

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: End-of-Year Director's Report

DATE: December 31, 2002

I. Commission Follow Up:

Woahink Lake: On October 29, 2002, the Department participated in a public meeting in Florence to discuss meeting water supply needs around Woahink Lake in Dune City. Water supply alternatives were presented to approximately 160 people attending the meeting. Supplying existing unpermitted uses and future uses using Dune City's existing water right is a promising option that the Department has been working with Dune City officials and others to evaluate.

Implementation of Deschutes Ground Water Mitigation Rules: At its meeting on September 13, 2002, the Commission adopted Deschutes Ground Water Mitigation rules (OAR Chapter 690, Division 505) and Mitigation Bank and Mitigation Credit rules (OAR Chapter 690, Division 521). The rules became effective on September 27, 2002, and are posted on the Department's web page.

On November 13, 2002, WaterWatch of Oregon and thirteen other individuals, businesses, and organizations filed a petition for Judicial Review of the final rules. In general, the petition asserts that the rules are invalid because they violate the requirements of the Oregon Scenic Waterway Act and the Oregon In-stream Water Rights Act.

Judicial review of administrative rules is in the Oregon Court of Appeals. The Court reviews to determine whether a rule (a) violates constitutional provisions, (b) exceeds the agency's statutory authority, or (c) was adopted without compliance with applicable rulemaking procedures. The rules remain in effect while being reviewed by the Court.

The Department is in the process of compiling the rulemaking record for the Court and the petitioners. In the near future, a briefing schedule will be set. A court decision is likely many months out.

In the meantime, staff continue to work on implementation of the rules. Staff also continue to work with the other natural resource agencies and to get information to

applicants and existing water users regarding the rules and mitigation requirements and options. At the February 2003 meeting, staff will likely be recommending that the Commission approve at least one mitigation bank charter.

Implementation of New Rules for Permit Extensions and Water Management and Conservation Plans: At its meeting on October 11, 2002, the Commission adopted Permit Extension rules for Municipal and Quasi-Municipal Water Use Permits (OAR Chapter 690, Division 315) and Water Management and Conservation Plans (OAR Chapter 690, Division 86). The rules took effect on November 1, 2002, and are posted on the Department's web page.

Since rule adoption, staff have developed new permit extension application and guidance materials. In addition, the Department has contacted municipal and quasi-municipal permit extension applicants requesting that they update their application(s) consistent with the new rule requirements. Correspondence will also be going to permit holders that are beyond their permit development date but have not submitted a permit extension or a final proof survey. The Department anticipates the first proposed orders under the new rules to be issued in mid-January 2003.

In coordination with the Department, the League of Oregon Cities and the Oregon Water Utility Council have issued a Request for Proposal (RFP) to prepare a Water Management and Conservation Plan guidebook and training for community water providers. According to the RFP, the guidebook will provide a template for community water providers to follow when developing their plans. The guidebook is envisioned to contain a summation of the rules and requirements, an easy to follow checklist, and two sample plans – one specifically modeled for systems serving a population under 7,500. The consultant awarded the contract will also be responsible for designing and conducting three training workshops across the state. Department staff will be part of a committee reviewing the technical support material and will be active participants in the three training workshops.

Legislative Concepts: Staff have previously briefed the Commission on the Department's two legislative concepts that will be filed prior to the 2003 Legislative Session which begins January 13, 2003. Legislative Concept (LC) 737 proposes to raise the bond carried by well constructors and landowners constructing their own well. LC 733 proposes to adjust many of the fees collected by the Department and to charge fees for transactions that currently require no fee.

As previously described, the proposed fee adjustment will allow the Department to maintain the current service level capability for positions funded by fees. The fee adjustment will also allow the Department to add resources to address the water right transfer workload; the workload associated with Water Management and Conservation Plan technical support and review; and processing allocations of conserved water and instream leases. Fee adjustments will also allow the Department to improve cost recovery ratios.

