

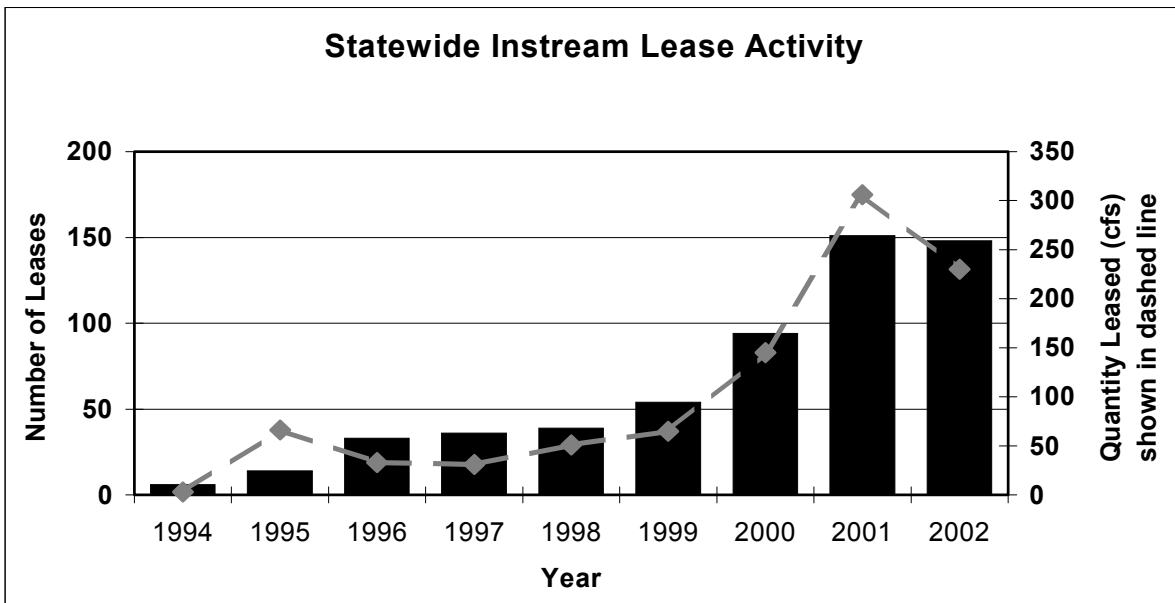
MEMORANDUM

TO: Water Resources Commission
FROM: Paul R. Cleary, Director
SUBJECT: Agenda Item C, February 14, 2003
Water Resources Commission Meeting

Director's Report

I. Commission Follow Up

Instream Leasing: As shown in the graph below, the instream lease program has grown significantly since the program's inception in 1994. In 2002, there were 148 active leases with 230 cubic feet per second (cfs) leased instream. 109 of these leases were signed in 2002. While the number of leases active in 2002 was similar to 2001, the amount of water decreased slightly. This decrease may be due, in part, to the extraordinary efforts made in 2001 to augment flows during that drought year. For example, in 2001 the Bonneville Power Administration and the Oregon Watershed Enhancement Board paid for instream leases, but neither did so in 2002.



The table below lists the instream leasing activity by basin in 2002. The Deschutes, Umpqua, and John Day Basins had the most leasing activity; although the greatest quantity of water was leased in the Malheur Basin reflecting Bureau of Reclamation water leasing associated with Skyline Farms.

Instream Lease Activity in 2002			
Basin Number	Basin Name	Number of Leases	Quantity Leased (cfs)
1	North Coast	0	0
2	Willamette	10	15.1
3	Sandy	0	0
4	Hood	4	1.5
5	Deschutes	45	50.4
6	John Day	24	43.5
7	Umatilla	6	0.4
8	Grande Ronde	2	0.9
9	Powder	0	0
10	Malheur	1	77.9
11	Owyhee	1	0.4
12	Malheur Lake	0	0
13	Goose & Summer Lakes	0	0
14	Klamath	2	4.3
15	Rogue	15	14.3
16	Umpqua	29	9.9
17	South Coast	9	11.4
18	Mid Coast	0	0
	Total	148	230.0

The 2003 season began with 44 multi-year leases in effect with 15 additional leases signed in 2003.

