WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

August 21, 2021

Oregon Water Resources Commission
725 Summer St, NE Suite A
Salem, OR 97301

RE: Public Testimony, Agenda Item F, Drought

Dear Oregon Water Resources Commissioners,

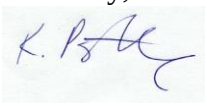
The Oregon Water Resources Department has a dual mission to (1) directly address Oregon's water supply needs and also (2) to restore and protect streamflows and watersheds in order to ensure the long-term sustainability of Oregon's ecosystems, economy and quality of life.

In the face of climate change and increasing incidents of drought, too often instream values are overlooked. We would urge the Commission to direct agency discussions and actions that include protection of these important resources.

While I am unable to provide verbal testimony today because of a scheduling conflict, I did want to forward a document WaterWatch drafted for the 2015 Drought Task Force for your consideration. We would urge Commission attention to the many items on this list, many of which are allowed under existing statute and rule.

Thank you for your consideration of WaterWatch's comments.

Sincerely,



Kimberley Priestley
Sr. Policy Analyst

WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

Memorandum

To: Drought Task Force
From: Kimberley Priestley, WaterWatch of Oregon
Date: August 22, 2016
Re: Drought Ideas for Task Force Consideration

A. DECLARATION OF DROUGHT: The Governor currently has statutory authority under ORS 536.740 to declare a drought absent county application; however it is our understanding that generally drought declarations follow applications by counties under ORS 401.165 (state of emergency). The drought process should be revised so that the Governor declares droughts (1) solely via ORS 536.740 (i.e. without a tie to the county emergency request under ORS 401.165) and (2) utilizing the US Drought Monitor (http://droughtmonitor.unl.edu/AboutUSDM.aspx). Utilizing existing authority in this way would remove local politics from the drought declaration process.

B. ENFORCEMENT AGAINST WASTE: Statute, rule and permit conditions all require that water be used beneficially without waste; however, WRD enforcement against waste is neither widespread nor uniform. No statutory changes are needed; the following can all be achieved under existing authority of the Governor and/or WRD.

- Governor direction to WRD to actively enforce against waste and fund extra water masters to do this: Existing statute, rule and permit conditions require that water use be limited to beneficial use without waste. Direct WRD to enforce against waste, including regulation of wasteful use and imposing civil penalties. Fund seasonal water masters to actively enforce against waste.

- Direct WRD to fully implement OAR 690-410-060: OAR 690-410-060 contains important tools to ensure the elimination of waste including but not limited to: i.e. (1) develop sub basin conservation plans and provide public assistance in areas of known over-appropriation of surface water and groundwater and water quality problems, (2) set basin specific efficiency standards and practices for irrigation/agriculture, (3) update basin plans to require a conservation element.

- Utilize state authority under ORS 536.720 and ORS 536.780: Existing drought statutes allow for Governor and/or WRC to order state agencies or political subdivisions (which includes municipalities and districts) to develop curtailment/conservation plans, including direction to undertake activities to prevent waste. Governor and/or WRC should utilize this authority beyond state agencies (as was done in 2015) to include, at a minimum, municipal/quasi-municipal providers and districts.

C. MEASUREMENT AND REPORTING: Measurement and reporting is critical for proper management of Oregon's water resources, especially in times of drought. Ideas include:

- Governor direction to WRD/WRC to use existing authorities to require measurement and reporting of surface water diversions, groundwater and reservoirs (i.e. including but not limited to ORS 540.310, ORS 540.330, ORS 540.435. ORS 537.665).
- Governor and/or WRC set near term deadlines for full implementation of all three tiers of the WRC's 2000 Strategic Water Use Measurement Plan (tier one---significant diversions in priority basins, tier two—significant diversions statewide, tier three---all diversions).
- Provide additional funds to the Measurement Revolving Fund.

D. MANDATORY CURTAILMENT IN TIMES OF DROUGHT: Upon a declaration of drought, require mandatory curtailment that is tied to a conservation target (i.e. 25%) and/or river flows (i.e. flows hit XX, curtailment measures are triggered). The Governor and the OWRC have the authority to require curtailment/conservation plans for state agencies, municipalities and irrigation districts under ORS 536.720 and ORS 536.780. During the 2015 drought Governor Brown issued an executive order requiring state agencies to achieve a 15% reduction of consumptive use; however she did not extend this to municipal/irrigation interests. CA has required a 25% statewide reduction in municipal water use, see: http://www.waterboards.ca.gov/water_issues/programs/conservation_portal/emergency_regulation.shtml

E. MUNICIPAL WATER MANAGEMENT AND CONSERVATION PLANNING: Ideas that could move forward under existing law:

- Require WMCPs: ORS 536.780 allows the Water Resource Commission, "upon a finding that a severe or continuing drought is likely to occur," to direct individual state agencies and political subdivisions to prepare "a water conservation or curtailment plan or both." Governor could present to the Commission and request that, for any such entity without a WMCP, it require these plans to be produced.

