

APPENDIX T

COMMENTS RECEIVED

City of Hermiston's Initial Comments
on
Draft Umatilla Sub-Basin
2050 Water Management Plan, dated 7/22/08

Although there are now many more details provided about the steps envisioned to accomplish the proposed actions in the latest draft of the Umatilla Sub-Basin 2050 Water Management Plan, dated 7/22/08, ("draft Plan"), in large part the City of Hermiston's comments on the previous draft plan dated 1/18/08 remain unaddressed. Therefore by reference and attachment, the City resubmits those comments again with respect to this latest draft Plan in addition to the comments below.

Additionally, we make the general comment that it is improper to rely on any of the statistically insignificant questionnaire results (compiled in the May 2008 Cogan Owen Cogan Review Report) as a basis to justify any recommendations in the draft 2050 Plan, which in this latest draft occurs throughout Section 6.

Section 6 Comments:

6-1 Plan Implementation

1. Establishment of a Sub-Basin Government Authority

- It is inappropriate for the draft Plan to justify pursuing the establishment of a new governmental authority based on the questionnaire results
- The draft Plan catalogues the detailed objections raised in interviews and written comments questioning the necessity to for a new water authority in the basin; yet the draft Plan does not adequately respond to these comments and recommends proceeding with a new governmental authority irrespective of the objections raised in the public review process.
- The draft Plan proposes that a local management entity could be "appointed" by the public. Why not use elections?

2. Base Funding

- It is inappropriate for the draft Plan to justify pursuing a county-wide well head fee based on the questionnaire results.
- The funding scenario is based on the inaccurate suppositions that "this plan benefits all water users [in the sub-basin]" and that all of the aquifers in the basin are interconnected. Neither has been adequately proven with science or economics.

- The City of Hermiston does not agree that it or its residents should financially participate in funding the County's water plan. The City of Hermiston has its own Water Supply Plan to provide water to its customers that is being implemented irrespective of the projects proposed in the draft Plan.
- Proposals for capital investments to benefit ground water irrigators in CGWAs will not benefit surface water users or those ground water users whose aquifers have but minimal if any declines.

6-2 Meeting Current Water Demand/Projects

1. Appropriate new surface water from Columbia River to replace groundwater in CGWAs

No additional comments.

2. Support establishment of CTUIR water rights and development of Phase III of Umatilla Basin Project

- It is inappropriate for the draft Plan to justify pursuing these approaches based on the questionnaire results.
- Although the draft Plan acknowledges on page 81 that many public commentators questioned why these concepts are part of the draft Plan given the County has no authority or necessary involvement in these issues, these questions are still not addressed in the draft Plan. Instead it is simply stated that it is "important for the Board of Commissioners to include these entities [what entities?] in any formal negotiation process on plan implementation to assure the county plan implementation can move forward in parallel paths with the federal component." See page 81. The meaning of this statement is very unclear and still provides no adequate justification for the County's involvement in tribal water right rights.

3. Assess Lower Basin Industrial Land Commercial Needs

No additional comments.

4. Support continuation of Umatilla County Exempt Well resolution

No additional comments.

5. Recommended Management Options

5.1 Update Basin Rules to limit use of certain aquifers and develop rules for groundwater replacement.

- It is inappropriate for the draft Plan to justify curtailing new ground water rights based on the questionnaire results.

5.2 Recommend state agencies clarify their responsibilities and jurisdictions in consultation with cities and counties to better coordinate land use and water supply as well as relevant regulations.

- WRD and DLCDC have provided responses to the Task Force with respect to these issues and the Task Force has chosen not to review these materials. Therefore it not appropriate for the Task Force to suggest any County Actions at this time. It is not appropriate for the Task Force make any land use planning/comprehensive plan update recommendations given that it has chosen not to review the relevant materials provided by the state agencies.

6-3 Development of a Water Budget

- It is inappropriate to use conceptual graphics that show all the sub-basin groundwater basalt aquifers are "interconnected like a bathtub" on page 94, when in fact there is no agreed upon scientific evidence to support this assumption and neither OWRD or USGS has made such a pronouncement.

Attachments:

City of Hermiston's Comments on draft Umatilla Sub-Basin 2050 Water Management Plan, dated 1/18/08, and originally transmitted 5/13/08.

City of Hermiston's Comments

**Draft Umatilla Sub-Basin 2050
Water Management Plan, dated 1/18/08**

Project No. 1¹ – Provide property owners in critical ground water areas (CGAs) new surface water rights to use instead of the ground water rights that are no longer sustainable to use.

- Clarify who could potentially be asked to pay the costs for this project outside of the CGA property owners.
- Clarify what benefits property owners outside of the CGAs would receive from this project.
- Clarify who is proposed to own the new surface water rights and whether they could be sold.
- What analysis has been done to determine that the best economic use of new surface water in Umatilla County is to use it for new irrigation water in the CGAs.
- Clarify how and which residents would have "the potential for vote."²

Project No. 2 – CTUIR water rights settlement

- Clarify what Umatilla County's authority is with respect to achieving this settlement.

If the County has no direct involvement and is just an interested community member, then this should not be included as a County "project" in the 2050 Plan and this concept should be clearly identified as a "project by others."

Project No. 3 – Complete Phase III of Umatilla Basin Exchange Project.

- Clarify what Umatilla County's authority is with respect to achieving or approving Phase III.

¹ These comments use the project numbering system identified in Section 6.7 of the draft plan which summarizes all the proposed projects on pages 80-82.

² This refers to the remark on the summary sheet for this particular project (and a number of others) that Residents have the potential to vote on this project.

If the County has no direct involvement and is just an interested community member, then this should not be included as a County "project" in the 2050 Plan and this concept should be clearly identified as a "project by others."

Project No. 4 – Assuming implementing state legislation is adopted, create a Umatilla Sub-Basin Water Management Board with authority to develop new water supply projects and implement funding mechanisms (such as well head and water use fees).

- Clarify what management alternatives there are to authorizing a new governmental authority that could develop new water storage and delivery projects.
- Clarify why just one management board is being proposed given that new water development projects in the County will likely not be interconnected, and if instead separate management boards could be created for each proposed water project.
- Clarify what authority the draft plan proposes this new board would have over cities and city residents.
- Clarify whether this board is proposed to be governed by the County Board of Commissioners.
- Clarify how and which residents would have "the potential for vote" for this project.

Project No. 5 – Complete a comprehensive ground water study of all the aquifers in the Umatilla Sub-Basin.

- Clarify if the draft plan proposes to allow any new water development projects in the sub-basin before this study is completed.
- Clarify why OWRD now allows new water rights in Umatilla County without this study being complete.
- Clarify the cost and time estimates reasonably necessary to accomplish this project.
- Clarify how this study would be funded and who would oversee the work
- Clarify why the draft plan states that the "public support and participation" of residents is required for a study of the groundwater aquifers.

If this is not a study that Umatilla County will have authority over, it should not be labeled as "project" in the County's 2050 Plan and instead this work should be identified as an effort likely managed by OWRD and supported by the County.

Project No. 6 – Encourage Oregon to develop a "Columbia River Water Management Plan."

- Clarify what other entities/agencies need to be involved with this effort and how Umatilla County is proposed to be involved.

This project is better identified as a "political project."

