

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item C, August 9, 2002
Water Resources Commission Meeting

Director's Report

I. Commission Follow Up:

Joint EQC/WRC Meeting: Staff from the Water Resources Department and the Department of Environmental Quality (DEQ) continue to build on the water quality/water quantity activities highlighted during the joint meeting of the Environmental Quality Commission (EQC) and the Water Resources Commission. Follow-up activities from the meeting include:

- WRD staff continue to participate and contribute to the water reuse initiative being developed by DEQ.
- WRD and DEQ have been identifying areas of potential coordination for data collection, specifically collection of temperature data at WRD streamflow gaging stations for use in developing total maximum daily loads (TMDLs) for temperature.
- The Department continues to coordinate with DEQ on the review of new water right applications and on issues related to instream water right applications.
- Department staff have been working with DEQ staff to provide better access to streamflow data to support TMDL development.

Information Coordination: At the joint meeting of the EQC and WRC in June, Commissioners expressed an interest in learning more about efforts to consolidate and share technical information among state, tribal, and federal agencies. There are a number of information and technology sharing efforts underway including the following:

- The Department has been a participating member of the Oregon Geographic Information Council (OGIC) since it was created by executive order of the Governor in 1994. Council membership includes state agency directors and representatives from local governments and the Governor's office. OGIC's mission is the efficient management and sharing of geographic information.

- The Department currently chairs the Hydro Standards Group that is defining a geographic information system (GIS) model for portraying digital hydrography. The group includes representatives from state agencies from Oregon and Washington and from federal agencies.
- The State of Oregon is also a participant in the Inter-organizational Resource Information Coordinating Council (IRICC). The council's mission is to develop a current and accessible information network to support ecosystem management. Membership on the council includes tribal, state, federal, and local agencies.
- Legislation passed in the 2001 Legislative Session (ORS 541.365) mandates that the Oregon Watershed Enhancement Board (OWEB) provide integrated natural resources information to support the Oregon Plan. The Department has provided input on the development of the integrated system and will be linking its streamflow, water right, and other water resource data to this system.

Instream Leasing: As of August 1, 2002, there were 119 active leases and one split-season lease, with 210 cfs being protected instream. The 2002 leasing season began with 40 active leases that were signed in 2001. Since then, the Department has received 102 lease applications. Twenty-two lease applications are currently pending. The average processing time is 30 days, including the time to provide weekly notice and the 21-day public notice period. The Department received injury challenges on seven of the instream lease applications. Two were resolved; five are currently under review.

Klamath Meeting: At its June 7, 2002, meeting the Commission denied a petition to initiate rulemaking to close the Klamath Basin to further appropriations. On July 25, 2002, the Department held a follow-up meeting with the organizations that submitted the petition. Representatives from four of the nineteen organizations attended the meeting as well as a representative from the Governor's office and the Senate Democratic Leadership office.

The meeting had three purposes: (1) to share with the petitioners in-depth information from the Department's ground water investigations in the Klamath Basin; (2) to discuss past and current ground water and surface water permitting activities in the basin including pending ground water permit extensions in the Bonanza area; and (3) to identify gaps in our information sources and permitting process and assess alternatives that may address the gaps. Staff will brief the Commission at its October 2002 meeting on gaps and alternatives that may require further Department action.

Umatilla Ground Water: Umatilla County is currently updating their comprehensive land use plan and is considering the issue of exempt ground water use in critical ground water areas. Exempt ground water uses are not currently restricted in the critical ground water areas within the county. The Umatilla County Planning Commission is concerned that increased use by new exempt users will adversely impact established ground water users. On July 17, 2002, WRD staff met with the planning commission and their technical

advisory committee to discuss this issue. Staff gave the planning commission an update on the status of the critical areas and explained the administrative tools available to the Department for managing exempt uses. The planning commission expressed a strong interest in restricting exempt uses in the critical ground water areas within Umatilla County and may request administrative action by the Department in the near future.

Willamette Valley Ground Water Workshop: The Water Resources Department and the Department of Land Conservation and Development will jointly host the “Willamette Valley Workshop: Linking Land Use and Ground Water Supplies.” The workshop will be held at the Water Resources Department in Salem from 10 a.m. to 3 p.m. on September 24, 2002. The goal of the workshop is to provide a forum for state and local governments to discuss current and future ground water supplies in the Willamette Valley and to identify partnership opportunities for addressing supply problems.

2001-03 Budget Execution Update: The Third Special Session of the 2001 Legislature met in late June and balanced the \$880 million revenue shortfall through a combination of tax increases, one-time use of reserves, accounting actions, and expenditure reductions. A Fourth Special Session may be required if the revenue measures fail in September’s special election, if the Governor vetoes portions of the Legislative plan, or if there are continuing declines in projected revenue. The legislature may also face a budget deficit of approximately \$1.4 billion during its next regular legislative session beginning in January 2003.

The Second Special Session reduced the Department’s General Fund budget by \$1.12 million and by 3 positions. The Third Special Session reduced funding for the Cost of Living Allowance (COLA) for Department staff by approximately \$176,000. The Department is identifying program reductions and vacancy savings to cover this funding reduction as most of the COLA increases are mandated by employment contracts. During the Third Special Session, the legislature also suggested that agencies target vacant positions for elimination during the next regular session. In the interim, the Department is developing a plan to fill critical vacancies under exception criteria established by the Department of Administrative Services. Unless additional reductions are mandated, the Department will have sufficient resources to fund operations through June 2003 at the adjusted levels.

