

## MEMORANDUM

**TO:** Water Resources Commission

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

**SUBJECT:** Agenda Item C, June 26, 2003  
Water Resources Commission Meeting

### Director's Report

#### I. Commission Follow Up

Instream Leasing: As of June 1, 2003, there were 142 active leases resulting in 118 cfs being protected instream. The 2003 leasing season began with 45 active multi-year leases. Since then, the Department has approved 97 leases, including one split lease application. The Department denied one standard lease application because the water right holder had not suspended use of the water. The median processing time for lease applications is 27 days — this includes the weekly notice mailing and the 21-day public notice period. Although 12 districts have active leases, two-thirds of the active leases are found in the Upper Deschutes Basin, the Umpqua Basin, and the Lower John Day and Willow Creek Basins. As shown in the table below, there are double the active leases in 2003 compared to 2002; and the quantity of water being protected has more than doubled.

Year as of June 1	Number of Leases	Amount of Water Protected Instream (cfs)	Median Processing Time (days)
2002	72	51	29
2003	142	118	27

COB Energy Facility Application - Bonanza: On April 29, 2003, COB Energy Facility submitted an application to the Department for use of 16.9 cfs (7,500 gpm) of ground water in the operation of a gas-fired electricity generation plant. The proposed development would be located in the Klamath Basin a few miles southeast of Bonanza, and has been the subject of continued debate among residents because of land use and ground water availability concerns.

The final decision on permitting of the facility, including the water right permit, will be made by the Oregon Energy Facility Siting Council. The Department issued a proposed final order for the Council that recommends issuance of the permit with conditions that severely restrict use in the event interference with other ground water users is determined. More recently, the project proponents have announced plans to switch to an air-cooled design for the plant which would reduce water demand to less than 1 cfs (about 340 gpm).

Spring Lake Estates: At the April 2003 Commission meeting, residents of Spring Lake Estates, a small rural development in the South Salem Ground Water Limited Area, expressed their concerns about ground water issues in Marion County. They asked the Commissioners and staff to provide information on water availability to the County Planning Commission as they review applications for new land development so that an adequate water supply would be ensured. Staff have provided written comments to the Planning Commission as part of their current review of the County's Sensitive Ground Water Overlay Ordinance. In May, Director Cleary wrote to the County Board of Commissioners relaying citizens' concerns; and offering technical assistance so that land and water use decisions can be coordinated to promote the development of ground water in a sustainable manner.

Endangered Species Act (ESA)/Water Law Work Group: As follow-up to the Commission's ESA/Water Law Work Group, the Department hosted a meeting on May 16 in Milton-Freewater to discuss ongoing efforts to address water quantity and fish passage issues in the Walla Walla Basin. Representatives from the U.S. Fish and Wildlife Service, NOAA Fisheries, U.S. Army Corps of Engineers (Corps), Washington Department of Ecology, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), irrigation districts, and local conservation and planning groups participated in the discussion. Topics included local efforts to restore streamflows, a presentation on the Corps/CTUIR feasibility study of flow restoration options, and opportunities for increased federal and state coordination to aid local habitat conservation planning efforts.

## **II. Current Events**

Confederated Tribes of the Umatilla Indian Reservation (CTUIR): For over a decade, the Department has had ongoing discussions with CTUIR regarding tribal water needs and water management issues within the boundaries of the Umatilla Indian Reservation. In 1996 the Department committed to a formal negotiating process with CTUIR to resolve water right and management issues on the Reservation. The Department agreed to begin negotiations following completion of the then-ongoing negotiations with the Warm Springs Confederated Tribes. The Warm Springs negotiations were substantially completed in 2001 with subsequent circuit court confirmation finalized in January 2003. Following its earlier commitment, the Department has joined with CTUIR to request establishment of a federal negotiating team to conduct negotiations pursuant to state statute including provisions for public input at all stages. Key objectives are to complement ongoing cooperative efforts between CTUIR and the Basin's water

users regarding Phase III of the Umatilla Basin Project and Westland Irrigation Districts's boundary adjustment, and to accommodate tribal water needs within the Reservation without interfering with existing water rights. Phase III may become the vehicle and process to resolve both irrigation and instream water needs and address CTUIR's current and future water uses.

Watermaster Changes: Mitch Lewis, currently District 10 watermaster in Burns, has accepted the position of Coquille (District 19) watermaster. In 1991 Mitch started with the Department as assistant watermaster in Canyon City, and in 1998 he became the watermaster in Burns. He has a good understanding of water delivery and use, and has had extensive training and experience in measuring steam flows. The Department is in the process of recruiting to fill the Burns watermaster position.