- WMCPs for smaller entities: Governor to direct WRD to produce and make available a scaled down, off-the-shelf WMCP for smaller entities, including those that may not have a WMCP trigger (e.g. home owners associations, mobile home parks, smaller special districts). This would be a plan that would be simpler and easier to implement.

Consider amendments to municipal water management conservation rules (Division 86) and/or drought rules (Division 19) to help rivers/fish in times of drought. Ideas include:

- Municipal Curtailment in Drought: Direct WRD to improve the "Municipal Water Curtailment Element" in the WMCP rules (OAR 690-086-0160) to specify that curtailment stages must include triggers related to river flows and fish needs. As it is now, the WMPC rules are vague and refer to severity of water shortage and water service difficulties, but have no direct tie to river flows or fish (unless a water permit has a condition such that those conditions could limit water use under the permit independently.). This could also be achieved by amending the drought rules to include triggers (OAR 690-019).

- Require meaningful curtailment/conservation actions to be triggered at certain stages of drought: Direct WRD to improve the WMCP requirement to clarify what meaningful conservation/curtailment actions are required at various stages of drought. This could also be achieved by amending the Drought Rules (OAR 690-019).

- Conservation Target: Direct WRD to revise the WMCP rules or the Drought Rules to require attaining a conservation target (like in CA) during drought. Credit would be given to entities that have already achieved low water use rates.

- Full compliance of WMCP a pre-requisite to state funding: Make full compliance with WMCP, including hitting target leak rate (10 or 15%, depending on plan and stage of plan) a perquisite for qualifying for water project funding (e.g. 1069, etc.) unless that funding request is specifically and strictly for reducing leak rate or accomplishing other meaningful conservation.

F. AGRICULTUAL WATER CONSERVATION AND MANAGEMENT PLANS: Improve drought rules and/or WMPC rules so, at a minimum, Districts have to develop a drought curtailment plan that sets curtailment triggers and conservation measures (i.e. WMPC "light").

G. DROUGHT FISHING REGULATIONS: Establish proactive emergency regulation temperature triggers for fishing closures during drought, including protective triggers for thermal refugia. Details developed by ODFW.

H**. LEASING/PURCHASING OF WATER FOR INSTREAM USE:** Provide state funds for the specific purpose of leasing and/or purchasing water for instream use in areas under declared drought. Prioritize funding for streams that support listed fish and/or are of high ecological values. Additional ideas noted by DRC at 8/15/16 meeting (i.e. suspend/cut fees, advance approval of leases, etc).

I. EMERGENCY MINIMUM FLOWS FOR FISH: Similar to California's regulations on this, set emergency minimum flows for fish on streams of significant ecological value. The basic structure of the CA directive is as follows:

a. Voluntary cooperative agreements to maintain emergency minimum flows for listed fish.
b. If voluntary plans do not cover a significant percentage of the water diverted in the basin, then mandatory minimum emergency flows for listed fish.
c. Curtailment of diversions to meet minimum emergency flows. Flows vary by season and include some pulse flows.
d. Curtailment orders suspended if the identified listed fish are not present and/or there is a change in hydrologic conditions.

For further information on how the CA regulations work go to the following link: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/milldeerantelope.shtml#new information

J. FUNDING SCIENCE/DATA: Provide funding for data necessary to build resiliency against drought, i.e. USGS Groundwater Investigations, stream gauges, water use measurement devices, etc.

K. **RIPARIAN PROTECTION:** Improving riparian protection across land use types and ownerships can provide important benefits to rivers and streams during times of drought. One idea proposed by some conservation groups is to require 100 foot no till buffers on each side of perennial streams on all lands designated for Exclusive Farm Use. Healthy, functioning riparian areas (especially on agricultural lands) help resist the consequences of drought by storing water in the subsoil and releasing it gradually over the summer, prolonging instream flows. Water stored naturally underground is not subject to the heating and evaporation that occurs in man-made reservoirs and not only does not create passage problems for fish but may provide thermal refuges from elevated water temperatures. Riparian areas also protect water quality of lowered instream flows, caused by drought, by shading streams that, in turn, reduces water temperatures and increases cold groundwater inputs. Lower stream temperatures can resolve depleted levels of dissolved oxygen caused by low flows and riparian areas also help to filter out polluted agricultural runoff. Riparian vegetation stabilizes stream banks that, in turn, reduces erosion and sedimentation, which leads to shallower and warmer streams. And riparian vegetation adds complexity to streams, which improves fish habitat, increases the likelihood of aquatic life survival in times of drought, and increases hyporheic exchange.