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THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY
RECORDS

STATE OF OREGON

In the Matter of Adoption)
of Exempt Well Resolution) Order No. BCC2005-15

WHEREAS on January 5, 2004, the Board of Commissioners adopted Order No. BCC2004-01 creating and appointing the Umatilla County Critical Groundwater Task Force to identify and implement technically and economically feasible measures to enhance and protect groundwater quantity and quality, as an essential natural resource necessary to assure continued economic development in Umatilla County, especially in designated Critical Groundwater Areas;

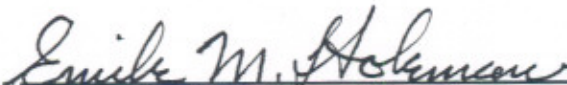
WHEREAS on January 6, 2005, the Umatilla County Critical Groundwater Task Force adopted a resolution and recommendation to deal with the immediate domestic water use issue and to provide security and clear and objective standards for Umatilla County citizens to develop domestic water supplies as allowed by law; a copy of which is attached to this order as Exhibit A;

WHEREAS on February 24, 2005, the Board of Commissioners held a public meeting to consider the resolution and recommendation of the Umatilla County Critical Groundwater Task Force, and voted to adopt the resolution with revised language for the 11th paragraph on page 2 of the resolution, further set out in Exhibit B attached to this order;

NOW THEREFORE, the Board of Commissioners orders that the Exempt Well Resolution is adopted as the policy of Umatilla County, as set out in Exhibit A, further amended by Exhibit B, attached to this order and incorporated by this reference. The Exempt Well Resolution will remain the policy of Umatilla County until further order of the Board of Commissioners.

DATED this 24th day of February, 2005.

UMATILLA COUNTY BOARD OF COMMISSIONERS


Emile M. Holeman, Chair



William S. Hansell
William S. Hansell, Commissioner

Dennis D. Doherty
Dennis D. Doherty, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Sean Hemphill
Records Officer



EXHIBIT A

January 6, 2005

UMATILLA COUNTY
CRITICAL GROUNDWATER TASK FORCE
Rural Residential Water Use
Resolution and Recommendation

WHEREAS the Umatilla County Critical Groundwater Task Force was created by order of the Umatilla County Board of Commissioners on January 5, 2004.

WHEREAS groundwater is an essential natural resource necessary to meet current and long-term water needs for domestic, municipal, agricultural, environmental, and other water uses in Umatilla County. The Umatilla County Critical Groundwater Task Force is created to identify and make recommendations on steps that Umatilla County should take to protect, sustain, and enhance groundwater quantity and quality in order to address future water supply needs in the County including the entire Umatilla Basin, but especially within designated Critical Groundwater Areas (critical areas).

WHEREAS one of the objectives of the Task Force, as specified by the Board of Commissioners, is to prepare a sustainable plan for groundwater development in Umatilla County through 2050.

WHEREAS the Task Force has met for ten months and has been presented with scientific and factual data from private parties, irrigation related entities, the Oregon Water Resources Department (OWRD) and other state agencies, and federal agencies. The Task Force has further been presented with scientific and technical information by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) representatives and experts. The CTUIR information provides knowledge of the interconnections of overall water uses and inventories in the Umatilla Basin. This information provides the Task Force with the foundation to understand the general makeup of the Umatilla Basin groundwater area as well as the reasons behind the creation of the various designated critical areas.

WHEREAS groundwater is the sole source of water supply to the residences outside the municipal water systems in the critical areas.

WHEREAS the development of the basalt groundwater reservoir in the lower Umatilla Basin, beginning mid-1960's and largely for irrigation, has resulted in regional water level declines in basalt wells.¹ The declines are continuing despite the administrative actions by the Oregon Water Resources Department to declare critical groundwater areas for the basalt aquifer in Stage Gulch, Ordnanee and Butter Creek areas and restrictively classifying the basalt aquifer in the Ella Butte area. These administrative actions affect approximately 800

¹ Zwart, M.J., 1990, Groundwater conditions in the Stage Gulch area, Umatilla County, Oregon: OWRD, Salem, 44 p.

square miles (most of which is in Umatilla County) and severely limit future groundwater development and reduce groundwater use in much of these areas.²

WHEREAS the Ordinance gravel aquifer, separate from the basalt aquifer and overlying much of the Ordinance basalt aquifer in Umatilla County, is also a critical groundwater area designated by the Oregon Water Resources Department. Through the actions of several well owners in the Ordinance area to artificially recharge the gravel aquifer, groundwater levels in this critical area have responded favorably as a result of the recharge project and are relatively stable³. Despite these improvements in the gravel aquifer, Oregon Water Resources Department is no longer issuing water right permits for non-exempt uses of groundwater in any of the critical areas.