At its October 2002 meeting, the Commission urged staff to consider adjusting the fees upward to achieve a 50% cost recovery. Staff have since re-evaluated the fees and associated cost recoveries and have made additional adjustments. Current and proposed fees in LC 733 are shown in Attachment 1. On average, the proposed fees would recover approximately 50% of the Department's processing costs. In a number of instances, reaching this cost recovery ratio doubles the current fee. Staff will continue to brief the Commission as the fee adjustment bill moves through the legislative process.

2001-03 Budget Execution: The December 2002 state revenue forecast indicated that General Fund revenue would be about \$112 million less than was estimated in September 2002. To maintain a balanced budget the Governor has signed an Executive Order reducing all General Fund budgets across the board by 1.2%. The Department must reduce budgeted General Fund expenditures by \$270,605 between January 1, 2003, and June 30, 2003 — about a 3.8% reduction in remaining General Fund resources. The Department will eliminate state cost-share funding for the Willamette Basin Reservoirs reauthorization, hold several additional positions vacant to accumulate salary savings, shift selected positions to temporary funding sources, and reduce funding for well construction grants in the Klamath Basin.

The adjustments to the Department's General Fund Budget are summarized as follows:

Department General Fund Budget			% Leg. Adopted Budget
Leg Adopted Budget	Effective July 1, 2001	\$23,875,317	100%
Second Special Session Action	Budget Reduction	-1,172,990	-4.91%
Emergency Board Action	Cost of Living Increase	506,283	2.23%
Fifth Special Session Action	HB 5100 cuts if Ballot Measure 28 (Income Tax Surcharge) fails	-838,579	-3.61%
Governor's Across the Board Cuts	Effective 1/1/2003	-270,05	-1.21%
January 1, 2003, Adjusted General Fund Budget		\$22,099,426	-7.4%

2003-05 Governor's Balanced Budget: The Department recently completed a budget appeal process that would result in a Governor's balanced budget for the 2003-05 biennium. The final version of the Governor's recommended budget is confidential until released by the Governor. Hopefully, the recommended budget will allow the Department to continue the Klamath Basin Adjudication, address the water right transfer backlog, and maintain the Department's fee supported activities.

Elimination of significant General Fund resources is also possible. Funds for water right mapping, basin ground water studies, information technology advancements, data management capabilities, and field and headquarter positions could be severely impacted as a result of shortfalls in General Fund revenues.

The following table summarizes the Department's potential 2003-05 resources under a Governor's balanced budget:

General Fund	Other Funds	Fed. Funds	Non-limited	Total Funds	Pos	FTE
22,266,526	5,759,208	1,295,000	359,103	29,679,837	144	143.21

II. Current Events:

Current Water Conditions: It is still too early to project water conditions for next summer. We are ending two years of generally well below to below normal conditions, and a good water year is necessary for recovery. Most water managers in Oregon are eagerly waiting for the storms and resulting snow pack we so desperately need. Unfortunately, we are well below normal for the water year. Basin average precipitation ranges from about 60% in the western part of the state to about 40% in the eastern part of the state. The National Drought Monitor ranges the state from "abnormally dry" in the west to severely dry in the east. The next several months will be critical in determining next season water supplies for Oregon.

League of Oregon Cities 77th Annual Conference: On November 8 and 9, 2002, Department staff participated in the League of Oregon Cities' annual conference held in Portland. Staff made a presentation to city attorneys regarding municipal water rights. A presentation was also given to city managers, public works directors and elected officials regarding the Commission's new rules for municipal water use permit extensions and development of water management and conservation plans.

Oregon Water Law Conference: On November 14 and 15, 2002, Department staff participated in a two-day Oregon Water Law Conference hosted by the Seminar Group in Portland, Oregon. Staff presentations covered the Deschutes Basin ground water mitigation rules, the status of the transfer rulemaking and other issues related to transfers, community water supply issues, and professional ethics.

Government-to-Government Natural Resource Cluster Meeting: On November 18, 2002, the Department hosted a Government-to-Government Natural Resources Cluster Meeting with various tribal and other state agency representatives. Karen Quigley of the Legislative Commission on Indian Services provided an update on current Government-to-Government issues. Representatives from the Governor's office discussed the statewide riparian policy and provided a transition team update. Other meeting topics included Klamath Basin ground water issues, water quality standards, floodplain designation, state forest management, and procedures for developing memoranda of

agreements between state agencies and tribes. The meeting also included a roundtable discussion of current programs and legislative concepts for 2003.

Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Meeting: On November 19, 2002, the Department hosted a meeting with the CTUIR. This meeting was one of a series of meetings between the Department, the Oregon Department of Justice, and the CTUIR regarding initiation of water rights negotiations and water management on the CTUIR Reservation. This meeting focused on exchange of information concerning water use on the Reservation. In addition, the status of the *Byers* case and the potential for formal negotiation was discussed. Lastly, the Department provided an update on the Wilson Cattle Company water right application and the status of the state budget.

Independent Multidisciplinary Science Team (IMST): Meg Reeves, Rick Cooper, and Barry Norris briefed the IMST on Oregon water law, water availability modeling, and streamflow restoration at its November 21, 2002, meeting. Department staff have also drafted a response on behalf of the Commission and Department to the recommendations of the IMST report on the Recovery of Wild Salmonids in Western Oregon Lowlands (Lowlands Report). A copy of the draft response is Attachment 2. At its October 10, 2002, meeting the Commission directed staff to formulate its response to the Lowlands Report and to provide an opportunity for public comment on the draft response prior to Commission consideration at its February 2003 meeting. A public hearing is scheduled for January 21, 2003 in Salem. The written comment period will also close on January 21, 2003.

Oregon Water Resources Congress (OWRC): In early December, Paul Cleary, Meg Reeves, and Tom Paul attended the OWRC's annual conference and meeting in Seaside. Paul Cleary addressed the conference about current Department issues, including budget constraints and regulatory streamlining efforts. Meg Reeves participated in a panel discussion, moderated by Professor Janet Neuman of Northwestern School of Law of Lewis & Clark College, regarding ownership of water rights.

Oregon Water Utility Council's (OWUC) Water Resource Symposium: Department staff participated on a state agency panel at OWUC's symposium held December 2, 2002, in Springfield. As part of the panel titled "State Agency Initiatives," staff made a presentation on major activities, pressing issues, legislative concepts, current water management activities, and goals for the 2003-2005 biennium.

Natural Resources Subcommittee on Stream Restoration and Salmon Recovery: On December 3, 2002, Adam Sussman provided testimony on Senate Bill 957. Senate Bill 957 directed the Department and other agencies to provide documentation of the criteria and procedures used to evaluate and process permits, approvals and other forms of authorization. The testimony gave a brief account of the Department's SB 957 implementation activities and related customer service, streamlining, and accountability improvements.

Leadership Summit: On December 9, 2002, Paul Cleary and Meg Reeves participated in a Leadership Summit hosted by Senators Wyden and Smith and Governor-Elect Kulongoski in Portland. The summit brought together business, elected, and community leaders from across the state to share in a dialogue about the economic future of Oregon. Workshop topics included streamlining permitting and refocusing economic development.

III. Committee/Task Force Updates:

Senate Bill 710 Work Group: Tom Paul and two other members of the Senate Bill 710 Work Group presented a report to the Full Joint Natural Resources Committee on November 6, 2002. Their presentation described the issues giving rise to Senate Bill 710 and recommendations for addressing ground water conflicts between municipal and non-municipal ground water users.

IV. Rulemaking:

Well Construction: The public comment period on rules for the continuing education for well constructors (OAR Chapter 690, Divisions 205 and 240) closed on December 20, 2002. The Department received one written comment and one comment during the public hearing on December 2 in Bend. No comments were received at public hearings on December 3 and 4 in Salem. Staff will propose adoption of the rules at the February 2003 Commission meeting.

V. Litigation Update:

Grants Pass Irrigation District v. Water Resources Commission

Federal District Court for the District of Oregon – The Water Resources Department has completed all the steps necessary to implement the federal district court Consent Decree that settled the issues regarding use of Savage Rapids Dam. The District voluntarily dismissed its petition for judicial review in the Oregon Supreme Court on November 29, 2002.

