

May 22, 2008

Ruben Ochoa
Water Resources Department
725 Summer Street NE, Suite "A"
Salem, OR 97301

Re: Comments, Division 600 Draft Rules, Water Conservation, Reuse and Storage Grant Program

Dear Mr. Ochoa,

WaterWatch appreciates the opportunity to comment on the draft rules for the Water Conservation, Reuse and Storage Grant Program. WaterWatch was very involved in bill negotiations on SB 1069, and served on the Rules Advisory Committee for these rules.

Before commenting on the specifics of the rules, we do want to note that because of this is a new program for the WRD and thus these rules are somewhat "experimental", and also because of the tight timeline of this rulemaking, we think that these rules should be limited in duration. We recommend that either the draft rules sunset on a date certain (i.e. 1-2 years into the future) or that the rules direct the WRD to re-open the rulemaking at some time in the near future (i.e. 1-2 years). Without certainty that these rules will in fact be evaluated and updated after the program's initial test run, we are uncomfortable with what we view as some serious gaps in the rules (i.e. evaluation criteria).

Comments:

OAR 690-600-0020, Application requirements: suggested language is underlined.

(2) Applications for funding may not exceed \$500,000 per project.

(4) We suggest the following section be added to ensure that that WRD has the information in front of it to know whether the statutory "trigger" has been prompted, which would require the planning studies to include specific statutory components. This was discussed at the RAC and there was general agreement that this trigger language be included in the rules.

- Identification of the project as either a water conservation, reuse or storage project.
- If a storage project, to the applicant's knowledge, will the project:
 - A) divert greater than 500 acre feet of surface water annually,
 - B) impound surface water on a perennial stream, or
 - C) divert water from a stream that supports sensitive, threatened, or endangered species

(4) In addition to the “trigger” language mentioned above, to streamline agency and public review, we suggest that all applications require the following information:

- If a storage project, the name of the affected stream
- If a storage project, the location of the proposed project
- If an above ground storage project, an indication of whether the project will be off-channel or on channel
- For all projects, whether the project will likely result in an instream benefit for the source stream.

(4)(c): This section refers to “information” required by the Department regarding water conservation, reuse or storage projects. This “information” should be spelled out in the rules.

(4)(h): This section refers to “information” requested by the Department that is necessary to evaluate the application funding based on evaluation criteria developed by the Department. This “information” should be spelled out clearly. Please see the discussion of the reference “evaluation criteria” in the application process section below (OAR 690-600-0030).

OAR 690-600-0030, Application process:

(2) Interdisciplinary Team: To ensure that funding decisions are as least biased as possible, the interdisciplinary team should be limited to state and federal agency representatives. We do not think it appropriate for industry representatives (including consultants) to be part of the state review of applications.

(XXX) Evaluation Criteria: While sections (3) and (4) of the application processing section reiterate two priorities set forth in statute, this section fails to take the necessary steps to both direct the WRD to rank projects based upon evaluation criteria (beyond the two points laid out in statute) and to lay out the actual evaluation criteria that the WRD will use to rank projects.

WaterWatch feels very strongly that both the direction and the actual evaluation criteria needs to be included in the rule. During bill negotiations the WRD represented to WaterWatch that through the rulemaking process there would be an opportunity to “rank” projects. In fact, earlier versions of HB 3203/SB 1069 included a direct mandate to establish priorities for funding via rule (unfortunately, last minute “streamlining” by legislative counsel deleted agreed upon language).

Because of the tight timeline for this rulemaking, the RAC did not have time to discuss evaluation criteria before the draft rules were submitted to the Secretary of State. The RAC did convene after the draft rules were released in public notice, and have begun preliminary discussions on ranking criteria but the work is far from over.¹ It was our understanding that the draft rules would provide a “placeholder” of sorts, so that there would be an avenue for inserting ranking criteria once it was developed. The draft rules do not contain such a placeholder. Thus, we suggest that the rules be amended to allow for a re-opener to insert the ranking criteria once developed and vetted through public comment, or in the alternative, that the rules as a whole be put on hold until the evaluation criteria is developed.

In addition to the inclusion of actual ranking criteria, this application processing subsection needs to include language that states:

- Applications will be reviewed based on administrative completeness and evaluation criteria as set forth in section XXX.
- The Department will rank applications based upon evaluation criteria set forth in section XXXX.