Project No. 7 – Recommend to the Oregon Water Resources Commission that all new water rights be "curtailed" in the Umatilla Basin until more aquifer studies are completed.

- Clarify who is proposed to pay for the studies and the proposed completion timeline.
- Clarify if any other exceptions to the moratorium concept are proposed besides supplemental water right applications.
- State clearly in the plan that this is a proposed "moratorium" on new water rights.
- Clarify how this project would affect the proposed new Water Management Authority's ability to develop new water supply projects.
- Clarify how residents would have "the potential for vote" with respect to this project.

The plan should affirmatively state that this proposal is for Umatilla County to lobby the state for an indefinite moratorium on all new water rights in the entire Umatilla Basin, and use the word "moratorium" to describe this idea instead of "curtailment."

Project No. 8 – Update the Umatilla Basin Rules

- Clarify that any Basin rule updates are managed by OWRD, and the process is managed by that agency pursuant to state rule making processes.
- Please provide a comprehensive list of the suggested changes to the Basin rules that are reflected by edits to the existing rules attached as Appendix B and the rationale for each proposed change, including how these suggested rule changes would affect cities with respect to the "five mile" rule. Would it be more correct to characterize these proposed changes in Appendix B as "suggestions" for now rather than "recommendations?"
- Clarify how residents would have "the potential for vote" with respect to this project.

Project No. 9 – Recommend state agencies make clarifications with respect to land use and water supply responsibilities.

This project as proposed should not be included as a project in this Plan because OWRD and DLCD provided extensive responses to these issues raised in this regard by Umatilla County in their joint letter to Umatilla County of January 23, 2008 which the Task Force has not yet had the chance to review or evaluate and which affects this proposed project. See attached copy of this letter.

Project No. 10 – Continue to implement Exempt Well Resolution if mitigation projects are developed.

This draft project indicates that County support of the continued implementation of the Exempt Well Resolution should be contingent on funding and completion of mitigation projects.

- Clarify why the Task Force is recommending not supporting keeping the Exempt Well Resolution in place unless mitigation projects are built.
- Clarify what mitigation projects are proposed and their approximate locations and cost.

Project No. 11 – This project identification number was not used on the summary pages.

Project No. 12 – Support legislation to allow creation a new governing body that can collect fees on existing water right holders and develop new water storage and delivery projects.

- In Section 1 in this project description on page 75 it states that the "gradual recovery scenario" benefits "all users." Clarify how the gradual recovery scenario, which only applies to declining aquifers benefits (1) Columbia River surface water right holders, (2) other surface water right holders, (3) ground water right holders in deep aquifers that are not showing significant declines, and (4) ground water right holders in alluvial aquifers.

- In Section 1.iii. of this project description, the plans states that groundwater characterization studies will not be reliable if water right holders are pumping their wells. Clarify why aquifer studies conducted in the winter, when wells are not being pumped, would not suffice to address any technical study needs, and why wells must be off for more than one winter season to study the aquifers.
- Clarify how residents would have "the potential for vote" with respect to this project.
- Clarify whether this proposal is to lobby for a new administrative agency under the purview of the County, of OWRD, or an independent body accountable to the state legislature.

Project No. 13 - Suggest the state provide one million dollars annually to address water quantity and water quality issues.

- Clarify what County resources would be necessary to lobby the legislature for this concept and whether this project consists of more than writing letters to policy makers.

This concept should be identified as a "political project"



Oregon

Theodore R. Kulongoski, Governor

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August 6, 2008

Kent Madison
Chair, Umatilla County Ground Water Task Force
216 SE 4th Street
Pendleton, OR 97801

Dear Kent:

Thank you for your July 22 version of the Umatilla Sub-Basin 2050 Water Management Plan (Plan) and the opportunity to provide comments on this draft. We have done a quick review of this draft and provide the following comments. We have also attached our previous comments dated May 19, 2008, which are still relevant in some instances.

- On the bottom of page 17, the Plan refers to a water matrix and that you are waiting on comments from Oregon Water Resources Department (OWRD) and Department of Land and Conservation Development. Please update this section of the plan to reflect you have received the input back from our agencies .
- In a number of sections, the Plan proposes the formation of an entity to oversee or implement different elements of the Plan. Different terminology is used throughout the Plan which makes it difficult to determine if you are proposing to establish more than one government entity (e.g., pg. 43, 60, 63). Assuming this is a single entity, it would be helpful to clarify the role it would serve. As you refine this concept, we continue to encourage you to research existing statute on formation of water authorities (see previous table of water authorities provided by OWRD) before seeking new legislation. As we mentioned in our previous comments, we would not want the formation of such an entity to conflict with the existing statutory authorities of OWRD and other state agencies. Given the project funded under Senate Bill 1069 and other projects contemplated in the Plan, it would be advantageous to focus how the formation of a water authority could help fund, build and manage infrastructure associated with these projects.

- We appreciate the extensive outreach the Task Force did with the public and understand the challenge in getting the public to return questionnaires. We would encourage continued outreach as the county moves forward with implementation. Given the survey response rate received to date, it may be helpful to put the results in that context, especially when characterizing the results.
- With respect to coordination in the Government-to-Government arena throughout the Plan (e.g. pg. 49, 57) we would reiterate the State of Oregon through OWRD is exploring government-to-government approaches with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) that can result in long-term water supply solutions in a manner that is protective of existing water rights and other water users in the Umatilla Basin. This effort will also include continuing government-to-government discussions between OWRD and the CTUIR regarding the procurement, administration and management of water resources on CTUIR lands consistent with Oregon Water Law.
- For clarification, on pg. 51, Oregon Department of Fish and Wildlife (ODFW) provides the OWRD input as a member of the interagency review team under our Division 33 rules and consistent with their Division 415 rules and as such does not have any regulatory responsibility associated with water rights.
- With respect to legislative concepts and efforts identified in the Plan (e.g. pg. 50, 54, 55, 56, 60, 65, 75, 81, 93), coordination early and often is key to success in the Umatilla Basin. An excellent example of this is the passage of SB1069 in the 2008 supplemental session. We would encourage the County to continue their coordination with the Governor's office, OWRD and others as appropriate with their legislative efforts related to budget, water use fees, and a Columbia River reservation.
- The Plan proposes the County adopt the county's exempt well resolution into their comprehensive plan. The Department encourages the County to continue to focus on the impacts of new ground water uses on long term sustainability of the ground water resource. Future studies of demand and supply options should continue to consider domestic water supply needs on a basin-wide scale as well as a priority focus on areas of continuing decline, such as the North Sub-Area of Butter Creek.

- With respect to appointing a Rules Advisory Committee (RAC) (e.g. pg. 54, 57), OWRD is supportive of the need to review and possibly amend the Umatilla Basin Program Rules. As a reminder, any RAC of this nature would be convened by OWRD. We would take recommendations from the RAC on proposed rule amendments. Suggested rule amendment would have to go through a formal rulemaking process including a public hearing and then presented for approval by our Water Resources Commission. These rule amendments would have to be consistent with our statutory authorities.
- With respect to the formal participation of the County in a federal negotiation process (pp. 81, 82) regarding settlement of federal reserved water rights in the Umatilla Basin, we would again reiterate that the State of Oregon through OWRD is exploring government-to-government approaches with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) that can result in long-term water supply solutions in a manner that is protective of existing water rights and other water users in the Umatilla Basin. This effort will also include continuing government-to-government discussions between OWRD and the CTUIR regarding the procurement, administration and management of water resources on CTUIR lands consistent with Oregon Water Law.