WHEREAS the Task Force has been presented with information by OWRD that the total available groundwater for use for irrigation and other non-exempt uses in the 800-square miles of critical areas is approximately 54,600 acre-feet per year, which is less than 40% of the 145,400 acre-feet per year of water rights issued for groundwater in the critical areas for non-exempt use.

WHEREAS the Task Force has been presented information demonstrating that domestic and residential uses of water are insignificant in volume compared to non-exempt uses of groundwater, such as irrigation and municipal, in the critical areas but are of critical importance to the citizens and the growth and vitality of Umatilla County.

WHEREAS the Task Force has received information that the volume of water for domestic purposes on 330 undeveloped rural residential lots within the designated critical areas is estimated to be less than 1-acre foot per year⁴ (af/yr) per resident having a family of four. To put this quantity into context, the amount of water that would be used annually by all 330 domestic users is less than 330 af/yr, which is less than 0.6 percent of the active groundwater rights in the critical areas.

WHEREAS the Task Force is aware that the impetus for its creation was the threat of limiting or restricting the ability of county citizens to develop property that utilizes exempt domestic wells for residential purposes on lands presently designated for rural residential development in the critical areas. Behind the impetus to the threat to Umatilla County citizens was sustaining pressure by OWRD and the Department of Land Conservation and Development (DLCDC) on Umatilla County, during the County's comprehensive plan periodic review process. This process by OWRD and DLCDC encouraged the adoption of an overlay zone to "help enhance" groundwater supply by restricting rural residential growth.

² OWRD, 2003, Ground water supplies in the Umatilla Basin: OWRD, unpublished, 30 p.

³ OWRD, 2003, Ground water supplies in the Umatilla Basin: OWRD, unpublished, 30 p.

⁴ Domestic water consumption (water for normal household purposes including watering lawns and garden) in Oregon is reported as 109 gallons per day per capita (van der Leeden, F., et al, 1990, The water encyclopedia, second edition: CRC Press LLC, Lewis Publishers, Florida, p.335).

WHEREAS the Task Force finds it necessary to provide an interim recommendation to the Board of Commissioners to establish a policy in order to preserve to county citizens the existing right to develop a water source for domestic and residential purposes as allowed by law.

WHEREAS the Task Force is aware, in making this Resolution and Recommendation, of state law ORS Chapter 197 taking effect December 2, 2004. This law would require Umatilla County to compensate landowners for a reduction in land value, or provide a waiver for any new regulation.

WHEREAS the Task Force is aware that a majority of the rural residential properties available for development within and outside of urban growth boundaries are within the boundaries of one of the four large irrigation districts, i.e., Stanfield Irrigation District, Westland Irrigation District, Hermiston Irrigation District, and West Extension Irrigation District. A majority of the rural residential properties, developed and undeveloped use water from the irrigation districts for irrigation purposes. These delivery systems provide surface water for lawn, garden, pasture, and small crop irrigation and serves as a distribution system for alluvial groundwater recharge by the residential properties.

WHEREAS the Task Force is aware that a "standard" rural residential on-site septic system is designed to accommodate domestic uses in the home (not garden or lawn) of 450 gallons per day. The Task Force is aware that most of the water use within the home is not consumed; rather, it is discharged to the septic system and into a drain field. Most drain fields are designed primarily for percolation of water. Because of drain field design, domestic water use in the home provides replenishment to the alluvial groundwater resource by virtue of the self contained on-site septic system.

WHEREAS, groundwater is a public resource and its development and use are regulated by the State of Oregon. The Task Force is aware that residential, domestic, and municipal uses are high priority uses under State of Oregon water policy, even in critical areas. Domestic use from groundwater sources is classified as an exempt use under Oregon law but can be regulated by priority date by the OWRD.

WHEREAS the Umatilla County Planning Department has provided the Task Force with information that at present there are approximately 330 undeveloped rural residential lots within the critical areas. Under current zoning regulations, each of the lots could be developed with a single home.

WHEREAS the Task Force has been presented with facts demonstrating that domestic and other exempt uses of water are insignificant in volume compared to groundwater availability and to irrigation and municipal uses in critical areas but are of importance to the citizens and the growth of Umatilla County.