¹ For instance, the WRD’s testimony on SB 1069 makes it quite clear that what the state was contemplating in supporting SB 1069 was that the funding be used for “smart” projects. In addition to ensuring that any project is both fiscally and environmentally sound, the state needs to have in place ranking criteria to prioritize those projects that rise to the top of the list (i.e. multipurpose use, instream benefits, regional efforts, etc.).

OAR 690-600-XXX, Reporting Requirements: SB 1069 specifically directs the WRC to adopt rules that establish rules to establish reporting requirements for grants. The rules do not contain any such requirements. A section needs to be added addressing this.

OAR 690-600-0060, Public Notice and Comment:

Studies funded by this program should be made available to the public through WRD. This section should be amended to provide for this.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Priestley', written in a cursive style.

Kimberley Priestley

Enclosure



Oregon

Theodore R. Kulongoski, Governor

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Before the
Senate Environment and Natural Resources
TESTIMONY ON SB 1069

Presented by Phil Ward, Director
Oregon Water Resources Department
February 6, 2008

Introduction

Thank you for the opportunity to present testimony in support of SB 1069. SB 1069 establishes and provides funding for a statewide Water Conservation, Reuse, and Storage Investment Fund and two feasibility studies in the Umatilla Basin. As a whole, the bill provides a tool for promoting smart water use statewide while also addressing critical water needs in one of the State's top food producing areas.

What the Bill Would Do

Smart Water Projects for Oregon

Oregon is facing increasing water demand and increasingly scarce water supplies. To adequately meet Oregon's diverse water demands now and into the future we must use our water wisely and efficiently. That means instituting innovative conservation and reuse programs and planning smart, environmentally sound storage projects that capture available water so it can be put to good use when needed. Across the state, there are numerous potential water supply projects that are not pursued because a lack of funds necessary to cover the up-front costs presents an insurmountable barrier. "Up-front costs" include hundreds of thousands of dollars to conduct the numerous feasibility studies and environmental analyses required before a project can even begin. Such funding is crucial, but scarce.

The Water Conservation, Reuse, and Storage Investment Fund presents a solution to remove the financial barriers to smart water use. The bill sets up a grant program that would provide a source of matching grants to cover part of the cost of up-front research and analysis for water conservation, reuse or storage projects. This up-front research is a good place for public investment, because it can ensure that each resulting water supply project is fiscally and environmentally sound. Public entities, private entities, and tribes would all be eligible for the funds.

The Water Resources Department (WRD) would administer the grant program, using funds deposited in the Smart Water Conservation, Reuse, and Storage Fund created by this bill. Grants would not exceed \$500,000 per applicant and would be matched at least dollar-for-dollar. Grant proposals for large water storage sites would be required to complete a higher level of comprehensive analysis of the project, including analysis of optimum ecological flows, environmental impacts, water conservation alternatives, and the need and feasibility of providing instream flows. This bill complements WRD's Oregon Water Supply and Conservation Initiative (OWSCI), which the Legislature funded in 2007. The Smart Water Conservation, Reuse and Storage Fund will make some of the important projects identified by the OWSCI possible. The legislation also gives priority ranking to those projects identified in the OWSCI.

Address Critical Water Needs in the Umatilla Basin

While there are water supply issues throughout Oregon, none are more severe than in parts of Umatilla and Morrow Counties. We've seen significant ground water declines throughout these counties (over 300 feet in some wells). WRD has identified more than 600 square miles of Critical Groundwater Areas (CGAs) in the Umatilla Basin where current demand for water exceeds natural availability. Because of continued declines, only 30 percent of water permitted for use was allocated for use in 2007. Further reductions in groundwater allocations are likely to occur until groundwater levels stabilize within these CGAs. Alternative water supplies are not readily available to meet this need. Surface water sources in the Umatilla Basin are either fully allocated or not available due to listed fish species needs during summer months.

