



Oregon

John A. Kitzhaber, MD, 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

MEMORANDUM

TO: The Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator
Alyssa Mucken, IWRS Policy Coordinator

SUBJECT: Agenda Item H, February 8, 2013
Water Resources Commission Informational Item

Integrated Water Resources Strategy Implementation

I. Introduction

With the August 2012 adoption of Oregon's Integrated Water Resources Strategy (IWRS), the Project Team has continued with implementation, following the Draft 2012-17 IWRS Workplan.

This staff report provides progress updates for several Recommended Actions in the IWRS, where workgroups have been especially active or new partnerships have formed:

- Mapping Water-Related Institutions in Oregon: Action 1.C
- Re-Launching the Willamette Basin Reservoir Study: Actions 2.A, 5.B, 9.A, and 10.B
- Undertaking Place-Based Planning: Action 9.A
- Authorizing/Funding a Water Supply Development Program: Action 10.E
- Developing Additional Instream Protections: Actions 3.A. and 11.B
- Fund Water Resources Management at the State Level: Action 13.B

II. Mapping Water-Related Institutions in Oregon: Recommended Action 1.C

The Department has had the good fortune to work with two talented interns from Oregon State University during the past several months, Racquel Rancier and Lauren Dennis, who have begun to "map" the water-related institutions in Oregon. The goal of this project is first to document the role that various public and private sectors play in the management of water resources in Oregon (both in water quantity and quality). The second goal is to identify where there are opportunities to improve collaboration and efficiencies in the water arena.

Phase One of the project includes analysis of state and federal websites, organizing water resource programs into the categories set forth in the Integrated Water Resources Strategy. State and federal partners have been asked to review, verify, and correct this information on-line; these efforts will extend through Spring 2013. With this information as a foundation, additional

partners and stakeholders—both public and private—will be invited to add information about the role that they play in managing Oregon’s water as well.

Phase Two of the project involves identification of those areas where entities do or could work together. This is an opportunity to document successes already underway, as well as areas needing improved collaboration and efficiencies. Phase Two will extend into early 2014. With much of this work completed on-line, staff will then have an analysis to share with the public, as well as with partners and stakeholders.

III. Re-Launching the Willamette Basin Reservoir Study: Actions 2A, 5B, 9A, and 10B

The next four recommended actions are bundled together into work the Department is conducting in the Willamette River Basin. These Recommended Actions are: 2.A (Update Long-Term Water Demand Forecasts), 5.B (Assist with Climate Change Adaptation), 9.A (Undertake Place-Based Planning), and 10.B (Improve Access to Built Storage).

2013 marks the re-launch of the Willamette Basin Reservoir Study with the U.S. Army Corps of Engineers. First begun in 1996, the study was designed to analyze a full range of beneficial uses in the Willamette Basin and identify ways to allocate existing stored water in the 13 reservoirs operated by the Corps. The study was put on hold in 2000 to allow for a federal consultation process related to listed fish species under the Endangered Species Act. Despite funding limitations, the Department and the Corps are currently working with stakeholders to re-launch Willamette Basin Reservoir Study.

In January 2013, the Water Resources Department and Willamette Basin stakeholders requested assistance from the Bureau of Reclamation’s WaterSMART Program to help develop water demand projections for both instream and out-of-stream needs in the Willamette Basin. If such a project successfully moves forward, the resulting information will provide much needed input into the Corps’ Willamette Basin Reservoir Study. Demand projections should take into account potential water needs that may arise from changing climate, land-use, and population.

Staff from the Department and U.S. Army Corps of Engineers will provide more details about the Willamette Basin Reservoir Study during Agenda Item I. Staff will continue to provide updates to the Commission as information becomes available.

