



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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## MEMORANDUM

TO: Water Resources Commission

FROM: Barry Norris, Administrator

SUBJECT: Water Resources Commission Meeting  
Agenda Item F, October 22, 2004

### **Informational Report on Exempt Ground Water Use**

#### **I. Issue Statement**

At the Water Resources Commission's meeting in May 2004, Commissioner Smith asked that a future agenda item provide time for Commission discussion of exempt ground water use. This report provides a brief review of exempt ground water uses and the Department's past and current efforts to address their impact on ground water supplies

#### **II. Background**

Oregon Revised Statutes provide for a number of exemptions from the requirement to obtain a permit for surface water and ground water uses. Attached is a chapter from the Department's Enforcement Manual that provides field staff with information about exempt uses. Although exempt from the requirement to obtain a permit, these uses are subject to regulation and use without waste in a manner similar to other water rights.

Rural housing development is subject to local government jurisdiction. A large percentage of new rural development is proposed with the intention of using individual exempt ground water wells as the water supply. Although statewide planning goals indicate a need for local government to consider water availability as part of their approval process, there is often a lack of ground water expertise and ground water data at the local government level. The default for local government has generally been that, if the Department does not formally restrict ground water development, ground water is assumed to be available. This default is often facilitated by a notion that development provides essential economic expansion to the local economy, and exempt ground water use is the only practical supply alternative available at a reasonable cost.

With the realization the majority of the surface water in Oregon is fully appropriated, there has been a marked increase in use of ground water. Consequently, Department staff are seeing

growing ground water problems in many areas of the state. These problems relate to both declining water levels and surface water to ground water interference. Where staff have sufficient data, administrative remedies have been implemented. These remedies include establishment of critical ground water areas, ground water limited areas, and ground water withdrawals. Additionally, staff use regulation according to priority date as another administrative remedy. This approach can be very difficult where exempt uses are in question because of the quantity of water involved for individual exempt uses, the timeliness of the relief that might be realized, and the lack of sufficient data needed to implement a solution. In this respect, the authority provided under a Serious Water Management Problem Area (SWMPA) might be a means to get the data needed for better management of ground water in problem areas. A SWMPA allows the Commission to designate areas of concern and require measurement and reporting within those areas.

The nature of exempt use ground water problems varies with geology statewide. Generally, exempt use wells are typically shallow as compared to irrigation wells and have a much lower production level. Even in aquifers that are not over-appropriated, water levels can be drawn below the pumping levels of the shallower wells by larger production wells. This would not constitute injury since these water users can deepen their existing wells to appropriate the water to which they are entitled. Some exempt users find it difficult to understand why they should have to lower their pumps to access water they are accustomed to receiving. In cases where the aquifer is fully appropriated, new exempt uses result in shortages to all the ground water users, including the new ones. At this point the situation becomes difficult to correct.

In areas of the state where the Department has implemented Critical Ground Water Areas and Ground Water Limited Areas, exempt uses have rarely been restricted. Of the seven Critical Ground Water Areas, Cooper Mountain-Bull Mountain Critical Area is the only one that restricts exempt use by requiring a ten-acre minimum lot size. Of the fourteen Ground Water Limited Areas, none restrict exempt use. There are currently two ground water withdrawals in the state and one of these, Victor Point, precludes the use of new exempt uses. Staff are finding that there are areas within the designated boundaries of these administrative areas where ground water levels continue to decline, exempt use continues to expand, and problems for ground water users continue to grow. Often, these problems extend beyond the limits of the designated administrative boundaries to development that is occurring nearby. It is apparent that a statewide evaluation of the existing Ground Water Critical Areas and Ground Water Limited Areas is needed, including a look at the need to expand boundaries and the need to include restrictions of exempt use. Likely, on continued study of ground water conditions, there will be new candidates for critical areas and limited areas or expansion of boundaries of existing administrative areas. As always, the difficulty lies in having sufficient staff resources to collect sufficient data and conduct studies that quantify ground water supply problems.

Over the years staff have worked closely with local government in an effort to leverage our ground water management efforts, and provide local government with the technical information they need in managing land use. Staff support continues in the form of providing technical assistance to local planning departments. Our local watermaster offices monitor local planning decisions and their potential affect on ground water. When issues arise, our ground water staff are notified and contact local planners to offer technical assistance and/or comment on the proposed development.

Examples of this effort include our work with Marion County, Jackson County, Polk County, Umatilla County, and others. In more recent years, in Marion County ground water staff worked with county staff to develop a review process that provides some assurance that ground water is available for new development. In Polk County ground water staff provided technical assistance to county planners in their deliberations over proposed development. In Umatilla County ground water staff and field staff work with county planners as new subdivisions are considered in locations such as Critical Ground Water Areas where the lack of ground water availability poses a problem to existing and new users. The primary issue of this nature in Umatilla County has been proposed rural development in Critical Ground Water Areas. Although exempt use continues to be allowed in the critical areas, ground water staff have continued to caution local government about allowing development that continues to deplete ground water supplies at the expense of permitted users. This issue was highlighted this year when the County, as part of its comprehensive land use plan review, proposed a restrictive overlay zone in the critical areas that required new development to find an alternative to ground water. There was considerable controversy over this proposal and a ground water task force is now meeting regularly to discuss ground water issues. Department ground water and field staff are providing technical assistance to the task force.

Several years ago the Department formulated a model county ordinance that was intended to provide local government with a pro-active approach to ground water management. Jackson County re-crafted the model ordinance and adopted it to fit their needs. However, a majority of the ordinance was later invalidated by the court because the provisions of the ordinance were preempted by ORS 537.769 which prohibits local regulation of well constructors, well inspection, and well construction.

The Department has also hosted workshops in Salem and in Pendleton. Reports were prepared for each that discussed ground water conditions and the problems associated with expanding ground water use. The workshops were well attended, and the participants provided positive feedback.

The Department has also been working with the Department of Land Conservation and Development (DLCD) in an effort to jointly fund a position to work with local

government on ground water issues. Staff at DLCD are looking at the possibility of funding the position in 2007.

Over the years the Commission has discussed the possibility of new legislation that would restrict exempt uses. Discussions have typically resulted from agenda items that included issues related to ground water use, not necessarily exempt use. Requiring permits for new exempt uses and/or decreasing the amount of water that could be used under the provisions of exempt ground water uses are topics that have been discussed, although not actively pursued.

As the discussion of exempt use continues, the Commission may want to consider various legislative alternatives such as those mentioned above. Additionally, the Commission might ask that staff continue working with local government on ground water issues as they relate to land use decisions, especially pursuing funding for a joint position being considered by DLCD and the Department. Another alternative is for the Commission to ask that staff consider the impact of expanded exempt use as existing and future ground water administrative boundaries are reviewed or designated.

### **III. Summary**

The expansion of exempt ground water uses for residential development can lead to problems for existing ground water users. These uses can occur without any prior approval or water availability assessment by the Department. Staff are working to provide technical assistance to local government who make land use decisions that impact or lead to expanded exempt ground water use. The Commission has expressed interest in further discussing this issue.

### **IV. Recommendation**

No action is required; this is an informational report only.

Attachment:

Enforcement Manual Chapter 3.1 "Water Uses For Which Permits Are Not Required"

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