Walnut Hills Ground Water: On January 29, 2003, the Department held an informational meeting to discuss the results of the Amity/Walnut Hills Ground Water Study. Approximately 105 people attended the meeting. Department staff provided a briefing on the ground water system, data collected in the area, and available ground water management tools. A summary of the meeting and other meeting materials are available on the Department's website. Staff will present a recommendation for a course of action to the Commission at its June 2003 meeting.

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 thus far. 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 west side of the state normal or above, and the east side of the state from "abnormally dry" to severe. Their ranking reflects current conditions and does not account for the lack of snow pack. The next several months will be critical in determining next summer's water supplies.

Deputy Director: On January 23, 2003, Meg Reeves left the Department to become the Director of Policy and Legal Services in the President's Office of Oregon State University. Phil Ward will be joining the Department as the new Deputy Director on February 17. Phil has 25 years of combined experience with the Oregon Department of Agriculture, the Oregon Farm Bureau, and the Independence/Monmouth School Districts. Phil has long-standing productive working relationships with agricultural and conservation interests throughout the state; and his experience and expertise will be welcome additions to the Department's management team.

Revisions to Oregon Plan Measures: Over the last year, the Department has been evaluating its Oregon Plan measures to eliminate measures that have been completed and to place its Oregon Plan efforts into a broader programmatic context. The new approach is a streamlined and focused approach to the Oregon Plan – with 5 measures compared to the 35 previous measures. A report describing the revisions to the measures is provided in Attachment 1.

NFWF Grant: In January 2003, the Department received a \$152,000 grant from the National Fish and Wildlife Foundation (NFWF) to develop a Water Resources Decision Support System. The demonstration project will focus on areas of the Deschutes Basin, Walla Walla Basin, 15 Mile Creek, 8 Mile Creek, and John Day Basin. The innovative system combines all of the necessary information for potential water transactions such as water rights, priority dates, current ownership, and typical regulation activities into a GIS-based system that can help predict if a particular water right will likely be met under normal water conditions. This system will be developed in collaboration with the Oregon Water Trust and Deschutes Resources Conservancy.

OWEB Grant: In January 2003, the Department received an \$85,000 grant from the Oregon Watershed Enhancement Board (OWEB) to process 85 water years of data and maintain three gaging stations in the John Day River Basin. The project will be completed in cooperation with the Department of Environmental Quality to support its Total Maximum Daily Load (TMDL) development in the basin.

Oregon Water Coalition: On January 28, 2003, Commissioner Hansell and Director Cleary participated in the 2003 Annual Meeting and Water Conference of the Oregon Water Coalition. Meeting topics included Columbia River management, Phase III of the Umatilla Basin Project, and current activities of the Northwest Power Planning Council.

Notice of Intent – Klamath Basin: On January 29, 2003, the Oregon Natural Resources Council and the Northcoast Environmental Center sent a 60-day notice of intent to sue to the U.S. Bureau of Reclamation (BOR) seeking a formal Section 7(a)(2) ESA consultation on the annual out-of-basin transfer of some 30,000 acre-feet of water from the upper Klamath Basin into the Rogue River Basin. The notice alleges that, because of the fish species involved, BOR must consult with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries regarding the transbasin diversion's impact. If BOR does not initiate formal consultation within 60 days, the groups intend to file suit over the alleged failure to consult.

III. Rulemaking:

Transfers: Working with the Transfer Rules Advisory Committee, staff have developed draft transfer rules to replace OAR Chapter 690, Division 15. The draft rules would restructure the transfer process and would implement 1999 and 2001 statutory changes. Public hearings were held on January 29 in Salem and on January 30 in Pendleton. The written comment period will close on February 18. The public comments received to date have not raised any major issues or concerns. Staff anticipate recommending adoption of the new rules at the April 2003 Commission meeting.

