

May 26, 2010

RE: Integrated Water Resources Strategy (IWRS): Issue Paper Comments.*

Members of the IWRS Policy Advisory Group:

Since I was unable to attend any of the open houses conveniently, please find below my thoughts and comments about the process and the issues.

The Project Team has done an amazing job of scoping out the process for getting to a final IWRS to present to the Water Resources Commission in 2012! I am commenting from the perspective of an unaffiliated citizen (i.e. not a member of a stakeholder group), and as such, I have a concern about **Public Input**. I found out about the IWRS from an incidental e-mail from a fellow member of the Hood River County Water Resources Steering Committee. (I am an at-large member. The views in this commentary are my own personal views and in no way represent or speak, in any capacity, for Hood River County's WRSC.) It is clear from the IWRS website documents that stakeholders with a specific interest in water, for example, in stream flow (FreshWater Trust) and advocating/protecting agricultural water rights (Water for Life), are engaged and involved in the process. However, I am concerned that the general, unaffiliated public will be under-represented and I believe that the more input from the general public the better. From your e-mails, I am aware of the open houses that have been held and are being held around the state, however, I have seen nothing in the papers or other news media informing Oregonians that this process is going on. My comment does not mean that efforts have not been made to inform the public at large of this effort, only that I am not aware of them. I hope my concerns are unwarranted and that the general public has been well-represented at the open houses and by the online surveys.

The 2009 Legislature is to be congratulated for initiating the IWRS! The Project Team and associated staff have done an incredible job of documenting the mind-boggling scope of the inter-relationships and challenges of this project. The Issue Papers are awesome! They are well-written, thoughtful and encompassing. I was particularly pleased to see Water Quality, Climate Change, and Social Issues included and was ecstatic to find **Ecology and Ecosystems!** Of them all, in my opinion, this issue should be the "guiding light" for the IRWS.

An expansion: "**Integrated**" has been defined in this project as "taking into consideration water quantity, water quality, and ecological needs during the formation of water resource policy and scientific work." However, I think this basic definition should be expanded to consider and foster "integration" between 1) all user groups, 2) all uses, and 3) all agencies (county, inter and intra state, federal and tribes). In reading the Issue Papers, I think this was certainly implied but not articulated. This conceptual expansion is important for the success of the IWRS and is reflected in some of my comments below.

In keeping with the critical concept of “Integration,” and if we are to survive, it is time for Oregonians (and the rest of the planet for that matter) to change our paradigm from economics to **ecology: making economics secondary to ecology and making decisions on the basis of what is best for the entire ecosystem**. The writers of the “Ecology and Ecosystems Issue Paper” clearly recognize this, but do not state it emphatically enough! I have been encouraged over the years to see ecology being actually incorporated into policy, for example “instream” water rights. In the “Benefits of Integrating Ecology into Water Resources Planning,” only flow and salmon protection are mentioned. There is another major item that needs to be dealt with here by the IWRS (WRD and ODF): For the water purification and carbon sink capabilities of our forests (just to mention two of their “ecological services”), the Oregon Forest Practices Act should be amended to make clear-cutting illegal on all forest lands! Clear-cutting is a perfect example of NOT putting ecology ahead of economics: a short-term economic gain for a logging company vs. the long-term sustainability of us all! As hard as it is to quantify in dollars at the present time, as part of the IWRS, research should be done to establish a reasonable dollar value for the water purification services provided by our forests, so that these numbers can be included in any and all EISs, land appraisals, transactions and decisions over land uses and water supplies. This line item will give the forests their due and heighten awareness of this critical function. Hopefully someday these line-items for environmental services will be automatically included. Additionally, ecological consequences should be just as strong a driver of policy as federal and state regulations.

Under the Key Challenges section of Issue 2, Water Quality, I would add ASAP clean-up of the **Hanford Nuclear Reservation**. This will, obviously, involve integration with federal and Washington state agencies. You can’t pump Columbia River water into the Umatilla Basin Aquifer for replenishment if the water is radioactive!

I would give three subjects mentioned in the Issue Papers their own **Issue status: Water Law, Conservation, and Funding**. Given the role and importance of these topics in the overall effort and challenge, I believe this emphasis is necessary for a successful IWRS:

“Issue 8”: Oregon Water Law. Water law (by which I mean the ORS, the OAR, and the WRD policies) is a very complex and contentious subject and there are hundreds of people who, by necessity and profession, are more knowledgeable than I. However, from my perspective, I have the following comments:

Attachment 1, Preliminary Work Plan, B, Intention: “The intention is not to overhaul Oregon water law or water quality laws. Nor is the intention to lay out a plan that re-allocates water.” I certainly understand the political expediency of this statement, however, given the seriousness of the challenge, **I would emphatically assert that a thorough review of Oregon’s water laws, with the possibility of change, must be a part of this process**. If not, the IWRS’s chance of success in the long run will be considerably handicapped, or, at worst, necessary substantive change will be prevented and inequities and inefficiencies perpetuated. “...if incremental statutory modifications are identified... the Department will forward such recommendations to the Legislature.” To me, this seems to open the door for the IWRS project to include Oregon water laws within its purview. Below I have discussed some areas in which I think water law might be changed:

Water belongs to all Oregonians, BUT granting a water right solely for a generic “beneficial purpose without waste” means the holder “owner” of the water right can do whatever they want with the water, including selling it to a for-profit entity. This amounts to privatization of a public resource. It would seem logical that “beneficial use” should be defined based on how the individual or municipality with the water right is themselves using the water for their actual direct “beneficial use,” i.e. irrigation of crops, drinking water, etc. A case in point is the current proposal for a Nestlé’s bottling plant in Cascade Locks: If the trial raising trout on city well water is successful, and after a transfer of an ODFW spring water right, the City of Cascade Locks may sell “their” municipal water to Nestlé for a minimal amount - “no more than they charge any commercial local account.” Nestlé in turn will sell the water far afield for a huge profit – an extractive, consumptive use that does not return to the local water table or basin or economy its true worth. Is this appropriate or fair with a resource that belongs to the people of Oregon? It would seem that our water law should deal with this inequity.

After 101 years, I raise a heretical question: is “Senior Right,” “first come, first served” a valid concept in today’s complex, over-populated, climate-challenged Oregon? I am referring to extreme cases where the senior upstream water right holder has an abundance while the downstream holder is starving. Rather than a system that looks only at a generic “beneficial use” of withdrawal, should we not be looking at the impact of a withdrawal on the entire system? The hydrologic cycle and distribution of water is a function of climate and geology/geography; who owns the land or got there first is irrelevant to the cycle. However, what one does on their property can alter the cycle: improperly cased wells creating flows from one aquifer to another, drying up streams, a neighbor’s well, etc. Our water law should deal with water in toto.

There are some very generous exemptions in our water law that do not require a water right. These should be reviewed and made more appropriate for our current situation and into the future. For example, the 15,000 gallon per day exemption for a domestic well is way more generous than actually needed. Given what is happening in the Willamette Valley, perhaps domestic wells should not be exempt.

Perhaps there are areas of water law that should be rewritten to reflect multi-level integration (water, uses, users, agencies) and if amended or changed would foster and make possible easier interaction and help remove “institutional, legal, and policy barriers” and “coordination difficulties and conflicts.”

It would seem appropriate to remove, for conflict-of-interest, the Dept. of Agriculture and the Dept. of Forestry from the responsibility for water quality protection on their respective lands and return it to the DEQ.

To foster the “Foundation of Data,” other considerations for water law might include increased requirements for actual meter measurement of water usage rather than the current essentially unmonitored “honor system.” If they don’t now, well construction standards might include the requirement for a water level monitoring port on all wells so that in the future if it were determined that GW levels and quality at that location needed to be monitored, they easily could. The purview of the WRD might be expanded to include mandates regarding dispersal technology.

Reading Rick Bastasch's Waters of Oregon (c.1998), raised in my mind some other areas of water law that might be considered for change, if not already done:

- A “beneficial use” is one of the tenets of water law to determine if a water right is necessary. If a quarry just wants to pump groundwater out, there is no beneficial use, therefore no water right is required. This in spite of the fact that removing water from the quarry may lower levels in nearby streams and wells. Water law should encompass all man-made movement of water, whether a “beneficial use” is involved or not.
- More specifically define in Oregon's water law exactly what the “public interest/public welfare/public benefit” is so that it can have a more definitive role in making decisions.
- There is a public trust doctrine in Oregon law, but no court has apparently defined its relationship to Oregon water rights.

“Issue 9”: Conservation. I found the word “conservation” mentioned only three times in the Issues Papers. To me this issue should be a very critical component for a successful IWRS and warrants a chapter of its own describing a task force, etc., dedicated to finding and implementing, by law if necessary, ways of conserving in all areas: agriculture, business, domestic, municipal, etc.

“Issue 10”: Funding. Almost all of the issue papers mentioned underfunding or getting funded as a problem for accomplishing their goals, which will be especially difficult in this economy. The key “strategy” of the IWRS should be how to obtain adequate funding from the legislature for these ultra critical tasks, thus its own status as an Issue! Given “Building on a Foundation of Data,” the following come especially to my mind for being fully funded: 1) a statewide, on-going groundwater quality and quantity monitoring program (not just in the GWMAAs), 2) the Climate Change Research Institute, and 3) hiring more hydrogeologists to do more hydrogeology research, especially GW. Funding for enforcement and compliance monitoring will be important.

It is relatively easy to provide comments and ideas and I thank you for the opportunity to share them. Real kudos go to the Project Team and the Advisory Groups who have the tough job of putting it all together so that it will work! I will be following the progress of the IWRS with great interest and enthusiasm. Keep up the excellent work!

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* My comments may be made public, however, my contact information is for your use only. Thank you.