Withdrawing surface water from the Columbia and Umatilla Rivers during times that avoid impacts to listed fish species and delivering that water for storage in groundwater aquifers is key to addressing the long-term water supply needs in the Umatilla Basin. The Umatilla Basin Regional Aquifer Recovery Assessment would investigate the engineering and hydrogeologic feasibility of such an approach and could be completed with an allocation of \$750,000. This analysis would be targeted at finding solutions on a regional basis while maintaining existing protections for fish and other resources. The scope of work for this project and any diversions resulting from the study would be subject to existing rules and statutes, including our "Division 33" rules related to the timing of water withdrawals from the Columbia River and its tributaries and our water availability determination.

To compliment the regional aquifer recharge approach and quickly respond to some of the urgent water needs in the Umatilla Basin, the bill also provides \$500,000 to launch a mitigation program. Many water users are interested in developing Columbia River water as an alternative source. However, under current rules, new uses of Columbia River water are prohibited between April 15 and September 30, unless the recipient mitigates the use of that water under a "bucket-for-bucket" arrangement. Individual farmers and cities have a difficult time finding mitigation water on their own and need a clearinghouse or "mitigation bank" to help facilitate these transactions and meet their mitigation requirement on new uses. This funding would establish such a bank in the Umatilla Basin to move available water to irrigators and municipalities in the Umatilla Basin.

Summary

Water is critical to Oregon's agriculture, industries, cities, and fish and wildlife. SB 1069 provides a foundation and tool for addressing statewide water needs. It will also foster significant improvements to water supply in the Umatilla Basin. WRD is pleased to support this bill.

Supplying Water for Oregon's Future: Smart Water Conservation, Reuse & Storage Fund

The "Smart Water Conservation, Reuse and Storage Fund" bill was considered in the 2007 Legislative Session as HB 3203 and is anticipated in the 2008 legislative session. This bill represents collaborative work among a wide variety of stakeholders and is supported by the Water Resources Department (WRD) and the Governor's Office. The Sand Hollow Project, described on the reverse of this page, is an important component of this legislation and would be the first project identified for funding upon passage.

The Problem: *Uncertain Water Supplies & Few Resources to Plan for Smart Water Use*

- ◆ Oregon is facing increasing water demand and increasingly scarce water supplies.
- ◆ To adequately meet Oregon's diverse water demands now and into the future we must use our water wisely and efficiently. That means instituting innovative conservation and reuse programs and planning smart, environmentally sound storage projects that capture available water so it can be put to good use when needed.
- ◆ Across the state, there are numerous potential water supply projects that are not pursued because a lack of funds necessary to cover the up-front costs presents an insurmountable barrier. "Up-front costs" include hundreds of thousands of dollars to conduct the numerous feasibility studies and environmental analyses required before a project can even begin.
- ◆ Such funding is crucial, but scarce.

The Solution: *Creation of the Smart Water Conservation, Reuse and Storage Fund*

- ◆ The "Smart Water Conservation, Reuse and Storage Fund" bill presents a solution to remove the financial barriers to smart water use. The Legislation sets up a grant program that would provide a source of matching grants to cover part of the cost of up-front research and analysis for water conservation, reuse or storage projects. This up-front research is a good place for public investment, because it can ensure that each resulting water supply project is fiscally and environmentally sound. Public entities, private entities, and tribes would all be eligible for the funds.
- ◆ The WRD would administer the grant program, using funds deposited in the Smart Water Conservation, Reuse, and Storage Fund created by this bill.
- ◆ Grants would not exceed \$500,000 per applicant and would be matched at least dollar-for-dollar.
- ◆ Grant proposals for large water storage sites would be required to complete a higher level of comprehensive analysis of the project, including analysis of optimum ecological flows, environmental impacts, water conservation alternatives, and the need and feasibility of instream flows.
- ◆ This bill complements WRD's Oregon Water Supply and Conservation Initiative (OWSCI), which the Legislature funded in 2007. The Smart Water Conservation, Reuse and Storage Fund will make some of the important projects identified by the OWSCI possible. The legislation also gives priority ranking to those projects identified in the OWSCI.

Water is critical to Oregon's agriculture, industries, cities, fish and wildlife. Our neighboring states have recognized the need to invest in future water supply. Washington has committed \$200 million to studying water supply issues in the Columbia River Basin. California's Assembly called a special session in 2007 to allocate billions of dollars toward water supply investments.

The Smart Water Conservation, Reuse and Storage Fund will provide an opportunity for Oregon to address this critical need and invest in future water supply solutions.