IV. The Intersection between Water Resources Department’s “Basin Plans” and Place-Based Planning: Action 9.A

Many western states have made water planning at the regional level an integral and essential component of their state water plans. In Oregon, basin reports and plans developed on a river basin-by-river basin basis have served as the state’s answer to regional water planning. Since the late 1950s, the Oregon Water Resources Commission and its predecessor entities have been developing river basin water plans and adopting them via administrative rule. These administrative rules, collectively referred to in statute and in rule as “basin programs,” reside in OAR Chapter 690, Divisions 501 – 520.

During the November 2012 Water Resources Commission meeting, commissioners asked staff to prepare a briefing on the Department's basin programs, and describe how they might inform and interact with the notion of "place-based planning," a theme that emerged from the Integrated Water Resources Strategy. See Attachment 1 for this briefing paper.

V. Authorizing/Funding a Water Supply Development Program: Action 10.E

One of the gaps identified in the IWRS was the lack of a formal water supply development program for the state of Oregon. Other western states, particularly neighboring California and Washington, have long had authorities in place, allowing the state to take an active role in the development of water supply to benefit both instream and out-of-stream uses. There are potential opportunities to purchase and re-sell stored water, as well as to invest in and develop new water resource projects. These opportunities are already apparent in the Columbia, Umatilla, Willamette, Rogue, Deschutes, and other Basins.

The establishment of a statewide water supply development program would improve the state's ability to develop new water supplies for all uses throughout Oregon. These water supplies could come from new multi-purpose storage projects (above and below ground), improved or expanded access to storage, water efficiency and water conservation, water re-use, water right transfers, or other actions that make more efficient use of partnerships, technology, data, and funding resources.

In House Bill 2258, the Department proposes statutory authorizations that would allow the state to serve as an investor, broker, banker, and funder of water supply projects, benefitting both instream and out-of-stream needs. The Governor's Balanced Budget (WRD Package #204) proposes \$10 million in bonds to finance such investment, brokering, banking, and funding activities. A Water Policy Workgroup comprised of diverse stakeholder interests is crafting statutory language that would guide expenditure of such funds.

The agency team responsible for water supply development would be convened by the Governor's Natural Resources Policy Advisor with staffing from the Water Resources Department, in partnership with the Department of Agriculture, the Department of Fish and Wildlife, and the Infrastructure Finance Authority. Each agency will bring expertise to the table, including engineering, scientific, permitting, and water law expertise from the Water Resources Department; agricultural demand forecasting from the Department of Agriculture; biological needs assessments from the Department of Fish and Wildlife; and infrastructure financing from the Infrastructure Finance Authority.

This team would have responsibility not only for determining and meeting Oregon's current water needs, but also to anticipate and adapt to water needs brought about by changes in climate, land-use, population, and other circumstances. Recommendations from the Columbia River-Umatilla Solutions Taskforce would serve as early action items for this program.

Such a program would necessarily work in tandem with state, local, tribal, federal and private partners to determine needs, feasibility, funding, and implementation of water supply development projects. A stakeholder advisory group would also convene under the auspices of the Governor's Natural Resources Policy Advisor.

VI. Developing Additional Instream Protections: Actions 3.A and 11.B

In the Integrated Water Resources Strategy, Recommended Action 3A calls upon the state to determine flows needed to support instream needs. Recommended Action 11B calls upon the state to develop additional instream protections, including establishing additional instream water rights and designating scenic waterways where needed to protect flows.

The Oregon Department of Fish and Wildlife (ODFW) has identified more than 300 streams where fish habitat studies need to be completed so that applications can be made for instream water rights. In addition, there are about 100 stream reaches where ODFW feels it could apply for instream water rights using flow data from already existing reports. Finally, there is a backlog of 67 instream water right applications that have been protested and need to be resolved.

The Oregon Water Resources Department (WRD) has requested two new staff, one hydrologist to determine water availability, and one permit writer to process protested and new IWRS applications. Likewise, ODFW has requested staff biologists to design and complete instream flow studies for those streams where it has been determined that instream water rights are needed to provide for base habitat flows for fish. ODFW predicts that it could develop and submit about 30 instream water right applications per year, with adequate funding.