We thank you for the additional revisions based on public input and hope you find our additional comments beneficial. We look forward in continuing our work with you in finding water supply solutions in the Umatilla Basin. Please give me a call if you have any questions.

Sincerely,



Michael F. Ladd
Region Manager

Att: May 19, 2008 comments

C: Debbie Colbert, Field Services Administrator
Doug Woodcock, Ground Water Manager
JR Cook, Assistant Planning Director



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May 19, 2008

Kent Madison
Chair, Umatilla Ground Water Task Force
216 SE 4th Street
Pendleton, OR 97801

Dear Mr. Madison:

Thank you for the opportunity to review the draft Umatilla Basin 2050 Water Management Plan (dated January 17, 2008). We appreciate the hard work of the Task Force and your efforts to address the long-term water supply needs of the Umatilla Basin.

The State of Oregon, through the Oregon Water Resources Department (Department), is also very interested in continuing to address important existing and future water needs in the Umatilla Basin. As part of this continuing effort, the Department is exploring government-to-government approaches with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) that can result in long-term water supply solutions in a manner that is protective of existing water rights and other water users in the Umatilla Basin. This effort will also include a continuing government-to-government discussion between the Department and the CTUIR regarding the procurement, administration and management of water resources on CTUIR lands consistent with Oregon Water Law.

It appears, with respect to the draft 2050 plan, that the water management authority concept in Attachment A of the plan represents a cornerstone of how you would fund project construction and data gathering under the plan. Given the importance of this *concept to the overall plan, we recommend that you review existing options for creating water authorities as described in the attached table (Attachment 1)*. You may be able to achieve your goals through existing authorities without seeking new legislation. We would be happy to discuss this table in more detail as follow up to our comments. Relying on existing authorities would also help ensure this type of organizational structure would not conflict with state authorities to manage water resources.

The draft plan recommends interim basin rules to restrict further ground water development while studies are being conducted. Considering how much time it may take to raise funding and complete these studies, this restriction could be in place for an extended period of time. We would also note that the statutory standard for restricting ground water use is that substantial evidence be in the record to support the action (See ORS 537.780). We may not have sufficient data to implement these steps on a basin-wide scale, even for this interim measure.

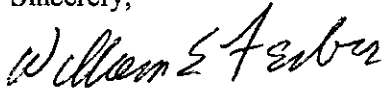


Kent Madison
Page Two
May 19, 2008

In addition to these general comments, we have provided a few detailed comments on the draft plan in Attachment 2.

We hope these comments are helpful as you finalize your plan. Please do not hesitate to contact us if you have any questions.

Sincerely,



for Mike Ladd
North Central Region Manager



Doug Woodcock
Ground Water Manager

Att: 3

c: JR Cook, Assistant Planning Director
Debbie Colbert, Field Services Administrator
Cogan, Owens and Cogan

Intergovernmental agreement formed under ORS 190		
Purpose	Representation	Formation Approval
Partnership created by an intergovernmental agreement between the various participants. This option provides the maximum flexibility in the formation of the business model. However, the risk factors associated with financing are the greatest under all of the organizational options.	Determined by the parties to the intergovernmental agreement and would be part of the agreement forming the intergovernmental agency.	Intergovernmental agreement is done by an agreement that stipulates the basis under which the entity will operate and is approved by ordinance by the various entities that are participants to entity

Example: Polk County Water suppliers and the Joint Water Commission.

County Service District formed under ORS 451		
Purpose	Representation	Formation Approval
Provide potable water service to the areas within the county service district.	County Commission	County Commissioners

Example: Alsea Valley County Service District

Domestic Water Supply Districts formed under ORS 264*		
Purpose	Representation	Formation Approval
This option is very similar to the options under ORS 450; however the annexation issues do not apply.	Five (5) members at large for four (4) year terms. The relationship of the participants to the district would be via contract.	County Commissioners or can be formed by a petition requiring a vote of the people for formation.

*The use of this option for multiple Cities would be unique and not recommended.

Organization Options

Water Authority Use formed under ORS 450		
Purpose	Representation	Formation Approval
<p>Combinations of districts and cities that currently may preclude the cities from taking over the assets and customers of the districts upon annexation. The statutes allow for the formation of a wholesale water authority that would not impact the annexation issues at a retail level. Some advantages for entity if participants allow water right certificates to be modified to cover entire area of authority.</p>	<p>Five (5) to seven (7) members elected within the boundaries; can be elected at large or by zones based on population. Voting is by majority. The relationship between the participants and the water authority would be by contract for the sale of water.</p>	<p>County Commission</p>

Examples of this arrangement are the Sunrise Water Authority

Peoples Utility District formed under ORS 261		
Purpose	Representation	Formation Approval
<p>Provide potable water service to participants within the service area</p>	<p>Five (5) members elected by zone within the boundaries of the Peoples Utility District- The zones are formed by population area with the intent of equal population within each zone. Voting is by majority.</p>	<p>Vote of the people. The statutes require that a majority of the people voting approve the formation of the Peoples Utility District.</p>

Example: Rockwood Peoples Utility District formed under ORS 261

WRD Comments on Draft Umatilla 2050 Plan
Last Revised: May 8, 2008

Section 2 – Water Governance

Page 20 – In regard to water governance and planning, please refer to attachment # 3, which is the joint WRD/LCDC letter and matrix on water and planning.

Section 5 – Water Management

We understand that 5-2 is the recommended management scenarios. Some of these tools might need statutory or rule changes; however, it is not clear based on the level of detail provided here what changes would be necessary to implement those scenarios. (e.g., water banking, etc.)

Section 6 – Management Alternatives

We appreciate the long term view the Task Force has taken regarding the timeline and benchmark approach to provide water security. (page 42)

It appears the Task Force recommendation is for gradual recovery of the aquifers. We would note that this exceeds the State's goal for stabilization so at face value it would not conflict with this existing standard. (page 42)

On p.43 the plan goal under section 3.b is not clear what is meant by local control over water management and regulation in Umatilla County. It is inherent in existing law the ability for a district, cities, Port Districts and others to manage their water supplies downstream from their diversion consistent with the water right entitlements. OWRD manages and regulates at the point of diversion.

6-1 Implementation

Figure 13

We appreciate the creativity and ambition of the Task Force in developing this concept. However, this figure needs substantial clarification. For example, what is the intended relationship between the stakeholders and entities listed at the top of the figure to the management board? Under the authorities and activities listed under the board, we would want to clarify that nothing listed conflicts or supercedes the state's management of water resources (e.g, delegating water under the bank).

Figure 14

Throughout Section 6 of the plan, it appears that this entire plan is dependent on passage of the legislative concept in Appendix A. We recommend that the Task Force develop alternative options for achieving the goals identified through existing statute and funding mechanisms. It would also be helpful to include a timetable that lays out the task force short and long term strategies for achieving the plan, understanding this will be

dependent on funding. Based on our reading of plan, it looks like even the intermediate steps such as the interim rules could be in place for several decades.

Under state law, once the Water Resources Commission adopts administrative rules they become effective. It might be helpful for the county to adopt land use ordinances that support the policies and direction of the basin rules.