IV. Litigation Update:

Confederated Tribes of the Warm Springs Water Right Settlement Agreement
Deschutes County Circuit Court – The Department, the United States, and the Tribes have taken 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 occurred on January 7, 2003.

Braymen et al v. Lewis et al

The Harney County Circuit Court Judge recently ruled in the Department's favor on one of several legal challenges to the watermaster's regulation of the quantity of water entering Foley Slough from the Silvies River. The Oregon Court of Appeals and Harney County Circuit Court both have filings before them regarding this matter.

Marks v. Water Resources Department

In May 2002, legal action was filed in Umatilla Circuit Court against the Department following a review of the water right record and subsequent regulation by the watermaster. Legal action is still pending; however, the landowners have deepened an existing well and filed a new water right application covering lands that have been irrigated. The expectation is that legal activity will end once the new ground water permit is issued.

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 was filed with the court on January 23, 2003. The Oregon Farm Bureau Federation and Crook County also filed “friend of the court” briefs.

V. Commission/Board Schedules

	Location	Date
Environmental Quality Commission (EQC)	Portland	May 8-9
Oregon Watershed Enhancement Board (OWEB)	Salem	Mar 19-20
Land Conservation and Development Commission (LCDC)	Salem	Mar 20-21
Parks and Recreation Commission	Salem	Mar 13
Fish and Wildlife Commission	Newport	Mar 21
Board of Agriculture	Salem	Mar 5-6
State Land Board	Salem	Apr 8
Board of Forestry	Salem	Mar 5

Attachments:

1. Oregon Plan Measures Report
2. Oregon Plan WRD Measures
3. Map of Streamflow Restoration Priorities

Oregon Plan Measures Water Resources Department

Summary

During the past year, the Water Resources Department (WRD) has reviewed and revised its Oregon Plan for Salmon and Watersheds (Oregon Plan) measures. The new measures build on past efforts; provide a simpler, programmatic context for future efforts; and focus on joint Oregon Department of Fish and Wildlife (ODFW) and WRD prioritized watersheds in each region. This new approach will allow the Department to focus limited staff resources in areas with the most need and opportunity for flow improvements.

Background

The Department has been involved in implementation of Oregon Plan measures since March 1997. The Oregon Plan was originally developed under the direction of the Governor to aid in the recovery of coastal coho salmon and to forestall federal listing of the species as threatened or endangered under the Endangered Species Act (ESA). Each state agency identified the tools available to support fish recovery. WRD identified 25 measures or activities that included increased review of new water right applications, establishment of instream water rights, increased water distribution and enforcement, and other programs to protect and restore streamflows. The number of measures was expanded to 35 with development of the steelhead supplement encompassing the Columbia River tributaries. The measures were also updated in response to the Governor's executive order establishing the Oregon Plan as a statewide effort to support recovery of all salmonids (Attachment 2).

Accomplishments

In the last six years, the Department has made significant progress toward its Oregon Plan measures including strides in maintaining and restoring streamflows, improving fish passage at instream structures, and protecting against salmonid mortality by screening water diversions. Our progress has been built on voluntary, incentive-based programs and strong partnerships with water users and other interests. As we begin implementing our new measures, it is useful to highlight some of the tasks completed and progress made under our previous Oregon Plan measures.

In implementing the Oregon Plan, the Department has:

- Established a process for soliciting input from ODFW district biologists on all water right transfers to ensure that instream water rights are being protected and to determine if fish screen or bypass facilities are needed on point of diversion transfers.
- Worked with ODFW to establish flow restoration priorities to overlay subbasins with the greatest biological needs and those with greatest restoration opportunity. These priority streamflow restoration areas are shown in Attachment 3. The combined priorities identify the best chance to succeed in areas that generate the