II. Current Events:

Western States Water Council: On June 12, 2002, the Department and the Western States Water Council jointly hosted a workshop on water information management systems. The three-day workshop, attended by representatives from eight western states and four federal agencies, was held at the Department’s Salem office and featured a roundtable discussion on information management needs and challenges; a discussion of federal and state cooperative data collection activities; and demonstrations on water data and information management approaches used in western states. Department staff provided a demonstration of interactive water rights mapping and a preview of the high-resolution (1:24,000) GIS layer for Northwest hydrology.

Walla Walla Flow Restoration: On July 26, 2002, the Department hosted a meeting with Representative Dave Mastin from the Washington State Legislature for a discussion of flow restoration efforts in the Walla Walla Basin. Representative Mastin gave representatives from OWEB, the Department of Fish and Wildlife, Department of Agriculture, and Water Resources Department an overview and update on the bi-state flow restoration efforts in the Walla Walla Basin.

III. Committee/Task Force Updates:

Senate Bill 710 Work Group: The Senate Bill 710 Work Group is currently drafting its report to the legislature on water trading tools for addressing ground water conflicts between municipal and non-municipal ground water users. The Work Group is scheduled to report its findings to the Full 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 12th meeting on July 19, 2002. The Task Force discussed state and local efforts to plan for long-term water supply needs, issues surrounding water right ownership as it relates to water supply and conservation, and a legislative concept to make permanent current temporary provisions in the allocation of conserved water statutes (ORS 537.460 to 537.480). The group continues its work on developing final recommendations for the Seventy-Second Legislative Assembly. The Task Force's next meeting will be in mid to late October and will focus on its draft recommendations and report.

Endangered Species Act (ESA)/Water Law Work Group: As follow-up to the ESA/Water Law Work Group and to promote continued coordination on ESA issues, the Department has initiated a series of presentations on state water law for federal agency staff. The Department gave a presentation to staff at the U.S. Fish and Wildlife Service in April 2002 and to staff at the Bureau of Land Management in May 2002. The next presentation is scheduled on September 23 to staff at the National Marine Fisheries Service. The Department is also planning a presentation for staff at the U.S. Department of Agriculture in the fall. Topics covered in the presentation include the doctrine of prior appropriation, the water right permitting process, and voluntary tools for restoring streamflows.

IV. Rulemaking:

Water Management and Conservation Plan Rules: Proposed water management and conservation plan rules (OAR Chapter 690, Division 86) and water right permit extension rules (OAR Chapter 690, Division 315) were noticed and available for public comment on July 1, 2002. The permit extension rules apply specifically to holders of municipal and quasi-municipal water use permits requesting an extension of time to develop a water use. The proposed extension rules link the granting of a water right extension to the development of a water management and conservation plan. Two public rulemaking hearings were held on July 24, 2002, in Salem – four people provided oral testimony.

The written comment period closes August 7, 2002. Proposed adoption of the rules will be at the Commission's meeting on October 11, 2002.

Well Construction: The Continuing Education Committee for Well Constructors continues to develop and review rules under OAR Chapter 690, Divisions 205 and 240, related to required continuing education for well constructors. Proposed adoption of the rules will be at the January 2003 Commission meeting.

Transfers: The Transfer Rules Advisory Committee (Transfer RAC) met on June 27, 2002, to review proposed modifications to existing transfer rules. Major issues included the draft procedures for determining whether water rights are subject to transfer and the evaluation of when a proposed transfer is injurious to other water rights. The next meeting of the Transfer RAC is scheduled on August 12. Staff anticipate that the RAC will discuss whether changes in the transfer rules addressing procedural issues should be completed this year and whether other more complex issues involving injury review standards should be delayed to allow additional discussion and evaluation.

Deschutes Mitigation: The public comment period on the Deschutes Ground Water Mitigation and Mitigation Bank rules (Divisions 505 and 521) closed on June 5, 2002. The Department received approximately 170 written comments and heard from 30 individuals at the public hearing on April 22, 2002. Staff are currently identifying key concerns and modifying rule language to address issues raised during the public comment period. The Department has scheduled a Commission meeting on September 13, 2002, for the Commission to consider adoption of the proposed rules.

V. Litigation Update:

United States v. Adair

Federal District Court for the District of Oregon – Oregon's appeal to a federal district court decision on the question whether the federal court should exercise jurisdiction given the pendency of Oregon's Klamath Basin adjudication. Appellate counsel for the Department has been assigned.

Lane v. WRC

Marion County Circuit Court – Department, on behalf of the Commission, entered into court-approved settlement of this case on July 30. Plaintiff Lane sought "entry," under the Carey Act, to two parcels of land in Deschutes County. As part of the settlement, the Department conveyed two parcels of land that were the subject of the dispute to a third party intervener, with the proceeds used to cover settlement and legal expenses. The case has now been dismissed.

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 final order approving Coos Bay North Bend Water Board water right application. The state submitted its brief 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 Department’s watermaster in Burns. Subsequent to the ruling, the Foley Slough Water Users have filed three separate actions: one action appealing the ruling to the Oregon Court of Appeals; another action requesting reconsideration by the Circuit Court; and another requesting judicial review of the watermaster’s final order with Harney County Circuit Court.

VI. Commission/Board Schedules

Commission/Board	Location	Date
Environmental Quality Commission (EQC)	St. Helens	Oct 3-4
Oregon Watershed Enhancement Board (OWEB)	John Day	Sept 19-20
Land Conservation and Development Commission (LCDC)	TBA	Sept 12-13
Parks and Recreation Commission	TBA	Sept 25-27
Fish and Wildlife Commission	John Day	Sept 20
State Land Board	Salem	Oct 8
State Board of Forestry	Salem	Sept 4

*TBA = to be announced