With respect to tribal water claims in Figure 13, Figure 14, and throughout Section 6 (6-3), we would note that the state of Oregon and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have requested the formation of Federal Water Rights Assessment Team.

We appreciate the Task Force's support for basin studies and monitoring ; however, it is not clear in this context who would be responsible for this monitoring.

6-2 Deficit Reduction

We would suggest updating the dates of the critical areas: Stage Gulch by order of the Director dated 1991 and Butter Creek by order of the Director dated 1986.

Clarify what are the regulatory hurdles and how those "hurdles" would be reduced?

Project #1:

Support for using alternative supplies to reduce pumping of ground water in the critical areas. The regional aquifer recovery approach via Senate Bill 1069 is an important first step to evaluating this approach. The focus is to look at developing winter Columbia River water. SB 1069 goes a long way to implementing this recommended management option.

We would like clarification on "replacement water protection rules." Is this the draft rule language suggested in Appendix B? We would also like more details on the water brokerage and banking system and any proposed changes to rules and statutes necessary to implement this concept.

It is not clear what the role of the improvement district would be. Since the surface water would only be available outside of the fish flow augmentation period, there would not really be opportunity to totally "replace" existing ground water rights with surface water for irrigation and other uses without storage. Rather, we understand that winter water rights might be obtained and developed by the improvement district for the purpose of recharging and recovering aquifers and then used as replacement water.

The stakeholders listed on page 53 should include the Department of Environmental Quality and Department of Human Resources/Drinking Water Program.

Page 58 –

Clarify 5) to say "identifies water available *to help meet the needs identified by the task force...*"

6-4 Scientific Needs

We appreciate support for a basin-wide ground water model. OWRD is currently entering into a contract with USGS to complete the audit of the 1988 USGS flow model as described in this section.

In the table on page 62, the draft plan recommends interim basin rules to restrict further ground water development while studies are being conducted. Given how much time it may take to raise funding for these studies and to complete these monitoring and studies, this restriction would be in place for an extended period of time. We would also note that the statutory standard for restricting ground water use is that substantial evidence be in the record to support the action (See ORS 537.780). We may not have sufficient data to implement these steps on a basin-wide scale, even for this interim measure.

Project #2

The Oregon Water Resources Dept. is currently undertaking a data gathering effort that will result in a state-wide water demand forecast out to 2025 and 2050. Through already existing reports and an original state-wide survey, the Department and a private contractor are engaged in a project that will broadly characterize in-stream and out-of-stream demands for water--at both the county level and also the administrative basin level. This project is scheduled for completion with a report available in time for the 2009 Legislative Session.

6-5 Water Policy and Regulation

The Task Force recommends interim basin rules to restrict new ground water development while studies are being conducted. We will comment with more specific comments below. Generally, the Department will need substantial evidence to be successful in this recommendation.

Project #1: The Task Force recommends interim basin rules to restrict new ground water development while studies are being conducted. Given the time it may take to raise funding for these studies and to complete the monitoring and studies, this restriction would be in place for an extended period of time. We would also note that the statutory standard for restricting ground water use is that substantial evidence be contained in the record to support the action (See ORS 537.780). It will take some time to collect sufficient data to implement these steps on a basin-wide scale, even for this interim measure.

It is not clear what is meant by implementing a temporary transfer system – we have current statute and rules that allow temporary transfers.

Page 66, # 4– typos – we think the reference is to Water Resources Commission (WRC?)

Page 67-Basin rules do not address the ability to do water right transfers. They address how and if we would issue new water rights.

Project #2:

It is not necessary to update basin rules to assure seniority of existing water right holders; fundamental to water code. Also what is meant by rules updated to provide interim options for water users?

Project #3:

WRD and DLCDD have provided comments on the jurisdictional description of the water resource management and land use planning (see attachment # 3). The state encourages the county to adopt ordinances and elements of their comprehensive plan consistent with this matrix.

Project #4:

Notwithstanding the county's exempt well resolution, we encourage the task force to continue to focus on the impacts of new ground water uses on long term sustainability of the ground water resource. Future studies of demand and supply options should continue to consider domestic water supply needs on a basin wide scale as well as a priority focus on areas of continuing declines, such as the North Sub-Area of Butter Creek. In that area all but one water right has been denied their allocation, yet ground water levels continue to decline.

Section 6-6 Funding

History of creative water supply solutions such as the Umatilla project has demonstrated that it takes substantial funding and staff resources to manage these types of innovative solutions. So we agree that the projects envisioned by the task force will take substantial resources to develop, implement, monitor, and manage. Another recent success story is the passage of SB 1069 which will explore the feasibility of regional aquifer recovery efforts. All of the partners will need to be able to sustain long term funding commitments to implement these efforts.

Project #1:

Well head fee, alternative fee structures, or fees on existing and new water rights would require new legislative authority.

If a water restoration plan is the concept provided in Appendix A, we would reiterate that any proposed legislation not conflict with the state's existing water management authorities. See other comments on Appendix A legislative concept below.

Project #2:

As we have mentioned previously, the state is currently undertaking a data gathering effort that will result in a state-wide water demand forecast out to 2025 and 2050. Through already existing reports and an original state-wide survey, the Department and a

private contractor are engaged in a project that will broadly characterize in-stream and out-of-stream demands for water--at both the county level and also the administrative basin level. This project is scheduled for completion with a report available in time for the 2009 Legislative Session. Funding was included to assist communities and regions that are working to address their long term water supply needs. SB 1069 passed in the 2008 legislative session also included \$1.75 million to fund feasibility studies of water conservation, reuse, and supply projects.

Section 6-7 Summary

Page 81 – 8

Basin rules – It is not clear what is meant by “classify based on future determination of the highest and best use”

Page 81 – 7, 8

The public does not vote on proposed rules. The WRC conducts a public rulemaking process that would include at least one public hearing in the basin. The draft rules are voted on by the Commission.

Appendix A Legislative Concept

This appears to create a below ground version of an irrigation district with the primary function of creating new funding to address ground water supplies and create new water supplies. More specifically, it proposes to set up a water management board with very broad authorities including powers of eminent domain, fee authority for well owners, bonding authority, and to create and distribute water through conveyance systems.

Details of this concept would be very important. My first reaction is that legislation would be needed. This concept proposes that the Circuit Court initially would appoint the board members with future terms being elected. This differs from existing statute for water districts to see if they accomplished its goals. We recommend that the Task Force review existing statutory options for creating water districts and water authorities under Oregon law. See attachment 1 which is a summary of these authorities and statutory citations.

Appendix B Division 507 Rule Suggestions

May want to address the classification of water for aquifer storage and recovery throughout these rules if the basin is interested in this supply option.

Withdrawal of aquifers: In table on page 62, recommend interim basin rule to restrict further ground water development while studies are being conducted. Given how much time it may take to raise funding for these studies and to complete these monitoring and studies, this restriction would be in place for an extended period of time. We would also note that the statutory standard for restricting ground water use is that substantial evidence in the record to support the action (See ORS 537.780). We may not have sufficient data to take these steps on a basin-wide scale, even for this interim measure.

Policy statements do not direct the Department to do specific activities (e.g., direct WRD to assess feasibility; assess carrying capacity of ground water quality). Several of these activities are outside of the Department's current authority (e.g., assessing carrying capacity of water quality) and existing resources (e.g., assist existing water users secure needed capital).