- greatest return. The prioritized flow restoration watersheds are used by watermasters, watershed councils, Soil and Water Conservation Districts (SWCDs), Oregon Watershed Enhancement Board (OWEB), and others to identify key stream reaches where instream leases, conservation projects, transfers, and other WRD programs would most benefit critical fish runs.
- Promoted flow restoration through leases, transfers, and conserved water allocations. Protected instream flows have increased by nearly 300 cubic feet per second since the inception of the Oregon Plan in 1997.
 - Participated in interagency efforts to resolve fish passage and other problems associated with diversion or “push up” dams. To date, WRD has worked with the Division of State Lands and ODFW to aid water users in replacing 60 push up dams with more fish friendly, alternative diversion structures.
 - Worked with ODFW to resolve protests on instream water right (ISWR) applications. Staff have successfully negotiated settlements on 10 ISWR applications on the Sycan River; Clackamas River; Bear Creek, Sevenmile Creek, Ferry Creek, Sixes River (South Coast Basin); and on Drews Creek, Dairy Creek and Elder Creek (Goose & Summer Lakes Basin). The WRD also resolved protested ISWR’s in the Powder and Malheur Basins, and on Elk River.
 - Worked to improve water use measurement and reporting. The Department has developed a statewide inventory of “significant diversions.” With the inventory complete, Department staff are now performing a compliance assessment of the water measurement device at each identified significant diversion, focusing assessment efforts in high priority streamflow restoration watersheds.
 - Completed a major multi-year rulemaking effort for extensions of municipal and quasi-municipal water use permits. Under the new rules, access to additional water supplies is linked to a rigorous analysis of future demand and strides taken toward conservation measures and considers resource issues such as ESA-listed species and water quality. The Department has conducted annual workshops for municipalities to aid in the preparation of water management and conservation plans and continues to work with the League of Oregon Cities, Association of Water Utilities, and others to assist municipalities developing plans under the new extension rules.
 - Coordinated with ODFW to identify areas where distribution of water for instream rights is a priority. This coordinated approach provides a method to focus finite staff capabilities on those areas in which enforcement will yield the most benefit to fish.
 - Entered into an enforcement plan with Oregon State Police (OSP) that formally identifies the scope of services that OSP officers will provide to WRD field programs. The Department has conducted regular meetings and training sessions with OSP to improve coordination between agency staffs.
 - Actively participated in regular coordination meetings with other natural resource agencies. These meetings have provided opportunities to brainstorm solutions to specific resource issues, streamline efforts among agencies, and share information.

- Increased access to and utilization of the Department's substantial databases and information on surface water hydrology, ground water, and water rights by watershed councils, SWCDs, and others.
- Acted as lead agency for developing state recommendations to the U.S. Corps of Engineers (Corps) for summer operation of Corps operated reservoirs located in the Willamette and Rogue Basins. Operational considerations include providing habitat for fish and wildlife, pollution abatement, and recreational opportunities.

These are a few highlights of the progress the Department has made on Oregon Plan implementation since 1997. A detailed description of the Department's Oregon Plan efforts is available at <http://www.wrd.state.or.us/programs/index.shtml>.

Focusing Efforts for the Future

In moving forward with Oregon Plan implementation, the Department has recognized the need to eliminate measures that have been completed and to place ongoing efforts into a broader, programmatic context. The Department's new measures are a streamlined and focused approach to the Oregon Plan – with 5 measures compared to the 35 previous measures.

The measures are listed below – each with a list of actions to achieving the measure. As part of our new approach, watermasters identify four or five actions they will pursue in their high priority watersheds at the beginning of each year. At the end of each year, watermasters describe the progress they made on their action plans, their successes, and barriers to their success. This adaptive management approach will allow greater flexibility for field staff to prioritize their Oregon Plan efforts, simplify reporting requirements, and focus limited staff resources on efforts with the greatest potential benefit for fish.

Measure 1: Water distribution and regulation.

Actions:

- Inventory significant diversions to ensure the adequacy of headgates and measuring devices and to improve distribution lists.
- Perform streamflow monitoring to provide accurate and timely information on the need to distribute water for instream and other water rights.
- Monitor and regulate water uses to identify unauthorized uses and to ensure that the use of water is consistent with state law.
- Perform distribution to provide water rights with the water to which they are entitled.

Measure 2: Fish and fish habitat protection.