VII. Funding Water Resources Management at the State Level: Action 13.B

At the direction of the Water Resources Commission and the Governor's Office, staff has continued efforts to design a fee mechanism that would help to stabilize the Department's funding source. In particular, the Department has a need to adequately fund its field services (the watermaster corps) and its technical services (scientific and information technology efforts).

The Department has developed Senate Bill 217, which would establish an annual water right management fee, applicable to all water right holders, at \$100 per water right. The bill includes a cap of \$1,000 for all but municipal customers. At the request of stakeholders however, the Department is preparing a set of amendments that would extend the cap to municipal water users as well. There are approximately 85,000 water rights in Oregon today. Assuming water right holders would cancel a number of these rights, rather than pay a fee, and that significant implementation costs may arise during the first biennium, the Water Resources Department has estimated net revenues of \$12 million, beginning in the second biennium after the program is established.

This bill comports with the State's Integrated Water Resources Strategy Recommended Action 13B: "Fund Water Resources Management Activities at the State Level." The concept relates to

WRC Agenda Item H

February 8, 2013

Page 5

WRD budget package #108, which would authorize the receipt and expenditure of a water right management fee.

The Department has convened a workgroup of water users and conservation groups to help think through the most equitable design possible, as well as important logistical considerations. The workgroup is comprised of representatives from the Association of Oregon Counties, League of Oregon Cities, League of Women Voters of Oregon, Oregon Association of Nurseries, Oregon Cattlemen's Association, Oregon Environmental Council, Oregon Farm Bureau, Oregon Water Resources Congress, Oregon Water Utilities Council, Special Districts Association of Oregon, The Freshwater Trust, The Nature Conservancy, Water for Life, and WaterWatch of Oregon.

Attachment 1: "The Intersection between WRD's Basin Plans and Place-Based Planning"

Brenda Bateman

503-986-0879

Attachment 1: The Intersection between WRD's Basin Plans and Place-Based Planning

Brenda Bateman and Ruben Ochoa

The statutory foundation for development of “basin programs” was established with the passage of House Bill 25 by the Oregon Legislature in 1955. In HB 25 (Chapter 707, Oregon Laws 1955), the Legislature created a new state agency, the State Water Resources Board (Board), vested with broad authority to establish state water policy and to carry out a statewide coordinated and integrated plan of water resource management. HB 25 provided various declarations of policy to guide the Board's efforts, including:

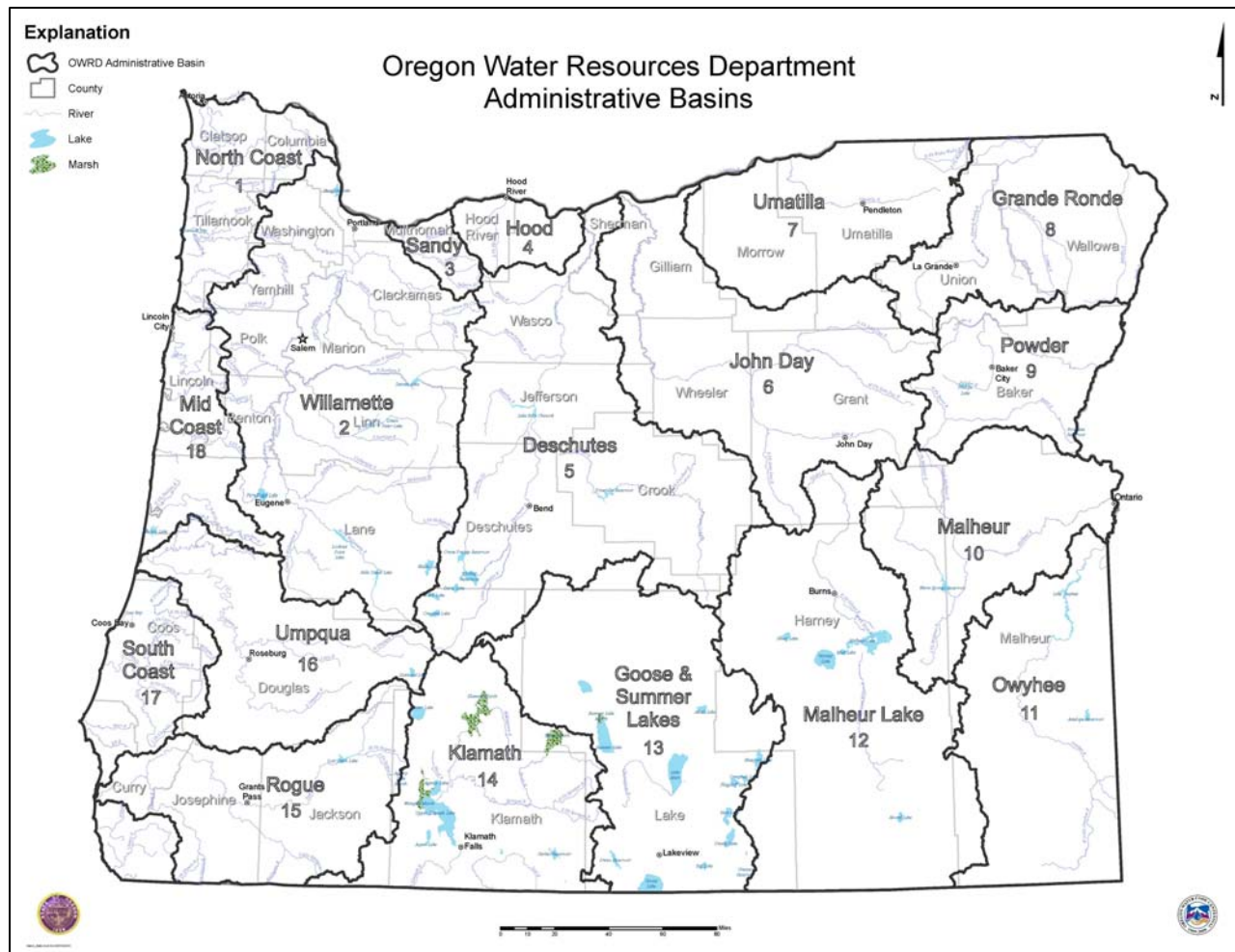
- Protection and preservation of existing rights, established duties, and relative priorities,
- Preference for watershed development policies that preserve balanced multiple uses,
- Maintenance of minimum perennial streamflows sufficient to support aquatic life and to minimize pollution, and
- Promotion and encouragement of local development of watershed conservation.

HB 25 authorized the Board to classify and re-classify any waters of the state for future allowable beneficial uses, to prescribe preferences for particular future uses over other uses and to withdraw streams from further appropriation when “necessary in the public interest to conserve the water resources of (the) state.” In addition, certain actions by any “state agency or public corporation which would tend to derogate from or interfere with the state water resources policy” as adopted by the Board were declared unlawful under HB 25.

Importantly, the Legislature directed the Board to promptly study the water resources of the state and based upon these studies and state agency input to “progressively formulate an integrated, coordinated program for the use and control of all water resources of this state and issue statements thereof.” Many of the policies, directives and authorizations provided for in HB 25 can be found essentially intact as originally codified in 1955 in ORS 536.220, 536.300, and 536.310.

Implementation

In carrying out its duties, the Board decided to take a basin-by-basin approach, a choice driven in large part by the wide diversity of water resources, water uses, current water supply demands, and future water supply needs among the state's major river basins. The Board explicitly recognized in its First Biennial Report to the Oregon Legislature that “no plan or program...can succeed without the full support of those directly involved” and represented that it would base programs “to a considerable extent on local desires.” The record indicates that the administrative basins chosen by the Board represented an attempt to align the physical contours of the major river or drainage basins of the state with the boundaries of watermaster districts as they existed at that time. (See map of the Commission's administrative basins).