507-0040

Current recharge rules allow up to 85% of the recharged water to be used, depending on the data. The proposed change to 70% would limit recapture and be more conservative than this existing standard. We would note that this would make the cost per acre foot for developing recharge water more expensive and may be a disincentive to undertake the storage of water. Is the Task Force intending the 70% apply to both recharge and recovery? Is the Task Force intending to apply the 70% to aquifer storage and recovery projects as well? Currently, aquifer storage and recovery allows up to 95% of the stored water to be recovered. This would be a substantial difference.

As a general comment in the 5 mile radius section we recognize the need to modify the rules throughout the Umatilla Basin Program based on AG advice. We would want to work with municipalities and stakeholders to adjust the 5 mile protection based on best available ground water data.

507-0020 (1)

Is this suggesting that the WRC develop policies regarding artificial recharge?

507-0040(3)(a)(C)

The proposed classification is not necessary given the earlier classification in that section.

507-0040(3)(b)

Is the goal here to require all ground water applicants to provide a hydrologic study? The language is awkward and the concept is not clear.

507-0610(3)

This places the responsibility on the Department to inventory alternative sources of water for domestic uses. We do not have sufficient resources to complete this inventory, especially within the time identified. Are you asking for consideration of not allowing exempt wells?

507-0680(1); 507-0820(1)

Directs Department to complete an updated sustainable annual yield by December 31, 2009. We put that update on hold pending the work of the task force. We agree it needs to be done, but we doubt we can meet that schedule.

507-0820(2)

Change standard from achieving sustained annual yield to gradual recovery. It appears to remove the opportunity to adjust the SAY upwards based on updated analysis.

507-0830

It directs the Department to assess alternative means of providing ground water in the critical areas and to complete a report with recommendations. We think we understand what this is intended to accomplish. It does not, however, belong as a rule. This could be a good product of the basin study.

507-0900

Appears to a placeholder for future rules. Obviously details of this approach will be important for the Department to review.



WRD



DLCD

January 23, 2008

Tamra Mabbott, Director
Umatilla County Planning Department
Umatilla County Courthouse
216 SE 4th Street
Pendleton, OR 97801

Dear Ms. Mabbott:

The Oregon Water Resources Department (WRD) and Department of Land Conservation and Development (DLCD) reviewed the February 1, 2007 memo that you provided to Umatilla County Planning Commission and other parties. Thank you for sharing it with us. We apologize it has taken us so long to get you our comments. Our agencies, after consultation with the Oregon Department of Justice, have developed the following summary of state and local coordination on land use and water issues provided for under Oregon law. We hope this summary will resolve some of your questions on this issue, and will enable Umatilla County to more readily move forward with its planning efforts.

Statewide Planning Goals

As you are well aware, the legislature enacted laws that require counties to develop comprehensive plans consistent with statewide planning goals, and implement regulations consistent with statewide goals. The goal that addresses water supply most directly is Goal 5, which requires inventory and protection of significant ground water resources, among other resources. The critical ground water areas in Umatilla County are, as you know, "significant ground water resources" according to the Goal 5 rule (OAR chapter 660, division 23). The rule does not prescribe how the resource is to be protected because each circumstance can be different. Additionally, the goal indicates that plans should, but are not required to consider, the carrying capacity of the water resources in the planning area.

OAR chapter 660, division 23, is not directly applicable to land use decisions at the county. In order for Umatilla County to protect this significant natural resource through its comprehensive plan, it must identify land uses that conflict with the resource; determine the impact area; perform an assessment of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use; and then develop and carry out a program to protect the resource or allow conflicting uses, as determined by county policy. OAR 660-023-0140(3).

This is what was contemplated by the task on the county's periodic review work program. Due to a variety of factors, this planning work was not completed and the task was removed from the county's work program.

In other words, Goal 5 and its implementing rules require the county to carry out long-range planning and policy-making. As you have found, attempting to apply Goal 5 on a case-by-case basis at the time of a permit request, with minimal (and perhaps conflicting) guidance from your comprehensive plan, does not work. We strongly encourage the county to update its comprehensive plan to comply with the Goal 5 rule for groundwater resources, as this offers an effective way to "connect" water supply and land use permitting responsibilities.

Your February 1, 2007 memo to the planning commission is correct that defensible findings must be based on compliance with applicable criteria and standards. Completion of the Goal 5 process described above would provide "applicable criteria" that are defensible and based on the best available data. A resolution that has not been adopted as part of the comprehensive plan cannot be relied upon for making land use decisions.

Land Use Compatibility Statements

Upon receiving a request from a county, WRD will provide any available information it has in order to assist counties with development of comprehensive plans and consideration of land use approvals. It is worth noting, that the more specific information the county provides, the better able we are to respond. For example, if an application for a land use approval were to identify the intended use of the water and the source, we are better able to reply. In addition, WRD continually seeks better data so that our agency can more effectively comment and provide information to local governments. For example we have been working toward a basin-wide ground water resource study for the Umatilla Basin for some time.

As you are also aware, state agencies are required to take actions affecting land use in a manner that complies with statewide planning goals and are compatible with local comprehensive plans, with some exceptions. ORS 197.180(1) and (2). Accordingly, the appropriate agencies, including WRD, have adopted State Agency Coordination Agreements (SACs). Agencies also work with local governments to develop, implement and evaluate local and state land use actions and plans.

Notwithstanding the SAC requirements to coordinate state and county actions, water is a public resource administered by the WRD and the Oregon Water Resources Commission (WRC). For example, with certain exceptions, water can only be used after obtaining a permit from the WRD. ORS 537.130; ORS 537.525. In addition, the WRD oversees among other things, transfers of water, development of water conservation plans, dam safety, and hydroelectric facilities. *See e.g.* ORS chapters 536, 537 – 543A. Finally, the WRD is vested with the authority to regulate the distribution of water among the various water right holders and among certain exempt uses. ORS 540.030; ORS 540.045; ORS 540.545.

With regard to integrated and coordinated planning of water resources statewide, the legislature has expressed a preference for these activities to be conducted by a single state entity. ORS 536.220. Accordingly, the legislature vested the WRC with the authority to study Oregon's hydrologic basins and to develop rules "for the use and control of all the water resources of this state." ORS 536.220; ORS 536.300; ORS 536.310. As with other

state actions affecting land use, both the WRD and the WRC review water permitting decisions and basin planning activities for compliance with land use goals or compatibility with acknowledged comprehensive plans and land use regulations. *See e.g.* OAR chapter 690 division 5. However, such land use coordination does not affect the WRD's primary authority over water allocation and regulation nor the WRC's authority to develop and implement basin plans for water resources.

Despite the Department and Commission's clear authority over water resources allocation, distribution, management and hydrologic basin planning activities, local governments are not precluded from, and in fact, are encouraged to address local water supply issues when conducting land use planning and when planning for future growth and economic development. In fact, WRD is actively supporting such efforts by counties and other local governments and has included in its Water Supply and Conservation Initiative match funding for community-based and regional water supply planning. This component of the Initiative will provide incentive funding for communities that are looking to develop strategies to meet their long-term water supply needs.

In addition to the above summary, we (WRD, DLCD) have also provided comments on the Water/Land Use Governance Table created by J.R. Cook. For reading ease we have attached a clean version. If you would like a marked up version, please let us know. We have expanded some sections and provided corrections in a few cases. We hope these edits will assist you with your project.