Confederated Tribes of the Warm Springs Water Right Settlement Agreement

Deschutes County Circuit Court – The Department, the United States, and the Tribes are taking the final steps to formally decree the Settlement Agreement of 1997 in the Deschutes County Circuit Court. The court heard, and denied, exceptions to the Settlement Agreement in early December. Entry of a Decree formalizing the Settlement Agreement is expected in early January.

Braymen et al v. Lewis et al

Harney County Circuit Court – The Harney County Circuit Court Judge recently ruled on one of several legal challenges to the watermaster's regulation of the quantity of water entering Foley Slough from the Silvies River. Water users on Foley Slough filed an

ORCP 71 Motion for Relief from Judgment from an earlier court ruling. The request for relief was due to alleged new evidence and a claim that prior counsel had made a mistake in preparing and presenting the case. The court denied the request for relief.

Prior to the court's ruling, the State was served notice of intent to file a Tort Claim to recover monies allegedly lost due to the watermaster's regulation of Foley Slough. The Oregon Court of Appeals and Harney County Circuit Court have filings before them regarding this matter.

Frank and Dorothy Hannigan v. Oregon Water Resources Department

Oregon Court of Appeals – The Hannigans have submitted a petition seeking judicial review of the Director's final order canceling several water rights for mining use in the Burnt River Basin. The Hannigans have submitted their opening brief. The Department's brief is due January 29, 2003.

William R. McCormack v. Oregon Water Resources Commission

Oregon Court of Appeals – At its June 2002 meeting the Commission issued a final order approving instream water right application IS-70606 on Bear Creek, tributary of the Crooked River, after hearing exceptions to a contested case proposed order. In August 2002, William McCormack, the protestant to the instream water right application, submitted a petition seeking judicial review of the Commission's final order. McCormack's brief should be submitted to the court within the next few months.

VI. Commission/Board Schedules

	Location	Date
Oregon Watershed Enhancement Board (OWEB)	TBA	Jan 16-17
Land Conservation and Development Commission (LCDC)	Newport	Jan 23-24
Parks and Recreation Commission	Portland	Jan 23
Fish and Wildlife Commission	Portland	Jan 10
Fish and Wildlife Commission	Portland	Feb 7
State Board of Forestry	Salem	Jan 8

*TBA = to be announced

December 10, 2002

**Water Resources Department
Current Fees and Proposed Adjustments
(Hydroelectric Fees Not Included)**

Fee Authority Oregon Revised Statute	Cross Reference / OAR	Subject	Description	Date Last Changed	Fee	Proposed Fee Adjustment
536.050 (1) (a)		Water Rights Surface or Groundwater	Application to appropriate water Application Examination Fee Plus: 1 st cfs or fraction Plus: each additional For appropriating stored water: Each a/ft or fraction up to 10 a/ft Each additional a/ft in excess of 10 a/ft Plus each additional a/ft in excess of 1000 a/ft	ch 587 1997	\$250.00 \$150.00 \$75.00 \$10.00 \$1.00 \$0.25	\$500.00 \$300.00 \$100.00 \$20.00 \$1.00 \$1.00
536.050 (1) (b)		Water Rights using stored water only	Application to use stored water Plus 1 st a/ft up to 10 a/ft Plus each additional a/ft up to 1000 a/ft Plus each additional a/ft in excess of 1000 a/ft	ch 587 1997	\$100.00 \$10.00 \$1.00 \$0.25	\$200.00 \$20.00 \$1.00 for each a/ft thereafter
536.050 (1) (b)	537.4 537.534(4)	Water Storage Under ORS 537.400 or 537.534(4)	Application to store water Application Examination Fee Plus: 1 st a/ft up to 10 a/ft; or Plus: each additional a/ft up to 1,000 a/ft Plus: each additional a/ft in excess of 1,000 a/ft	ch 587 1997	\$250.00 \$10.00 \$1.00 \$0.25	\$500.00 \$20.00 \$1.00 for each a/ft thereafter
536.050 (1) (c)		Permit Recording Fee	Fee for recording a permit to appropriate or store water (Except under ORS 537.409)	ch 587 1997	\$175.00	\$350.00
536.050 (1) (d)		Filing or Recording (including assignment of permit or transfer)	For filing or recording any other water right instrument First page Each additional page		\$25.00 \$5.00	No Change Proposed
536.050 (1) (e)		Copies	For copying records of the department First page Each additional page		\$2.00 \$0.50	No Change Proposed
536.050 (1) (f)		Certification	For certifying copies, documents, records, or maps		\$10.00	No Change Proposed
536.050 (1) (g)		Blue Print	For blueprint copy of any map or drawing Actual cost of the work		Actual Cost	No Change Proposed
		Computer Generated Map			New Fee	Actual Cost

