Adair*

Federal District Court for the District of Oregon – This is a federal district court decision regarding Klamath Tribes' water rights. Individual defendants and the State of Oregon have appealed to the U.S. Ninth Circuit Court of Appeals. Oregon's appeal is limited to the question of whether the federal court should exercise jurisdiction given the pendency of Oregon's Klamath Basin adjudication.

#### *In Re Water Right Application in the Name of Coos Bay North Bend Water Board, WaterWatch of Oregon v. Oregon Water Resources Commission*

Oregon Court of Appeals - Judicial review of January 17, 2001 Commission order approving Coos Bay North Bend Water Board water right application. The state's brief is due on June 7.

#### *Braymen et al v. Lewis et al*

Harney County Circuit Court - On April 26, 2002, the court denied the request for a temporary restraining order against the Burns watermaster. Subsequent to the ruling, the Foley Slough Water Users petitioned the court to reopen the case based on new evidence. On May 29, 2002, the court reopened the case, heard testimony, and again denied the temporary restraining order.

#### *Sheehy et al v. Becker et al*

Union County Circuit Court - On April 22, 2002, the court heard argument regarding this challenge to an instream transfer of an irrigation water right. The court dismissed the case based on jurisdictional issues.

### **Commission/Board Schedules**

<b>Commission/Board Schedules</b>	<b>Location</b>	<b>Date</b>
Environmental Quality Commission (EQC)	Salem	June 6-7
Oregon Watershed Enhancement Board (OWEB)	John Day	Sept 19-20
Land Conservation and Development Commission (LCDC)	TBA	June 13
Parks and Recreation Commission	TBA	Aug 1
Economic and Community Development Commission	TBA	July 18-19
Fish and Wildlife Commission	Portland	June 7
State Land Board	Salem	June 11
State Board of Forestry	Tillamook	July 18-19

\*TBA = to be announced

**Water Resources Department**  
**2003 - 05 Agency Request Budget Preparation**  
**Policy Option Packages**

**(Revision: June 5, 2002)**

<b>POP #</b>	<b>Agency Priority</b>	<i>Title</i>	<b>Estimated Cost</b>	<b>FTE</b>	<b>Description</b>
160	1	Fee Adjustment LC 690-1	GF \$131,081	1.00	LC-1 proposes to adjust certain statutorily established fees and to capture fees for transactions that are currently exempt from fees. The purpose is to ensure adequate resources to handle existing workloads and increasing demands. This concept is a continuation of HB 2135 (1997). LC-1 would propose fee adjustments for processing many water right related transactions including water right transfers, permits, applications for small ponds, limited licenses, water right permit extensions, and certain protests. The concept would propose to assess and collect processing fees for instream lease applications. The concept would also adjust certain fees that have not kept pace with inflation including the well construction start card fee, and the well constructor's license examination fee. The concept would repeal the statute that establishes fees charged for copies to allow regular adjustment via rulemaking.
161	2	Klamath Basin Adjudication	GF \$652,895 FF \$1,000,000	3.00	The Department is in the process of adjudicating water right claims in the Klamath River Basin. This package restores limited duration staffing as permanent positions, increases base budget support, and adds federal fund limitation. Package provides resources necessary to carry on the process as well as match a federal commitment and other funds that are being actively pursued.
131	3	Water Right Transfers	GF \$396,332 OF \$223,987	5.00	Provides resources to address the backlog and increasing workload demand for transfers. Water in many basins has been fully allocated. New uses must be satisfied through more efficient use of existing water rights or by using statutes that authorize changing water rights. The Allocation of conserved water and transfer of water rights is seen as one of the long-term solutions to meeting new and increasing water demands. Staff would be added to address the backlog, process new applications, and to work through an increasing workload in protests.
133	4	Watermaster	GF \$159,839	1.00	Provides resources to establish a Watermaster position in Enterprise. The Enterprise office was closed in the 1980's. However, water management and streamflow needs are increasing and are taxing resources provided out of the La Grande and Baker City offices. Current staffing does not provide the customer service needed by water users, who are looking for ways to better monitor, deliver and use the resource, nor can it adequately support streamflow restoration projects.
136	5	Klamath Water Management Augmentation	GF \$2,000,000	0.00	Reauthorize KEDA resources of \$2,000,000, approved in 2001 Session to be utilized in areas of highest need in the Klamath Basin; including but not limited to: Adjudication, ground water investigation, gaging stations, metering devices, diversion point inventory, well construction issues.

