

Comments on:

Oregon's Integrated Water Resources Strategy Discussion Draft

December 22, 2011

REVISED FROM COMMENTS OF November 18, 2010

The following are comments I initially had after reviewing the latest Draft Issues Paper on the IWRS program. The next comments were follow-ups to my comments on the previous draft of 10/18/2010.

This is a Revised letter after the Draft of June 22, 2012

To preface these comments let me say that it seems that the promise put forward by the DWR that this has been a bottom up process is a bit hard to swallow. I attended some of the town halls on the public's thoughts on IWRS and have difficulty seeing the input by the vast majority of water users incorporated in this last and assumedly final draft.

1. THIS CONTINUES TO BE UNADDRESSED;

There is nowhere in this paper where it deals with the State's reaction to the continuing infringement of the Federal Government in issues that affect the States Rights to own and regulate water within its boundaries and not specifically defined as Waters of the United States. I believe this to be the most critical long term threat to Oregon managing its water for the future beneficial interest of Oregonians.

There can be no meaningful discussion of Water Rights under Oregon's Water Law in Oregon without first establishing the fact that Oregon owns and will be the priority manager of its water. This primary management right cannot be abrogated to the Federal Government or any of its agencies to the subordination of Oregon's agencies and water users.

2. **ECONOMIC IMPLICATIONS OF WATER MANAGEMENT CONTINUE TO BE LACKING OR DISPROPORTIONATELY LOW IN THIS DRAFT; In the Recommended Actions sections there is not one reference to what actions could be taken to improve Oregon's economy by better use and management of its water. Under the "The Purpose of The Document" Oregon's Economic Development is stated as one of the two "emerging themes" but it is difficult to see this fleshed out in the remainder of the document.** The economic aspects of water use in Oregon have to be the driving factor behind long term planning.

Economic Development takes up less than six pages of this 135 page document. There can be no clean and plentiful water planning within the State if its citizens are run into economic ruin by overreaching environmental policies which ignore the fact that to have a clean environment you have to have a healthy and thriving economy. How many poor third world nations are there that have sustainable clean environment management. That third world status is where Oregon will be heading if we do not prioritize our economy above overreaching environmental fanaticism. There is simply an overriding and penetrating tone of the environmentalist advocates agenda in this paper.

3. **THIS FOLLOWS THE LACK OF UNDERSTANDING OF THE IMPACT OF INCREASINGLY REGULATED WATER ON RURAL AREAS' ECONOMIES;**

RURAL POPULATION LOSS.

There is no section in this paper that addresses the continued loss of population in the agricultural portion of the state which is that part East of the Cascades. **The lockup of land and water in Eastern Oregon has lead to a continued decimation of its socioeconomic structure. The ever increasing focus on in-stream rights has prevented the development of in-stream and off-stream water storage projects. Those projects not only feed water into the local economic infrastructure but the retention of water as high up in a basin as possible is just good water management policy. Retained water during peak flows and low use periods creates longer sustained discharge, cleaner water, better flows out of the basin and improved riparian habitat during low-flow and high demand seasons.**

On page 100 it is states *"It costs far more to obtain drinking water when treated by a multi-million dollar facility than maintaining a relatively healthy watershed that naturally provides a source of water"*. Does this statement take into consideration the loss of revenue potential from those resources locked up in watersheds? Are not water treatment facilities going to be needed anyway? This lack of consideration of clean –technologically sound multiple resource benefit from our forests and grazing lands is symptomatic of the approach within this document.

THIS IS WHERE REAL ECONOMIC DEVELOPMENT SHOULD BE FOCUSED.

- 4. THE NEXUS HERE MUST BE RECOGNIZED BUT NOT USED TO PUNISH GROUNDWATER USERS WHERE STUDIES (IF THEY EXIST) DO NOT INDICATE DAMAGE TO AQUIFERS OR RECHARGE SYSTEMS)** There is a clear technical and political nexus between groundwater and surface water.

SURFACE AND GROUNDWATER NEXUS

Before a meaningful long term plan can be made for Oregon, the project of defining water availability, management and use for both ground and surface water should be completed on a basin by basin basis. AR and ASR projects, while of good intent and locally appropriate, are simply not energy efficient and quantitatively sufficient to provide for our water based industries in the future. Seasonal Upstream storage capacity has to be increased for the benefit of the downstream seasonal need and the improvement of groundwater recharge.

5. BASE, PEAK AND ECOLOGICAL FLOWS

I put together as time line that would incorporate all the flow types developed by the Ecological Flows Technical Advisory Group. That time line shows literally every month of the year with some controlling environmental flow criterion attached to it. These eco-flows will be nothing more than a handy tool for whatever group wants to prevent beneficial use of water at any time of the year.