December 10, 2002

Water Resources Department
Current Fees and Proposed Adjustments
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Fee Authority Oregon Revised Statute	Cross Reference / OAR	Subject	Description	Date Last Changed	Fee	Proposed Fee Adjustment
536.050 (1) (h)	540.505-540.537; 540.580	Water Right Transfer	Application for change to an existing water right: Application Examination Fee Additional type of change requested: Plus: Each additional type of change Change in place of use or type of use for water exchange Plus: Each CFS or fraction in addition to the 1 st CFS	ch 587 1997	\$200.00 \$100.00 \$100.00	\$500.00 \$350.00 \$200.00
536.050 (1) (i) 536.050(1)(i)(A) 536.050(1)(i)(B)	540.523; 540.570	Temporary Change in Place of Use	Application for temporary change in place of use Application Examination Fee Non-irrigation uses Plus: Each CFS or fraction in addition to the 1 st CSF Irrigation Uses Plus: Per acre irrigated	ch 587 1997	\$100.00 \$50.00 \$0.25	\$200.00 \$100.00 \$1.00 or \$0.25 if submitted digitally
	537.348	In-stream Leases	Application for lease Lease renewal		New Fee	\$200.00 \$100.00
536.050 (1) (j)	537.153; 537.621; 543A.120	Protest	Submitting a protest Protest on a water right permit application Any other protest	ch 416 1995	\$200.00 \$25.00	\$250.00 \$250.00
536.050 (1) (k)	OAR690-15-100	Extension	Application for extension of time for completion of water right development Application Examination Fee	ch 416 1995	\$100.00	\$300.00
536.050 (1) (l)	537.143; 537.534(2); OAR690-340-030(a)	Limited License	For a limited license - established by rule of WRC Examination and recording 1 st point of diversion Plus: For each additional POD	ch 587 1997	\$100.00 \$10.00	No Statutory Change Proposed
536.050 (1) (m)	541.329	District Water Right Mapping	District petition for filing, examining and certifying a petition for remapping Filing, examination and certification fee Plus: Per acre of water involved in application	ch 1000 1989	\$250.00 \$0.10	No Change Proposed

December 10, 2002

Water Resources Department
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Fee Authority Oregon Revised Statute	Cross Reference / OAR	Subject	Description	Date Last Changed	Fee	Proposed Fee Adjustment
536.050 (1) (n)	537.153(5); 537.621(6); 543A.120	Protest	Request for standing	ch 416 1995	\$50.00	No Change Proposed
536.050 (1) (o)	537.170(2); 537.622(2); 543A.130	Participation in Contested Case	Balance of protest fee	ch 416 1995	\$150.00	\$200.00
536.050 (1) (p)	537.140-.252; 537.505-.795; 543A.005-300	Copy of Proposed Final Order and Final Order	Except for an applicant, for obtaining a copy of both a proposed order and a copy of a final order for a water right application	ch 416 1995	\$10.00	No Change Proposed
536.050 (1) (q)	537.409	Water Right - Storage (alternative process)	Submitting an application for a water right for a reservoir Application Examination Fee	ch 752 1995	\$10.00 per a/ft not to exceed \$100.00	\$200 plus \$10 per a/ft not to exceed \$500.00
536.050(1)(s)	540.524	Substitution	Examining Application for Substitution		\$100.00	\$250.00
537.747 (6) (a)(b)(c)(d)		Well Constructor	Well Constructor License: Examination Fee License Fee Renewal License Fee Late Renewal Fee	ch 496 2001	\$20.00 \$150.00 \$150.00 \$250.00	No Change Proposed
537.753 (4)		Landowner's Permit	Application for permit for landowner drilled well	1981	\$25.00	No Change Proposed
537.762 (5)		Well Construction	Start Card Fees (start of construction)	1989	\$75.00	\$125.00