The state adopted its first basin program in 1959 (Umpqua River Basin). By 1970, basin programs had been adopted for 15 of the state's 18 administrative basins and for the Middle Snake River. Basin programs have been adopted for all of the Commission's 18 administrative basins except for the Klamath River Basin. The general approach taken by the Board to formulate basin programs during this period included the following three steps:

1) Conduct Studies

The specific subject matter of the studies to be conducted was identified in HB 25 to include: existing water resources and the means and methods of conserving and augmenting these water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish, and for pollution abatement (all declared to be beneficial uses), and all other related subjects, including drainage and reclamation. The Board established a planning department to conduct the studies and to staff the basin planning process.

2) Develop a Basin Report (Plan)

After concluding the necessary studies, the Board published a basin report which included analysis of the basin studies, consideration of data, research and other input from various federal, state and local agencies and a summary of testimony received from the public at hearings held within the basin. The reports described the basin's physical features and the various factors (such as population, transportation, land use and ownership, agriculture, forestry, mining, commercial fishing, manufacturing and recreation) that contributed to the basin's economy. The reports contained findings and conclusions regarding the quantity and quality of surface water and groundwater supplies; water use and control, including drainage and erosion; and an examination of the potential for water resources development in the basin.

3) Adopt Basin Programs

The general approach taken by the Board in the basin programs was to apportion or classify each basin's water for certain "designated uses," based upon present water supply uses and constraints and future water supply needs. These designated uses included domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish, and pollution abatement. The basin programs were adopted via rulemaking, and as such, were developed subject to review and comment by the public prior to adoption.

During the 1970s, the Water Resources Board, and its successor, the Water Policy Review Board, began comprehensive revisions of the basin programs. These efforts fell victim to sustained reductions in federal and state funding support and by the early 1980s work was proceeding on only one basin program. Significant reductions in federal and state funding support persisted and the pool of funds to conduct full-fledged basin program updates completely dried up by the early 1990s.

Nonetheless, the basin programs, and the broader state water management program of which they are a part, continued to be among the priority issues periodically reviewed by Oregon's Legislature and the Water Resources Commission (Commission). Three review efforts of note include those conducted by: 1) the Strategic Water Management Group, created in 1983 via the passage of Senate Bill 523; 2) the Water Resources Commission in 1993-94 with the intent of improving its existing basin planning program; and 3) the Joint Task Force on Water Supply and Conservation, established in 1999 via the passage of Senate Bill 93.

Strategic Water Management Group

Senate Bill 523, enacted into law in 1983 (Chapter 829, Oregon Laws 1983), created the Strategic Water Management Group (Group), comprised of the Governor (chair) and the directors of nine state agencies, including the Oregon Departments of Water Resources, Energy, Agriculture, Environmental Quality, Land Conservation and Development, State Lands, Fish and Wildlife, Forestry, and Geology. The Group was created to develop a multi-agency water management plan for one of Oregon's river basins (John Day Basin) which would coordinate surface and groundwater planning and integrate water quantity, quality, land use, and fisheries

planning. In addition, the legislation provided for increased public involvement and the testing of an improved data management system. Although this effort did result in the adoption of an updated John Day Basin Program, it was criticized for being overly expensive and as failing to produce an interagency agreement on water resource management.

Oregon Water Resources Commission

Persistent criticism of the basin planning process prompted the Commission in 1993 to direct the Water Resources Department (Department) to conduct a general evaluation of basin planning and recommend how the process for developing basin programs could be strengthened. A common criticism was that the basin programs lacked flexibility and that their catalogue of allowed and disallowed uses made no allowance for unexpected new uses of water that may be widely favored by policy makers and the public. In order to accommodate an unforeseen use, the basin program needed to be amended through the cumbersome process of an administrative rule revision.