- 6. IT IS GOOD TO SEE THIS HAS BEEN RECOGNIZED IN THIS DRAFT! THIS NEEDS TO BE A PRIORITY BEFORE NEW MANAGEMENT TOOLS ARE IMPLEMENTED IN ANY UNAJUDICATED AREAS;**

UNAJUDICATED WATER RIGHTS

The issue of unajudicated water rights in Oregon is an embarrassment if not a complete dereliction of duty by the DWR. Before we can move forward to creating more encumbrances on the water right holder, those folks who hold unajudicated rights have the right to adjudication under the conditions that prevailed at the time of their filing on those rights.

This should be a mandatory obligation of the State's water management program.

7. THIS CONTINUES TO BE A CONCERN;

FOREST LANDS

It should be incumbent upon any water management plan in a state where 50% of the land is forestland, to take on the issue of Federal Forestland management. In the last 20 years we have seen the neglect in our forests lead to catastrophic fires. A single big fire season can lead to severe degradation of our waterways a thousand fold greater than the minimal damage created by proper forest harvest projects. The management plan should support active commercial harvesting and replanting of our public forests as a critical tool to minimize the potential for the destruction of watersheds and degradation of waterways by fire while adding funds to the government and local coffers to economically sustain proper forest management. Again here the States Right to manage its resources has to trump Federal regulation.

THIS CONTINUES TO BE A CONCERN;

INSTREAM AGENCY FILINGS.

It seems to me that when an agency files for an instream water right, that that is overstepping the bounds of what an agency should do with a resource that is held by all the people of Oregon. It is almost certainly true that agencies are given preferential treatment when filing for water rights over what a private sector entity would get. I believe that there should be no priority date given to any agency requesting a water right and a term set for those rights that would sunset unless extended by the legislature after an appropriate time period.

It should in essence be a water use lease for a set period of time to accomplish a specific beneficial use. The public does not vote on these rights “held in trust for public benefit” and the public benefit priorities may change over time. Planning and managing water for the future should not authorize an agency, with a current agenda, to lock up the peoples resources in perpetuity.

In action item 11b, the DWR calls for the Voluntary programs to restore Stream flow. By this action item DWR has reinforced its priority of instream uses over historical and economic beneficial uses.

8. IN-STREAM TRANSFERS NEED NEW PRIORITY DATES;

Instream transfers

Permanent In stream transfers from water rights older than the beneficial use for wildlife was an option, should receive the priority date of the transfer and not the original priority date. When you permanently take water rights out of the private sector, which were acquired pre-wildlife beneficial use allowance, and put them into the public sector then the water right should become junior due to a radical change in beneficial use. The priority date should move to the date of the instream transfer.

9. CLIMATE CHANGE BASED MANAGEMENT PLANNING CONTINUES TO BE A HUGE CONCERN AND IS INCREASINGLY PROBLEMATIC AS SCIENCE BUILDS ON THIS ISSUE;

CLIMATE CHANGE

The Intergovernmental Panel on Climate Change, the IPCC, is fraught with corruption and outcome oriented science. To use the IPCC's climate predictions as a fundamental building block for water availability planning is scientifically questionable at best.

Any water management strategy that hinges its plan around climate change is problematic. It is not only courting technical disaster but wasting the public's money and the government's credibility while hobbling the private sector with more controls on resource development. Any number of studies can be found to refute the climate change premises contained within the *Climate Change* section.

It is a documented fact that mankind has thrived in times of global warming and declined in times of global cooling. The affects of either of these occur slowly enough to accommodate and adapt to when the tangible facts are upon us. Planning for the unknowable and uncontrollable is sheer folly.

In the staff report submitted to the Commission from the WRD and other conspiring or contributing agencies, there were letters of support from all those participating agencies, but nary a letter in dissent from the water users. It appears that the DWR has placed the Water Resource Commission directly between the opinions and desires of the relating agencies and the needs and opinions of the water users of Oregon.

I hope the Commission will choose to work for and carry out the wishes of the people of Oregon and reject this draft Integrated Water Resource Strategy.

Thank you for the opportunity to comment on this issue critical to the future of Oregon.

Tim K. Smith
Harney County, Oregon

August 3, 2012

Text Read to WRC 8/2/12

IWRS FLOW DEFINITIONS AND OCCURANCE CHART												
FLOW TYPE	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT	OCT	NOV	DEC
PEAK FLOWS												
"ECOLOGICAL FLOWS"												
SUBSISTENCE FLOWS												
BASE FLOWS												
BIOLOGICAL TRIGGERING FLOWS												
HABITAT MAINTENANCE FLOWS												
NOTE:	<p>THE COLORED AREAS SHOW THE MOST LIKELY TIME PERIODS FOR THESE FLOW CONDITIONS TO EXIST. It should be noted that the peak flow times where water could be utilized for storage and upbasin retention would now fall under both the biological triggering and habitat maintenance flow periods; i.e. their use for non-ecological purposes would/could be contested based on these flow regime definitions.</p>											