Finally, the WRD has provided a second attachment to address a few points raised in your February 1, 2007 letter. It is not intended to take up every point on which you and WRD may have a difference of opinion, but simply highlights some areas where the agency believes it is important for you to understand its perspective.

Please feel free to contact either of us if you have any questions about this letter or the attached documents. You can reach Mike Ladd at 541-278-5456 and Jon Jinnings at (541) 318-2890.

Sincerely,



Michael F. Ladd
Region Manager
WRD



Jon Jinnings
Central/Eastern Oregon Regional Representative
DLCD

Att: 2

cc: Debbie Colbert, Division Administrator, WRD
Rob Hallyburton, Acting Deputy Director, DLCD

	OWRD	COUNTY	DISTRICTS
<p style="text-align: center;">PLANNING</p>	<p>1) Any planning activity undertaken by OWRD shall be in compliance with Statewide Planning Goals and compatible with local Comprehensive Plans. (ORS 197.180, OAR 690, Division 005.)</p> <p>2) ORS 536.310 (8): Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged.</p> <p>3) ORS 536.241 (2): Requires planning in a "consistent and coordinated manner."</p> <p>Summary: OWRD planning must be in compliance with Statewide Planning Goals. OWRD may initiate a planning process and will coordinate with affected local governments in the "Planning Area" by providing notice and opportunity for hearing in the basin. ORS 536.300</p>	<p>1) ORS 195.025: Delegates coordination of all planning activities affecting land uses to counties. While this does not pre-empt the state's authority over formulation of water resource policy, it places a responsibility on counties to coordinate with the state in development of water policy, and to coordinate local comprehensive plans with such water policy.</p> <p>2) 197.225: The Department of Land Conservation and Development shall prepare and the Land Conservation and Development Commission shall adopt goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans.</p> <p>3) 197.250: Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission.</p> <p>Summary: Counties have statutory responsibility to coordinate all land use planning activities within the county. Those activities must comply with the statewide planning goals.</p>	<p>ORS 545.221 through 545.295 document a district's ability to conduct some planning, regulation, management and enforcement within their respective boundaries. Districts:</p> <ol style="list-style-type: none"> 1) Manage water rights cooperatively with patrons including distribution, transfer, storage etc. There are, however, formal processes, including notice requirements, involved in some of these processes. 2) Assess charges and collect fees through payments, condemnation or liens on crops 3) Elect boards, managers and other officers 4) Plan to ensure district viability through projects, conservation, etc.

OWRD	COUNTY	DISTRICTS
<p>REGULATION</p>	<p>1) Watermasters regulate distribution of water based upon water rights. (ORS 540.045.)</p> <p>2) Watermasters respond to complaints of water shortages or unlawful use. Regulatory action is based upon review of records (water rights on parcels) and field inspections. Watermasters distribute water based on relative rights (seniority), any rotation agreements, and, in the case of ground water, substantial interference with senior rights. (OAR 690-250-0100--690-250-0130.) Also, exempt wells can be regulated ORS 537.545 (3).</p> <p>3) The WRD director administers and enforces the laws of the state concerning the water resources of this state. (ORS 536.037.)</p> <p>Summary: OWRD has authority to regulate water use.</p>	<p>1) ORS 197.175: Counties shall exercise their planning and zoning responsibilities in accordance with statutes and the statewide planning goals. Each county in the state shall prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission and enact land use regulations to implement their comprehensive plans.</p> <p>2) OAR 660-023-0140: Local governments shall amend acknowledged plans in order to inventory and protect significant groundwater resources under Goal 5.</p> <p>Summary: County has the responsibility to regulate land use based upon its acknowledged Comprehensive Plan (ORS 536.370 does not authorize the WRC to delegate water use regulation to another public agency.)</p>
	<p>ORS 545.221 through 545.295 document a district's ability to conduct planning, regulation, management and enforcement within their respective boundaries.</p> <p>Districts:</p> <p>5) Manage their water rights including distribution, transfer, storage, etc.</p> <p>6) Assess charges and collect fees through payments, condemnation or liens on crops</p> <p>7) Elect boards, managers and other officers</p> <p>8) Plan to ensure district viability through projects, conservation, etc.</p>	

	OWRD	COUNTY	DISTRICTS
<p style="text-align: center;">MANAGEMENT</p>	<p>1) 690-410-0010: Establishes a policy of coordination with other governmental entities. ("Coordinated action by federal, state and local agencies, Indian Tribes, and special districts, along with public education, shall be fostered to promote the effective management, protection and beneficial use of groundwater.")</p> <p>3) "The primary method of managing water is through classification of streams and groundwater. Classification establishes the beneficial uses of water, and dictates how water can be put to use..." (1988 Basin Report)</p> <p>This is a difficult mechanism to implement in over-appropriated basins because new water rights are limited and no program is in place to classify Columbia River water or transfers.</p> <p>4) ORS 536.241(2): Requires management in a "consistent and coordinated manner."</p> <p>5) ORS 536.300 directs the OWRC to develop an integrated and coordinated water resources program for the use and control of all the water resources of the state.</p> <p>6) In formulating the water resources program, the OWRC is to consider numerous policies declared by the legislature, including that "[i]t is of paramount importance in all cooperative programs that the principle of the sovereignty of this state over all the waters within the state be protected and preserved, and such cooperation by the commission shall be designed so as to reinforce and strengthen state control."</p> <p>7) No state agency or public corporation (including counties) can exercise any power, duty or privilege that would tend to derogate from or interfere with state water resources policy, unless approved by the OWRC. (ORS 536.360 and 536.370.)</p> <p>Summary: OWRC has authority to develop programs and policies for the use and control of the waters of the state.</p>	<p>Summary: Counties do not have authority over managing water resources. That function is the exclusive responsibility of the state.</p>	<p>ORS 545.221 through 545.295 document a district's ability to conduct planning, regulation, management and enforcement within their respective boundaries.</p> <p>Districts:</p> <p>1) Manage their water rights including distribution, transfer, storage, etc.</p> <p>2) Assess charges and collect fees through payments, condemnation or liens on crops.</p> <p>3) Elect boards, managers and other officers</p> <p>4) Plan to ensure district viability through projects, conservation, etc.</p>

which must be adhered to by other agencies and governmental entities unless authorized by the OWRC to deviate from those policies.

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	OWRD	COUNTY	DISTRICTS
ENFORCEMENT			

Pertinent Policy

536.241 Policy on water supply. (1) The Legislative Assembly finds that availability of an adequate water supply is essential to the continued health and safety of all Oregonians.

(2) The Legislative Assembly declares that it is the policy of the State of Oregon to ensure a water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources. Further, in recognition of this policy, the Legislative Assembly declares that the planning and management of the water resources of this state shall be conducted in a consistent and coordinated manner. [1999 c.984 § 2]

536.220 Policy on water resources generally. (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155. [1955 c. 707 § 1; 1989 § c.833 § 53]

537.525 Policy. The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

- (1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state from all sources of water supply belongs to the public, and that in order to insure preservation of the public welfare, safety and health it is necessary that:
- (2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.
- (3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent when, under certain conditions, the public welfare, safety and health require otherwise.
- (4) All claims to rights to appropriate ground water be made a matter of public record.
- (5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.
- (6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.
- (7) Reasonably stable ground water levels be determined and maintained.
- (8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.
- (9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.
- (10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled
in accordance with the purposes set forth in this section.
- (11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS
468B/155. [1955 c.708 § 2; 1985 c. 673 § 46; 1989 c. 201 §2; 1989 c. 833 § 56]

Definitions:

Definitions pertinent to this document highlighted in the attached 2050 Plan Definitions chapter.



