



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
FAX 503-986-0904

December 1, 2006

Tamra Mabbott, Director  
Umatilla County Planning Department  
Umatilla County Courthouse  
216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

Dear Ms. Mabbott:

The Oregon Water Resources Department (WRD) recently received a copy of your paper entitled "Recommendation for Big Look Task Force, July 14, 2006, Water, Paper or Planning?" Since WRD was not invited to offer assistance during the development of this paper, we are providing the agency's observations and comments at this time. Due to the fact that this paper may be widely circulated, we felt it important to correct some of the errors and mischaracterizations contained in the document. In our view, the paper also provides an inaccurate representation of how our agency works with local governments during our permitting, rulemaking and regulatory activities.

First, your paper asserts that WRD "spends the majority of [its] time and resources processing water right applications and in contested case hearings and litigation," deferring planning and "day-to-day water management in the field." This assertion is inconsistent with the Department's allocation of resources. Of the agency's 140 positions, the field program, which is responsible for day-to-day water management, is the agency's largest single staffing unit with 55 positions. In addition, we have eight employees in our Technical Service Division who develop scientific information to support our agency decisions and assist our field staff in managing the resource. In comparison, we have a total of seven staff devoted to water right permitting, contested case hearings and litigation coordination.

Second, your paper comments that "OWRD response to land use notices is simply to state whether or not the landowner has a legal (paper) right to use water." While the Department is not always able to provide as much information as it would like in response to each land use notice, we believe this statement inaccurately characterizes the assistance WRD has provided to counties, particularly to Umatilla County. WRD has consistently provided comments on proposed comprehensive plan amendments and zone changes. Our staff offer technical comments related to existing water rights, shared well agreements, transfers, and resource protection. When appropriate, the agency provides an analysis of how the proposed land use decision could impact existing water supplies. For example, Mike Ladd recently wrote to you providing a detailed response to the Kennedy/Wood proposed comprehensive plan amendment and zone change (letter attached).

Third, in the public involvement section, your paper makes the statement that “water law has minimal public involvement requirements\*\*\*.” Nothing could be further from the truth. The statutory requirements for public involvement in water right-related processes are extensive and well-used. In fact, the public has two, or potentially three, opportunities to become involved in the decision-making process for most water right applications. Additionally, all of WRD’s processes not only fully comply with the public involvement requirements of the Administrative Procedures Act, but we continue to look for new ways to make it easier for the public to track decisions before the Department. For example, as described in more detail below, the agency makes its notices easily available on its web site.

Fourth, the paper further states that the agency’s public notice is “circulated to local government agencies.” This statement fails to recognize that WRD mails a copy of its weekly notice to anyone who subscribes to that service and provides weekly links to the notice via e-mail to anyone who requests it. The weekly notice is also published on the agency’s web page, which has received over 1.9 millions hits during 2006. WRD has added a “keep informed” link on its home page during the last year, which allows the public to more easily access information about the agency’s activities. Currently, 250 people receive WRD’s weekly notice, 160 receive notices about our commission meetings and over 200 receive notices regarding the agency’s rulemaking activities.

Fifth, your paper suggests that there is no cumulative analysis of the impact of land use on water supplies in a basin. While the Department does not specifically analyze cumulative land use impacts, we do analyze cumulative impacts of new surface and ground water applications. WRD maintains thorough records of water rights approved throughout the state. The agency uses this information to perform a cumulative analysis of the impact of each new surface water right application on the water available for use in the affected basins. The cumulative impact to groundwater is also analyzed and the information is used to evaluate new ground water applications. There must be sufficient water available before the Department will approve a new application. WRD can make this information available to any jurisdiction that requests it for planning purposes.

Finally, your paper provides an overly simplistic and misstated summary of the approval process for water right applications. The statement is made that “OWRD cannot deny an application if it is consistent with the basin plan, is for a beneficial use and does not injure other existing water rights.” This is inaccurate on several levels. Prior to approving an application, WRD must also find that water is available for the proposed use and the use complies with all rules of the Water Resources Commission. If the application demonstrates that all of these elements have been met, it establishes a presumption that the proposed use is in the public interest (or protects health, safety and welfare for ground water applications). The opportunity remains, however, for a person to demonstrate that the proposed use will impair or be detrimental to the public interest (or not protect health, safety and welfare), at which point the Department must deny the application.

Additionally, your paper presents a flawed description of WRD's existing processes, particularly as they concern coordination with land use planning departments. Our permitting processes contain multiple opportunities for coordination, planning and local involvement. WRD will not issue a permit, complete a transfer or take other actions until it is demonstrated that the action is consistent with the county's acknowledged comprehensive plan or the statewide planning goals. Additionally, if the County wishes to change its comprehensive plan to address water supply concerns, WRD is available to work with the County to accomplish this goal.

Your paper also states that WRD's public notice process does not include a direct notice to surrounding property owners and suggests that WRD should modify its public notice to reflect the method used for land use. While providing notice to neighboring property owners may be sufficient for land use, we believe it would be grossly inadequate for water-related issues due to the transient and three-dimensional nature of water. A surface water right application might not interest surrounding property owners who do not have water rights, but it may be of significant interest for someone with a water right 100 miles downstream. Similarly, a ground water application may have no interconnection with local wells on surrounding properties, but may share a water supply with properties some miles distant. Thus, in our view, our current notice more appropriately reflects the varied and wide-ranging interests of our stakeholders.