To better identify and help address this and other types of concerns, the Department held a series of meetings and workshops to solicit public input. These included sessions attended by county planning directors, representatives of state agencies, public interest groups, and the public. The paramount concerns identified during these sessions included:

- Adding flexibility to the basin programs,
- Ensuring close coordination during planning and program revisions,
- Creating a rational connection between water availability and the uses allowed in the program,
- Accommodating local and statewide priorities for water use, and
- Addressing basic water supply problems.

Joint Task Force on Water Supply and Conservation

In 1999, the Oregon's Legislature enacted Senate Bill 93, forming the Joint Task Force on Water Supply and Conservation (Task Force). The measure declared that the availability of an adequate water supply is essential to the health and safety of all Oregonians and emphasized the need to ensure a sufficient supply to meet existing and future beneficial uses of water. The Task Force was charged with developing recommendations in consultation with WRD regarding a process of siting and funding future water supply.

In its report to the 2003 Oregon Legislature, the Task Force stated that “despite past ‘basin planning’ efforts dating back to the mid-1950s, the state does not have a comprehensive plan to ensure it can meet the water needs of streamflow-dependent resources and a growing economy and population.”

The Task Force asked a number of important policy questions regarding a coordinated long-term water supply effort, such as: 1) how local planning and management activities would be

integrated into the overall effort; 2) what the role for local governments, watershed councils and soil and water conservation districts should be; 3) if the appropriate governmental structure is in place to allow such a coordinated effort; and 4) how such a planning and implementation effort would be funded?

Common Conclusions from These Three Groups

A common conclusion reached as a result of all three of the reviews was that basin programs, conceptually and administratively, needed to expand beyond their primary focus of apportioning or “classifying” water to a broader range of water management issues.

Basin plans and programs do not yield or facilitate further actions, such as identification of specific water supply projects and associated funding mechanisms. This was identified as an important shortcoming that warranted further review.

Finally, the requirement to modify basin programs through a formal hearing process and administrative rule change has resulted in criticisms from stakeholders that the basin planning process is “inflexible” and “top heavy,” managed from the “top down,” with less accessibility to the public and to organizations interested in planning and managing water flows for water supply, water quality, and environmental benefits.

Basin Plans and Programs and Their Intersection with Place-Based Integrated Water Resources Planning

Concepts and direction for basin planning and program development are firmly supported by existing statutes. Basin plans have been developed at the major river-basin scale and formulated in consideration of the unique water resources and socio-economic conditions of each basin. Basin program administrative rules were adopted on the basis of basin reports that contained: findings and conclusions regarding water use, the quantity and quality of surface water and groundwater supplies, an examination of the potential for water resources development, a description of the basin’s physical features, water resource limitations, water quality and development issues, and the various factors that contributed to the basin’s economy. The authorizing statutes called for an integrated approach to water resources management, calling out the value of water quality ... protection of streamflows and the ecosystem at the watershed level. Relative to other states’ water planning, Oregon’s basin plans were forward-thinking for their time.

The Department has not had the resources nor the support to re-visit these plans, leaving some of the data and reporting elements in need of an update.

Since adoption of the basin plans, many other plans, rules, and regulations — from WRD and other state and federal agencies -- have also been established. Some examples include Oregon’s efforts under the Endangered Species Act, the Clean Water Act, Safe Drinking Water Act, and Oregon Forest Practices Act. It is necessary to find a way to help communities take into account and to reconcile all of these requirements related to water.

During recent development of the Integrated Water Resources Strategy, communities specifically asked for help: gathering and paying for critical surface water and groundwater data; modeling future water resources scenarios; counting projects toward multiple state and federal requirements; partnering with the state to develop new water resource management techniques, and streamlining regulations for complicated projects.

The current mechanism of a “basin plan” is not nimble enough to address all of these emerging needs. However, the way it organizes information at the basin level, and the content that it lays out for consideration, is precisely the type of approach the state should continue to pursue in its quest for place-based integrated water resources planning.