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135	6	Water Management Plans	GF \$143,123 OF \$143,123	2.00	Provides resources to enable the Department to assist districts and community water suppliers with the development and review of water management plans.
141	7	Hydrographic Backlog Reduction	GF \$1,800,000	0.00	Provides resources to contract for the elimination of the hydrographic record backlog. The availability of accurate hydrographic data is essential to infrastructure development and natural hazard mitigation. Over the last eight years the Department has placed a high priority on the development and maintenance of a water availability model and quantifying the availability of surface water in Oregon. Staff was tasked with supporting this effort instead of processing new hydrographic data. The result is a backlog of about a decade of raw data that has not been processed and made available.
132	8	Restoration of Field Staff	GF \$430,007	4.00	<p>Field – Clerical Support  SB 5575 enacted by the Second Special Session eliminated the only State clerical positions located in the North Central and Eastern Regions. This package proposes restoration of those positions.</p> <p>Field Water Right Technician  The Department eliminated the Field Water Right Technician in the Southwest Region as part of reductions mandated by the 2001 Legislature. This position is critical to the effort of the Agency to provide water right and well information to constituents. Additionally, this position plays an integral role in the processing of water right transfers within the Region.</p> <p>NC Region Liaison  Provides for the creation of a Field Liaison position to work with the North Central Region. The Field Liaison is responsible for integrating Agency policy from Salem into the Region, processing instream water right leases, coordination with local governments on land and water issues, and reviewing OWEB grant proposals. In the NC Region, the Liaison would assist with the Walla Walla working group, Umatilla Phase III working group, and work with local governments on declining ground water issues.</p>

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134	9	Field - Customer Service & Data Collection Tech, GIS	GF \$212,279	1.00	<p>Customer Service &amp; Data Collection Technology  Provides resources to equip Watermaster offices with tools to allow the public to access Department data. The package would provide tools to create an electronic record of diversion points, diversion methods, and water location to supplement GPS information. Existing measurement equipment would also be upgraded.</p> <p>GIS Specialist – Water Right Transfers  Provides resources to create permanent GIS position to continue support for a system to track district transfers. Districts are authorized to move water for long and short- term needs. Irrigation districts use these provisions annually. The changes often include hundreds or thousands of acres with multiple ownership. As a result of the GIS transfer application, the districts and the Department are saving funds and staff time in tracking the changes.</p>
142	10	Dam Safety	GF \$151,439	1.00	<p>Provides resources to address dam safety concerns related to inspection and study. Current statutes charge the Department with operation of safety of dams program. Current resources allow for routine inspections, selected special inspections, plan review, and technical assistance to dam owners and engineers. However, new studies indicate that Oregon is subject to seismic events that may be much more severe than original dam designs contemplated. In some of the state, updated predictions of rainfall are much higher than provided for in original plan design.</p>
140	11	Surface Water Gages	GF \$700,884	2.00	<p>Provide resources to reactivate existing gages and add new gages to broaden coverage of surface data collection. The current gage network is insufficient to provide data for accurate assessment of water conditions as they relate to water distribution, drought monitoring, and Oregon Plan restoration efforts. Gage locations have been identified in priority basins for new gages. Existing gages have been identified for reactivation. Proposal would provide resources for thirty stations.</p>

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110	12	Agency Relocation	GF \$90,000 OF \$224,695	0.00	The Department will be relocating to the new North Mall Office Building in the fall of 2003. The move is necessitated by space needs and the substandard condition of the current location in the Commerce Building, and long-term Capitol Mall Agency cluster objectives.
111	13	Repeal State Carey Act Statutes LC 690-4	OF \$325,000	1.00	LC – 4 would repeal statutes that enacted the federal Carey Act in Oregon and those statutes related to the State administration of the Tumalo Project. Repeal would remove these program specific statutes, which are obsolete, removing any uncertainty about the status of the Carey Act in Oregon. It would formally recognize that the purpose of the Carey Act has been met in Oregon and that continuing its provisions is no longer in the public interest. The concept would direct the Department to conduct a final inventory of all projects and make a final disposition of lands where title may remain unresolved. It would allow the Department to utilize proceeds of sale of lands to fund expenses related to the final accounting and disposition of lands, and provide for a final report to the next regular session or interim committee.
130	14	Water Right Transfer RAC LC 690-6			Placeholder for any revenue or expenditure impacts of proposals from the Water Right Transfer Rules Advisory Committee.
170	15	SB-93 Task Force on Conser. & Supply LC 690-3			Placeholder for any revenue or expenditure impacts of proposals from SB-93 Task Force: stored water, interstate water banking, water conservation, instream leases, etc.
171	16	SB 710 Task Force LC 690-7			Placeholder for any revenue or expenditure impacts of proposals from SB-710 Task Force
143	17	ISD Start Cards	OF \$97,411	1.00	Reauthorize LD Data Entry position and \$25,000 for GRID maintenance funded with Start Card Fees.
		<b>Total General Funds</b>	<b>\$6,897,879</b>		
		<b>Total Other Funds</b>	<b>1,014,216</b>		
		<b>Total Federal Funds</b>	<b>1,000,000</b>		
		<b>Total All Funds</b>	<b>\$8,812,095</b>	<b>22.00</b>	