Additionally, alternative models for coordination between water and land use, such as the transportation model you suggested, must recognize the complexity of water resource management. Unlike land or roads, water is not static. The amount of water available at one time of the year will not be available later in the year, and the amount of water available in one year does not guarantee that amount will be available the next year. While additional roads can be constructed or existing roads enlarged to meet increasing demands, water is a finite resource. For these reasons, a high level of technical expertise is required for effective water management. Further, in many places, water flows through multiple jurisdictions as it travels toward the ocean. Since the state's surface water and ground water belongs to the people of Oregon, state regulation of water use is essential to ensure comprehensive and consistent management and regulation.

WRD recognizes that many of the issues raised in your paper stem from a valid concern about water supply for existing and future uses in this state. This agency recognizes that an adequate source of water supply is essential to the state's economic and environmental health, and desires to work closely with counties on their water supply issues. This is reflected in the amount of time WRD staff have devoted to assisting the Umatilla County Ground Water Task Force. The agency also intends to work closely with local governments to identify long-term water supply needs and to look for opportunities to meet those needs. That is why we are pursuing funding in 2007 for the Oregon Water Supply and Conservation Initiative, which would provide this important information. It is also why we are proposing to include incentive funding in the Initiative so we can work in partnership with counties and others that are planning for future water supply needs.

Tamra Mabbott, Director

December 1, 2006

Page 4

We think the Initiative is a truly productive approach to addressing the long-term water supply needs of our state. Beyond this initiative, we continue to look for new ways to provide for greater flexibility and creativity under our current system of allocating and managing water.

Lastly, we think it is important to note that your suggestion that Oregon "move away from" the prior appropriation system does not recognize the certainty that the doctrine has provided in the settlement and economic development of the state. This system has formed the basis of water rights in the entire western United States and has provided a clear regulatory process for determining which water user is entitled to water in times of shortage. Any approach that unwinds or does not sufficiently protect existing water rights would put our industries and natural resources at risk, especially agricultural-based industries such as those found in Umatilla County.

I apologize for the length of this letter, however, we felt it important to provide you with a full response to the concerns we have with the paper. Please feel free to contact me or Mike Ladd at our regional office in Pendleton (541-278-5456) should you have any questions. Finally, I would like to reaffirm WRD's commitment to working with Umatilla County to ensure an adequate water supply for its citizens.

Sincerely,



Thomas Paul  
Deputy Director

Cc: Oregon Water Resources Commission  
Chair Dennis Doherty  
Commissioner Bill Hansell  
Commissioner Emile Holeman  
OWRD Director Phil Ward



# Oregon

Theodore R. Kulongoski, Governor

Water Resources Department  
North Central Region  
116 S.E. Dorian Avenue  
Pendleton, OR 97801  
Phone (541) 278-5456  
FAX (541) 278-0287

August 21, 2006

Tamra Mabbott  
Umatilla County Planning Department  
216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

RE: Kennedy/Wood Proposed Comprehensive Plan Amendment and Zone Change

Dear Ms. Mabbott:

This letter is provided in response to the proposed comprehensive plan amendment and zone change referenced above. As we understand, the proposed amendment would change the zoning of the land (108.42 acres in total) from exclusive farm use (EFU) to rural residential with a 10-acre minimum lot size.

The comments of the Oregon Water Resources Department (Department) relate to concerns about the impact to the basalt aquifer if new wells are drilled into this aquifer as a result of a zoning change. It is not clear from the information provided, however, whether the proposed water source for the development would be from new wells drilled into the basalt aquifer.

The land at issue is within Subarea "A" of the Stage Gulch Critical Ground Water Area (SGCGWA). As you are aware, the basalt aquifers within the critical area has a long history of water level decline or overdraft, and is intensively managed by the Department in an effort to stabilize the ground water level and to fairly allocate the water to holders of existing water rights.

The Department's efforts to control water level declines and manage Subarea A have resulted in some water users receiving an allocation that is a fraction of their permitted water right. In this subarea, the Department is only allocating 35 percent of the total water needed to fully satisfy all existing water rights. The water rights in Subarea A total 32,971 acre feet and the Department is only allocating 11,450 acre feet to the water users. As a result, it appears the water level declines have slowed, based on information from two wells in the subarea. (See the attached copies of two hydrographs from wells in the subarea.)

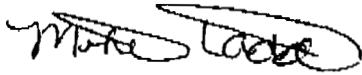
The Department is unable to permit new ground water rights from the basalt aquifer for irrigation of the proposed 10-acre lots due to the critical groundwater area designation. While we understand some of the land at issue has existing water rights from springs, there are not adequate water rights to irrigate all of the land. Domestic uses and irrigation of up to ½ acre of lawn or non-commercial garden are allowed by statute as exempt uses. It is worth noting that these uses exempt from water right permit requirements are subject to regulation by priority date.

Allowing the zone change could result in the construction of 10 additional wells in the basalt aquifer and approximately 10 additional acre-feet being withdrawn annually for the exempt uses.

Ms. Mabbott  
Page two  
August 21, 2006

Thank you for the opportunity to comment. If you have any questions, or you want additional information, please call me at the number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Ladd", enclosed within a hand-drawn oval.

Michael F. Ladd  
Region Manager

Att: Hydrographs, Umat 2711, 2708

C: Barry Norris, Administrator  
Tony Justus, Watermaster