December 10, 2002

Water Resources Department
Current Fees and Proposed Adjustments
(Hydroelectric Fees Not Included)

Fee Authority Oregon Revised Statute	Cross Reference / OAR	Subject	Description	Date Last Changed	Fee	Proposed Fee Adjustment
	OAR 690 Division 86	Water Management and Conservation Plan	Fee to accompany submittal of plan Ag Plan Municipal <1000 Municipal >1000		New Fee	\$250.00 \$500.00 1000.00
	537.455 to 537.500	Allocation of Conserved Water	Application for allocation of conserved water		New Fee	\$850.00

Attachment 2
Draft Response
December 24, 2002

February __, 2003

William Percy
Stan Gregory
Interim Co-Chairs
Independent Multidisciplinary Science Team
Department of Forest Science
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Subject: Report on the Recovery of Wild Salmonids in Western Oregon Lowlands (Technical Report 2002-1)

Dear Co-Chairs:

This letter provides the Water Resources Commission (WRC) and Department (WRD) responses to recommendations in the IMST report on the Recovery of Wild Salmonids in Western Oregon Lowlands (Lowlands Report). Four recommendations of the report were directed to the WRD and one to the WRC. Our response to each recommendation is presented below.

“Recommendation 10. Water Resources Department (OWRD), in cooperation with other agencies, should reestablish a more natural hydrograph (timing and magnitude) on an experimental basis in river systems where flow modification is occurring as a result of storage operations.”

In considering this recommendation, it is important to recognize that restoring natural hydrographs in these systems, even on an experimental basis, could have significant consequences on development currently sited or planned within floodplains. Therefore, implementation of this recommendation would have to be conducted at all levels of government, local, state, and federal, and would have to consider multiple public interests.

More specifically, WRD lacks the statutory authority to implement this recommendation. Restoring the natural hydrograph on mainstem systems such as the Rogue, Willamette, and Columbia Rivers would have to be accomplished by the US Army Corps of Engineers (Corps) which controls releases from federal reservoirs on these systems. However, under existing laws, WRD can provide input on how the Corps manages these facilities. For instance, every year WRD works with other state agencies and provides a coordinated set of recommendations for

consideration by the Corps as they develop a plan for the annual operation of the Willamette and Rogue Basin reservoirs. In this advisory capacity, WRD could work with the Corps to attain more natural hydrographs via recommendations related to timing of storage and release of water. However, the Corps is limited by federal requirements to operate certain reservoirs for flood control, and WRD is limited to an advisory role, so that its recommendations to the Corps are not binding. WRD's advisory capacity is further constrained by state law. For example, Senate Bill 620, passed by the 2001 Oregon Legislature, requires WRD to encourage the Corps to place Detroit Lake as the highest priority recreational use lake in the Willamette Basin reservoir system. Management as a recreational use lake would affect the timing and amount of water released from Detroit Lake and is just one example of existing statutory limitations related to reestablishing a natural hydrograph in this system.

In addition to providing input on the management of these storage systems, WRD will continue to provide the data necessary to understand and describe the historical hydrographs of these systems. In fact, understanding the water resources of the state is one of the core strategies for promoting our agency's mission to serve the public by practicing and promoting wise long-term water management. WRD currently provides hydrographic information in a statewide database available on its website (www.wrd.state.or.us). The data are presented as flow duration curves for natural streamflow, which are statistical estimates of expected natural streamflows based on historical gaging station data.

“Recommendation 11. Water Resources Department (OWRD) should maintain or increase streamflow where water withdrawals and/or impoundments presently limit salmonid distribution, productivity, or migration.”

Current efforts of the Water Resources Department under its existing statutory authority are consistent with this recommendation. Under Oregon water law, there are several approaches to maintaining streamflow in areas occupied by salmonids. Under the WRC's administrative rules, issuance of new surface water rights is constrained throughout the state by the needs of salmonids listed under the Endangered Species Act. Another tool for maintaining streamflow is the establishment of instream water rights. The Departments of Fish and Wildlife (ODFW), Environmental Quality (DEQ), and Parks and Recreation (ODPR) are state agencies that can apply for instream water rights for fish protection, minimizing the effects of pollution, or maintaining recreational uses, respectively. Once issued, these instream water rights are held by WRD as trustee for the people of the State of Oregon.