Actions:

- Use public interest review on requests for new water uses to assess impacts to fish, consistent with the existing legal framework.
- Review new ground water applications to evaluate impacts to surface flows due to hydraulic connection between surface water and ground water.

- Ensure that instream water rights are protected from injury during water right transfers.
- Expediently process applications for new instream water rights and applications for instream leases, transfers, and allocations of conserved water.
- Coordinate with ODFW on enforcement of water right conditions requiring screening of diversion structures.

Measure 3: Promotion of flow restoration.

Actions:

- Identify and support streamflow and fish habitat restoration activities in high priority areas through voluntary efforts.
- Provide technical assistance on water right related issues to support the modification of water diversions to improve fish passage and protection.
- Promote transfers of existing surface water points of diversion to ground water appropriations in areas with unconfined aquifers that are hydraulically connected to the authorized surface water source.
- Promote programs that improve water use efficiency and conservation, including expeditious review of agricultural water supplier and municipal water management and conservation plans.
- Promote and assist with applications for instream transfers, instream leasing, exchanges, substitutions, and allocations of conserved water.

Measure 4: Public outreach and education.

Actions:

- Provide technical support and information to watershed councils and other organizations involved in streamflow and fish habitat restoration.
- Maintain accurate streamflow data and provide the data in a timely manner to researchers and other interested parties.
- Provide readily accessible data via WRD website to support watershed and fish restoration activities.

Measure 5: Improvement of resource understanding.

Actions:

- Maintain and update the water availability model for the consideration of instream water rights and scenic waterway flows.
- Continue ground water investigations to assess stream-aquifer interaction, aquifer hydraulic properties, and aquifer recharge and discharge relationships.
- Work with the Independent Multidisciplinary Science Team; the National Academy of Science; United States Geological Survey; ODFW; and other researchers, educators, and extension entities to ensure that our decisions and management actions reflect the most up-to-date resource information and best available science.

Oregon Plan for Salmon and Watersheds
Water Resources Department Measures
January 2001

- WRD 1 – Public Interest Review to Protect Salmonid*
- WRD 2 – Water Right Transfer Review for Fish Concerns*
- WRD 3 – Coordinated Agency Field Meetings*
- WRD 4 – Issuance of Instream Water Rights*
- WRD 5 – Water Availability Models*
- WRD 6 – Streamflow Restoration Priorities*
- WRD 7 – Coordinated Enforcement Plan*
- WRD 8 – Increased Distribution and Enforcement*
- WRD 9 – Installation of Monitoring Stations*
- WRD 10 – Inventory Water Diversions*
- WRD 11 – Dissemination of Streamflow Data*
- WRD 12 – Improving Efficiency and Prohibiting Waste*
- WRD 13 – Agricultural Water Conservation Program*
- WRD 14 – Municipal Water Management Program*
- WRD 15 – Instream Transfers and Leases*
- WRD 16 – Water Right Forfeiture*
- WRD 17 – Public Outreach and Information*
- WRD 18 – Ground Water Studies*
- WRD 19 – Watershed Council Technical Information and Support*
- WRD 20 – Water Use Measurement and Reporting*
- WRD 21 – Peak Flow Protection*
- WRD 22 – Modification or Replacement of Diversion Dams Which Interfere with Fish Passage*
- WRD 24 – Protection Against Direct Habitat Loss*
- WRD 25 – Compliance Rate Monitoring*
- WRD 26 – Reservations*
- WRD 27 – Water Development Loan Fund*
- WRD 28 – Identify Need for Geomorphic Evaluations*
- WRD 29 – Amend Current Hydropower Licenses to Improve Fish Passage*
- WRD 30 – Expedite Handling of Application for Change in Water Releases As Is Permissible*
- WRD 31 – Coordinate Water Release Requests for Federal Willamette Basin Projects*
- WRD 32 – Coordinate Water Release Requests for Federal Umatilla Basin Projects*
- WRD 33 – Coordinate Water Release Requests for Federal Rogue Basin Projects*
- WRD 34 – Work with Grants Pass Irrigation District to Resolve Fish Passage Problems*
- WRD 35 – Restoring and Maintaining Streamflows*