**Testimony of the
Confederated Tribes of the Umatilla Indian Reservation
Before the Umatilla County Planning Commission
October 16, 2008
Umatilla County 2050 Water Management Plan**

Good evening, my name is William Quaempts. I am a member of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, a member of the Tribal Water Commission, and a member of the Umatilla County Critical Groundwater Task Force.

I would like to thank you for the opportunity to testify before the Umatilla County Planning Commission today about the Umatilla Sub-Basin 2050 Water Management Plan. If possible, I would like to submit a written copy of my testimony for the record.

Our shared water resources are vitally important to the future of both the people of the Umatilla Indian Reservation and Umatilla County as a whole. Our futures are linked, and water is the key to that future.

Water and its wise management and use are essential to the Tribes from both a cultural and economic standpoint. Water, or chush in our Indian language, is one of our First Foods -- the first of the First Foods that we honor in our prayers, ceremonies, and traditional gatherings. Our teachings tell us that we must take care of our water and other resources and pass them along to future generations for them to use.

We recognize that water is also essential to our economic security and that of the wider community here in eastern Oregon. We see that water -- an assured and stable supply, with forward-thinking management -- is an essential component of our economy and healthy environment.

We have to take care of our water. Water is life; water is medicine. We depend on it for sustaining our very being. In too many places across the world, we see communities that are struggling every day to find enough clean water to drink. Streams go dry, water courses become polluted, and aquifers are depleted. We cannot take our water for granted, for we too, have seasonally dry streams, water quality problems and declining aquifers. It takes foresight and planning, effort and

resolve, and community collaboration and leadership to restore depleted water supplies, to protect its quality and make sure there is enough water to meet our needs for clean drinking water, cold water for fish, municipal uses, irrigating our crops, and all the other uses.

We are grateful to the Umatilla County Board of Commissioners for its leadership in addressing and developing solutions to the groundwater problems in the Umatilla River Basin. Even though groundwater declines began decades ago, this is the first comprehensive look, surpassing the efforts in 1986, at the scope and potential solutions to economic and environmental problem caused by the declines.

The Board of Commissioners wisely established a citizen's task force, the Umatilla County Critical Groundwater Task Force, to come up with a plan to assure water supplies through the year 2050. We support the intent of the 2050 Water Plan, which is to provide locally developed options, actions, and solutions, through coordination and collaboration that will assure adequate and sustainable water supplies to meet broad community and environmental needs in the Umatilla Sub-Basin through the year 2050. We also appreciate Umatilla County giving the Tribes an opportunity to participate on the Task Force and help develop the Umatilla Sub-Basin 2050 Water Management Plan.

Although the Task Force's principal focus was on the state-established Critical Groundwater Areas in the lower Umatilla River Basin, the Task Force recognized the hydrologic connection between the upper and the lower Umatilla River Basin. This is important because groundwater depletion and surface water use decrease stream flows in the Umatilla River, which in turn affect fish habitat, the Tribes' Umatilla River fishery, and surface water users throughout the river basin.

The Task Force also recognized that the entire Umatilla River Basin is vulnerable to the depletion of its basalt aquifers. While the depletion problems in the lower basin are truly critical, if we do not establish basin-wide water allocation rules that address the aquifer's vulnerability to over-draft, the groundwater depletion problem will continue to spread across the landscape. It's also possible that basalt groundwater depletion in the upper basin could affect groundwater availability in the lower basin and vice versa.

We know that everywhere there has been significant development of basalt groundwater in the Sub-Basin, including the upper basin, groundwater levels have declined. Virtually all domestic users and many municipalities and irrigators in the upper basin rely exclusively on basalt groundwater for their drinking water supply

and their livelihoods. Over-development of the groundwater resource will certainly affect the availability of water for people on and off the Umatilla Indian Reservation, thereby affecting economic viability and the environment.

Through our Water Code, the Umatilla Tribes have enacted strict limits on basalt groundwater development and prioritized domestic and community uses in an attempt to forestall groundwater depletion, ensure water availability for human consumption, and provide access to water across the Reservation for multiple beneficial uses. We believe the people of the Umatilla River Basin must take an active role in water management to prevent depletion from spreading into new areas of the basin. And, the Task Force's 2050 Water Plan provides, through its well-defined goals and principles, the guidance on how to prevent depletion from becoming a basin-wide problem and recover the aquifers in the lower basin.

During the development of the 2050 Plan, the Task Force identified four steps or principles that need to be implemented to successfully address the critical groundwater problems in the Sub-Basin. I want to take a few minutes to discuss those steps because they capture the essence of tasks ahead for the citizens of the Sub-Basin to both reverse the effects of groundwater depletion and provide a sustainable supply of groundwater.

Most of the aquifer depletion in the lower Sub-Basin is the result of irrigation development that surpassed the availability of groundwater in the aquifers. As OWRD cuts back groundwater pumpage to a safe annual yield, some groundwater pumpers have had their use curtailed. This has created a deficit between the amount of water permitted under certificated water rights and the amount of water actually allowed to be pumped each year.

The Task Force has looked for ways to provide new water to fill this deficit and to replace most or all of the certificated groundwater rights in the lower Basin. As a first step in the Plan, the Task Force proposes a solution that utilizes Columbia River Water for replacement of certificated groundwater irrigation rights. This action calls for diverting Columbia River water, when it's available generally during the winter months, to replace these certificated groundwater rights in the Critical Groundwater Areas. The purpose would be to fulfill nearly 100% of certificated irrigation water rights and to guarantee water for the entire crop year. The importance of this action would be to significantly reduce groundwater pumping in the Critical Groundwater Areas and probably allow the aquifer to recover. This approach would complement existing artificial recharge and other environmental restoration projects in the Sub-Basin. As many of you are already

aware, efforts are underway to determine if this action is feasible. This year, the Oregon Legislature allocated state funds to begin assessing the ability to divert Columbia River water to storage in the shallow, alluvial aquifer to offset existing groundwater use. That study is currently underway, and we are hopeful it will ultimately result in water deliveries that eliminate the water deficit.

The Tribes have fishing rights in the Columbia River, and the almost-extinct lamprey run and the restored salmon and steelhead runs that return to the Umatilla River must migrate up the Columbia River to return to their spawning areas. We don't want to manage or divert water resources in the Columbia River that would impact the Tribes fishery. We are cautiously optimistic that some winter Columbia flows can be diverted to replace some or all of the groundwater deficits in the Critical Groundwater Areas in the Umatilla Sub-Basin without harming the fishery.