Instream water rights and public interest review of new water right permits are useful approaches to maintaining streamflows. Instream water rights identify flow levels on a month-by-month basis and are usually set for a certain stream reach. However, instream water rights are not guarantees that a certain quantity of water will be present in a stream. When the quantity of water in a stream is less than the instream water right, WRD can require junior water right holders to stop diverting water. But under Oregon law no water right, including an instream water right, can affect a use of water with a senior priority date.

Therefore, instream water rights cannot increase streamflows and do not guarantee minimum streamflows in stream reaches.

Other tools must be utilized to restore streamflows in reaches where water quantity limits fish recovery. WRD promotes voluntary streamflow restoration through water use efficiency and conservation programs and water right leases and transfers. These streamflow restoration tools are effective approaches to putting water back instream. In 2002 there were 182 active leases, instream transfers, and allocations of conserved water with 390 cfs protected instream, representing a 250% increase in streamflow restoration actions since the Oregon Plan was adopted in 1997.

As your report mentions, other actions can contribute to achieving this recommendation. One such action is identifying and prioritizing streams where salmonid productivity is limited by streamflow and where flow restoration is most critical to salmonids. WRD has identified watersheds statewide with the highest potential for streamflow restoration, and has partnered with ODFW to combine assessments of streamflow needs for fish with streamflow restoration potential—to produce priorities for streamflow restoration in river basins. Watershed councils, soil and water conservation districts, conservation groups and others are encouraged to use these priorities to guide their flow restoration efforts. WRD watermasters also focus their flow restoration efforts and other Oregon Plan activities in these high priority areas.

Understanding ground water and modeling watersheds can also aid in streamflow restoration. WRD works with the US Geological Survey (USGS) in cooperative studies mapping and assessing ground water resources, including determining whether there is a hydraulic connection between surface water and ground water. In some systems where a hydraulic connection is verified and surface water is fully appropriated, new ground water rights may not be granted or mitigation may be required. This process can provide protection of instream water rights and scenic waterways.

As part of this recommendation, you encourage WRD to incorporate the role of wetlands into its water availability models and to coordinate with other agencies to restore wetlands. To the best of our ability, our water availability model incorporates the role of wetlands. In terms of wetlands restoration, WRD does not have management authority over wetlands within the state. Therefore, other state agencies responsible for wetland restoration and permitting such as OWEB and DSL are better suited to address wetlands restoration under this recommendation but WRD works cooperatively with these other agencies.

“Recommendation 12. The Water Resources Commission should develop and implement a strategic plan for the long-term management of water in western Oregon.”

The Commission and Department agree that there is a need for a strategic long-term water management plan for Oregon. Such a plan would be instrumental in identifying opportunities for

addressing instream flow deficiencies while addressing water use efficiency and future population demands for water. The Commission and Department are actively evaluating approaches for long-term water supply management in Oregon, and the Commission will be seeking input from stakeholders at its meeting in February 2003.

However, a number of difficult policy questions must be addressed before moving ahead with a long-term water management effort such as: What is WRD's role in planning for and implementing long-term water management? What local planning and management activities are currently taking place? What is the role of other state natural resource agencies? What agencies/entities are best suited for assessing future water demands? What is the role for local government and watershed councils? Is the appropriate governmental structure in place to allow such a coordinated effort? How will such a planning and implementation effort be funded?

Notwithstanding these difficult policy issues, the Commission and Department agree with the IMST that a strategic long-term plan would benefit the state. While WRD is involved in a considerable number of water management activities (supply and demand forecasting, agency coordination, land use/water use coordination, Oregon Plan, basin planning, Willamette Basin Reservoir Study, ground water studies, Senate Bill 93 Task Force on Water Supply and Conservation, and water supplier water management and conservation plan development), these activities and other state and local activities are not strategically coordinated under a statewide long-term plan.