Powerdale Hydroelectric Project: State and federal agencies, tribes, and other stakeholders recently signed a settlement agreement with PacifiCorp to decommission the Powerdale hydroelectric project in 2010. Powerdale Dam diverts up to 500 cfs which will be converted to an instream water right as part of the agreement. In order to complete fish studies that depend on adult fish trapping at the dam, the settlement parties agreed to continue operation of the project until June 2010. At that time the project decommissioning and dam removal will begin — the fish collection facilities will be dismantled and fish will have unimpeded passage through the project area. In the meantime, interim fish and habitat protection measures will be taken such as increasing minimum bypass flows; shutting down the project during juvenile fish migration periods; restricting project ramping to avoid fish stranding; and continuing operation of the existing fish screen and ladder.

Stream Flow Measurement Class: On June 11 the Hydrographics and Northwest Region staff offered a stream flow measurement class for staff of watershed councils, cities, and conservation districts; eleven guests attended the class. The morning session consisted of a classroom presentation of U.S. Geological Survey methods and procedures for measuring streams. The afternoon was spent performing stream measurements and demonstrating stream gage operation at the Mill Creek demonstration gaging station.

Current Water Conditions: By the end of February, experts were forecasting well below normal water conditions, with drought in much of the state. However, March and April were excellent precipitation months and water conditions improved significantly. As of June 1 the Surface Water Supply Indices are trending upward indicating conditions are continuing to improve. Individual indices show average to moderately dry conditions. Snow pack on April 1, the date normally used to indicate conditions for the water year, ranged from 45% to 79% of normal. Reservoir storage is currently about 68% of normal; and the stream flow forecast varies significantly throughout the state, ranging from 20% to 100% of normal.

Rock Creek Water District: Department staff have been working with customers of the Rock Creek Hideout Water Company to address limited water supplies and ongoing water quality

issues associated with their existing facilities. Staff worked with the community, located in the Yamhill River Basin, to identify transfers and helped them form the Rock Creek Water District. Shortly after it formed, the District was awarded one of Oregon's largest USDA rural development grants in recent history. The District continues to work with the Department to acquire additional water supplies and is participating in Polk County efforts to identify a regional water supply solution.

Water 2025: In May the U.S. Department of Interior announced the Water 2025 initiative to address chronic water supply problems in key western watersheds. Several areas in Oregon, such as the Klamath Basin, have been identified as areas where existing supplies are not adequate to meet water demands for people, for farms, and for the environment. Interior Secretary Norton will be hosting a series of regional conferences to solicit recommendations to identify community-based solutions to water supply shortages. Director Cleary will be participating in the July 17 regional conference in Boise, Idaho.

### **III. Rulemaking**

Division 9: The Commission adopted OAR Chapter 690, Division 9, rules in 1988 to provide guidance for determining whether proposed ground water appropriations have the potential to cause substantial interference with surface water supplies. Over the last several months staff have been examining the process for reviewing ground water applications under Division 9 with a goal of improving consistency and providing more structure and documentation of reviews conducted by staff. As a result, a format has been developed for following and documenting each step outlined in the rules. Staff have drafted language to clarify Division 9 rules, and discussed the proposed amendments with the Ground Water Advisory Committee on June 20 in anticipation of initiating the public rulemaking process. Staff plan to present the rule amendments to the Commission for their consideration at the November 2003 meeting.

### **IV. Litigation Update**

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

Harney County Circuit Court - This case revolves around a legal challenge to the watermaster's regulation of the quantity of water entering Foley Slough from the Silvies River in Harney County. The Harney County Circuit Court Judge recently heard oral arguments on a Motion for Summary Judgement. Trial is currently set for November 2003.

#### *William R. McCormack v. Oregon Water Resources Commission*

Oregon Court of Appeal - In August 2002 William McCormack, the protestant to instream water

right application IS-70606 on Bear Creek, tributary of the Crooked River, submitted a petition seeking judicial review of the Commission's final order. At its April 2003 meeting the Commission withdrew its final order for reconsideration. The final order on reconsideration was filed with the court on June 23, 2003. Legal briefings continue; no date for oral argument has been scheduled.

**V. Commission/Board Schedules**

	<b>Location</b>	<b>Date</b>
Environmental Quality Commission (EQC)	Portland	July 17-18
Oregon Watershed Enhancement Board (OWEB)	TBA	Sept. 10-11
Land Conservation and Development Commission (LCDC)	Salem	July 17-18
Parks and Recreation Commission	Coast - TBA	Aug. 7
Fish and Wildlife Commission	Portland	July 11
Board of Agriculture	Pendleton	Sept. 3-4
State Land Board	Salem	Oct. 14
Board of Forestry	Sutherlin	July 24-25
DOGAMI Governing Board	TBA	August