The second step is to determine the availability of groundwater throughout the Sub-Basin and to allocate it in a way that is sustainable and meets the needs of the people of the Sub-Basin. Scientific data on the basin's hydrology and water resources are essential for water managers to meet existing and future water-supply needs. We don't know how much native groundwater is available for sustainable use. A comprehensive groundwater study and an optimization model are needed by water managers and stakeholders to make informed decisions on how water is managed in the Sub-Basin. The study would determine the water budget for the Sub-Basin. Since water is a critically important natural resource and must be shared among multiple beneficial uses, we believe it is imperative to conduct a comprehensive groundwater study, funded by the federal government, state of Oregon, Umatilla Tribes, and local stakeholders, for the long-term benefit of the people and the environment. Such funding would be required to complete a comprehensive groundwater study, which would be used to:

- Promote development of a consensus and scientifically based approach to water resources management
- Provide a water budget for planning, development and resource sustainability
- Protect instream flows from effects of groundwater development
- Prevent social, economic, and environmental consequences of over-use of the water supply

The third step is to settle the Tribe's water claims and to maximize the benefits of the existing federal infrastructure and any new infrastructure to deliver surface water to relieve the groundwater deficit. The Tribes have unquantified, treaty-

reserved water rights in the Umatilla Sub-Basin. These water rights have the earliest priority dates in the Sub-Basin and are intended to provide enough water (sufficient quantity and quality) to support an economy on the Umatilla Indian Reservation and in-stream flows to support the fishery as promised in our Treaty with the United States. The CTUIR is undertaking a project to settle its water rights to meet our water needs without harming existing water rights in the Umatilla Basin. A successful, negotiated settlement of the Tribes' water rights would relieve the existing uncertainty of water availability in the Sub-Basin above and beyond the Tribes' needs.

CTUIR, Westland Irrigation District, and State of Oregon are working in concert to plan and implement Phase III of the Umatilla Basin Project. A Phase III project could provide Columbia River water to Westland and others in an exchange for the irrigation district's McKay Reservoir and Umatilla River water. McKay and Umatilla River water could be used by the Tribes for fishery augmentation and for consumptive use on the Reservation to meet Tribes' water needs. The project could provide Westland with a more reliable water source. An added feature to Phase III could be the use of the infrastructure to deliver and store Columbia River water to help offset some of the water deficits in the Critical Groundwater Areas. Such use of the infrastructure could increase the benefits of the Phase III project and distribute the financial obligation among more users. Currently, the U.S. Department of the Interior is conducting an assessment of the scope of the Tribe's water rights and an appraisal level study of how the water would be developed on the Reservation to satisfy those rights. By mid-2009, those studies should be done and the next step would be to determine if the parties want to proceed with negotiations to settle the Tribes' water rights.

The final step is to protect the economic and environmental benefits realized by implementation of the Plan AND TO ENSURE THAT THOSE BENEFITS, such as the allocation of the replacement groundwater, new water rights, restored stream flow, and improved water quality, CONTINUE INTO THE FUTURE.

Adequate protections would be established through a coordinated monitoring and management program to assure benefits. Possible techniques to provide the necessary assurances include:

- a. Establish a local oversight board to monitor allocation of new supplies and project operations
- b. Provide adequate financial and other needed resources to monitor and manage projects

- c. Determine beneficiaries for assessment of project costs and assure delivery of the water supply
- d. Impose a temporary cap on new alluvial and basalt groundwater rights
- e. Define project boundaries and establish rules that retain water supplies within the boundaries
- f. Modify State laws and rules
- g. Identify future priority water uses and needs and protect supplies to meet the needs.

The 2050 Plan is a major step forward in the process to understand, manage, and protect the Sub-Basin's water resources for future generations. Umatilla County has developed a plan for success that the Tribes are pleased to support. We thank the members of the Task Force and county staff for their hard work in developing the 2050 Water Plan. Remember, we cannot take for granted the quality or availability of our vital water resources to meet the needs of the people of the Umatilla River Basin now or in the future.

Again, we would like to thank the Board of Commissioners for their foresight in establishing the Task Force and to commend Commissioner Doherty, especially, for his leadership in bringing together the various water users into a unified voice for resolving the difficult water problems in the Sub-Basin.

There is much more to be accomplished, but the 2050 Plan offers sound guidance on how to develop and protect sustainable water supplies in the Umatilla Sub-Basin. The Tribes look forward to working with the county and other stakeholders in the Sub-Basin to implement the plan.

Thank you for the opportunity to speak tonight; that concludes my statement.

October 15, 2008

To the Umatilla County Planning Commission

Dear Mr. Chairman and members,

Adopting the Umatilla Sub-Basin 2050 Water Management Plan is a correct **first step**, but it is only the first of many issues that must be addressed if we are to have any hope of a providing a sustainable and productive future for the many generations which will follow us. Please do not just pay lip service to the proof before you that we are in a critical time when it comes to water here in Umatilla County.

As a farmer of largely irrigated crop land in the Milton Freewater area, I have watched with great concern as both our surface and basalt wells have begun a rapid decline in their production of vital irrigation water. This decline has been especially noticeable over the past two years.

Please use common sense in all planning issues before you, especially when dealing with agricultural lands. Do not let personal agendas or pressure from others cloud your thinking when making decisions which will impact our county **forever**.

And respect that fact that the overwhelming majority of our crop land is non-irrigated. Do all you can to protect this rare resource and those who have the knowledge to farm without benefit of irrigation. Stop the rush to divide these lands, making it harder and harder to farm them.

Yes, Oregon says you can divide EFU lands down to 80 acres. Oregon also says you have the right to assisted suicide. There is little difference in my book.

You are our citizen representatives who have volunteered to do a challenging job. Make sure that you represent not just our generation, but the many, many generations of your own families who should be able to live and prosper here in Umatilla County.

Sincerely,

Scott Hendricks

PO Box 293

Milton Freewater, Oregon

Subject: [Fwd: Local Groundwater]
From: Connie Caplinger <ccaplinger@co.umatilla.or.us>
Date: Wed, 15 Oct 2008 16:48:34 -0700
To: JR Cook <jrcook@co.umatilla.or.us>

JR
This is from the city manager at Pilot Rock.
Connie

Subject: Local Groundwater
From: Paul Koch <pkconsulting17@hotmail.com>
Date: Wed, 15 Oct 2008 16:11:31 -0700
To: <bill_hansell@co.umatilla.or.us>, <larry.givens@co.umatilla.or.us>, <dennis_doherty@co.umatilla.or.us>
CC: <vcarnes@centurytel.net>

Commissioners: This email is to inform you of City support for the creation of a local regional board or program to keep control of groundwater and other water sources in our region. This is supportive of the recommendations sent to you by the Groundwater Task Force. The City is very supportive for all actions that will keep control locally so as to have the greatest potential for managing our own future.

In addition, the City feels that there should be some mention and use of water reuse in the plan. This is vital for our region and as the technology exists (and is used in other parts of this country and world) for us to re-use waste water for a variety of uses, we think this should be added. We understand it is now state policy and that DEQ has rules dealing with water reuse. Anaheim, California will take 10% of its domestic drinking water from a reuse plant that treats waste water. The new technology for waste water can reduce treatment facility cost by 50 to 75%.

We also think that the two counties (Umatilla and Morrow,) working with the two Ports should be able to initiate the Task Force recommendations fairly easily.

Additionally, be aware that Pilot Rock is very quickly moving to reorganizing and being more effectively able to deal with economic development issues.

Should you have any questions, please feel free to contact me.

Thanks you.

Paul

503-309-1460 www.paulkochconsulting.com

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Local Groundwater.eml | **Content-Type:** message/rfc822
Content-Encoding: 7bit

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