Given the varied challenges facing the state, long-term water management will need to include a diversified tool-kit including surface and ground water storage, conservation and efficiency and water right transfers. Any effort will also need to involve the numerous stakeholders and be grounded in local issues and needs. The Department and Commission welcome the opportunity to engage in a dialog about how to move forward with a long-term water management vision and how to fund such an endeavor.

“Recommendation 13. The Water Resources Department (OWRD) should coordinate with USGS to establish and maintain hydrologic gaging stations on stream and river systems critical to salmonid recovery where data are not currently available.”

As stated in your report, monitoring streamflow at gaging stations is important for numerous resource management and scientific inquiries, including determining long-term trends in streamflow, assessing effectiveness of streamflow restoration efforts, and developing watershed hydrological models. The Department gathers and provides quality assurance on a variety of surface water data including gage flow at over 200 surface water gaging stations and miscellaneous measurements of surface water flow at various locations throughout the state. While this network of gaging stations is considerable, streamflows in some areas of the state where salmonids occur are not sufficiently monitored.

Considerable effort is expended by Department staff in maintaining existing gaging stations and in collecting and analyzing these data. Increasing and, in some cases, maintaining these data efforts is challenging given state budget limitations and recent reductions in other funding commitments. For instance, USGS and WRD have a cooperative program whereby USGS operates gaging stations and provides 50% of the cost. The number of gages operated under this program has decreased from over 100 in 1988 to a current level of five stations due to state funding reductions and budget limitations.

Each legislative session, the Department has requested funds to operate gaging stations in both the USGS program and the state program, but the legislature has been unable to provide these funds. The five stations currently operated in the USGS program are funded through outside cooperators that provide funds through WRD to USGS. With diminishing state funding available for these streamflow gaging efforts, the Department continues to look for opportunities to partner with others to maintain or increase our gaging stations statewide.

“Recommendation 18. The Division of State Lands (DSL), Water Resources Department (OWRD), Oregon Department of Fish and Wildlife (ODFW), and Oregon Department of Transportation (ODOT) should reestablish and maintain natural fish passage for juveniles and adults in lowland stream systems.”

Throughout the state, Department staff work with willing water right holders to maintain or reestablish fish passage in streams. Through the Oregon Plan, WRD, DSL, and ODFW have coordinated to assist water users in replacing over 60 push up dams with alternative diversion structures. By changing this practice, the need to bring heavy equipment through the riparian area is decreased, if not eliminated, and channel morphology is also maintained. These efforts have generally occurred as opportunities have arisen to work with interested water right holders and in response to funding availability.

Efforts to restore fish passage will always be dictated in part by funding sources and availability and landowner participation. However, developing a strategic plan to eliminate fish passage barriers, as you suggest in your report, would help our agency direct limited staff resources to areas with the greatest need for restoration. Our agency would be interested in working with other natural resource agencies to develop this type of plan.

Beyond these interagency efforts, WRD promotes other tools for eliminating fish passage barriers through its existing statutes and rules. For instance, the Department promotes the transfer of surface water points of diversion to ground water appropriations under ORS 540.531. These transfers provide several benefits to fish and riparian areas including minimizing disturbance of riparian areas and eliminating fish passage barriers.

Other tools for eliminating fish barriers include water right substitutions. A water user may substitute use of a supplemental ground water right for use of a primary surface water right,

provided that no other water rights are injured by the change (ORS 540.524). This provides an opportunity for water users with existing surface water rights and ground water rights to eliminate points of diversion on surface waters, thereby providing benefits to fish and water quality. The Department can also condition approval of a point of diversion transfer to require a proper fish screen or by-pass device if requested by ODFW (ORS 540.525; OAR 690-015-0073).

WRD is committed to supporting salmonid recovery efforts and values the IMST's input and the thoughtful scientific evaluation provided in the Lowlands Report. We look forward to continued dialog on our agency's role in salmon recovery and watershed restoration in Oregon's western lowlands as well as other areas of the state.

Sincerely,

Dan Thorndike
Chair
Water Resources Commission

Paul R. Cleary
Director
Water Resources Department

c: Governor's Natural Resources Office