Exempt Well Resolution

WHEREAS domestic and other exempt water uses account for very little of alluvial and basalt aquifer waters used in the Umatilla Basin and the designated critical areas. The Task Force believes there are immediate and reasonable solutions to the issue of providing domestic water supplies to the rural residential parcels now or hereafter established in the critical areas. The Task Force wishes to resolve this matter so it can focus its efforts on exploring ideas, water supply needs, enhancement opportunities, and potential projects necessary to complete a 2050 plan, which will address long-term groundwater supply problems that affect economic development, the environment, and the quality of life in the Umatilla Basin.

WHEREAS the Task Force is aware that there are active exempt wells in the critical areas and that the continued growth of exempt wells, scattered throughout the critical areas, may have an impact to the existing water-right holders in the critical areas. Inasmuch the cumulative impact of groundwater withdrawals by all exempt wells in the critical areas may be significant, groundwater withdrawal by a single resident or 330 residences is insignificant compared to current withdrawals for both exempt and non-exempt uses.

WHEREAS the Task Force recognizes that the current groundwater conditions of decline and overdraft are widespread and affect all groundwater users in the critical areas, and that limiting or restricting withdrawals for domestic use will not solve the problem of groundwater decline and overdraft. Moreover, because a relatively small amount of groundwater is needed to supply 330 residential lots, as compared to existing exempt and non-exempt withdrawals, development of groundwater for use on these residential lots is unlikely to exacerbate the problem significantly.

NOW THEREFORE, the Task Force presents the following findings and recommendation to the Umatilla County Board of Commissioners as a means to deal with the immediate domestic water use issue and to provide security and clear and objective standards for Umatilla County citizens to develop domestic water supplies as allowed by law:

1. The Task Force finds the comfort and economic security of the citizens of Umatilla County, and the county's ability to provide an appropriate balance of rural residential housing, is dependant upon a citizen's ability to construct a water well for domestic purposes. The citizens of Umatilla County are aware that neither the state nor the county has ever guaranteed (or will ever guarantee) a supply of water for domestic, irrigation, or other uses, but the county must recognize a citizen's right to install a well for lawfully allowed uses.

2. The Task Force finds domestic and other exempt uses of water consume relatively very little of the alluvial and basalt aquifer waters in the Critical Groundwater Areas as compared to non-exempt uses such as that used for municipal, industrial, and agricultural purposes.

3. The Task Force finds, at present, there is the potential for approximately 330 additional domestic wells in the one hundred square mile area surrounding Hermiston. These

wells would serve new rural residences in the critical areas. The Task Force finds that some wells will be installed in the alluvial aquifer and some will be installed in the basalt aquifer.

4. The Task Force finds that domestic uses currently allowed by Oregon law are consistent with existing uses by Umatilla County citizens. The Task Force further finds that while such uses and quantities are measurable overall, they make up an insignificant quantity of water use within the Umatilla Basin and the critical areas compared to other existing commercial, industrial, agricultural, and municipal uses. The domestic and residential uses, however, are of the highest priority to Umatilla County and are paramount to preserve for the benefit of Umatilla County citizens.

5. The Task Force finds that the addition of approximately 330 new residential and domestic users will have an insignificant impact on the overall groundwater supply in the critical areas. The Task Force finds that it would be both unfair and economically unwise to impose non-proportional burdens on domestic and residential water users when such users will have an insignificant effect on current water-supply problems. This is based on the fact that the domestic and other exempt usage is relatively insignificant, and is spread over a one hundred square-mile area.

6. The Task Force is aware that certain wells may need to be deepened or relocated due to age, water quality, or declining water levels. The Task Force finds that one isolated area or areas exists near Hermiston (e.g. the Dickenson Addition) where a high concentration of residential and domestic wells has created well interference and consequent deepening of domestic wells. The Task Force finds that an isolated area, or areas, containing a high density of residential and domestic wells is not a reasonable basis to impose restrictions or limitations on the development of domestic wells on rural residential properties in the critical areas in Umatilla County.

7. The Task Force finds that state law provides a means to deal with domestic well interference. The Task Force finds that neither the state nor the county can guarantee any well owner an adequate water supply to meet the water demands of the owner, and the OWRD has the authority under state law to regulate well use, including domestic well use. Owners of existing and new domestic wells must accept the risk of having the use of their domestic wells regulated, including restrictions on pumping, by OWRD.

8. The Task Force finds that facts, ideas, projects (such as rural water systems), and proposals brought before the Task Force for the last ten months have provided tremendous opportunities to help enhance and preserve the Umatilla Basin's alluvial and basalt aquifer water supplies. Such projects impact larger areas in many ways and are likely to be disbursed throughout the Umatilla Basin and primarily in the Critical Groundwater Areas. These projects require a collective element of private, semipublic, city, county, tribal, and state cooperation, oversight, and implementation. Such projects cannot be implemented,

nor their costs borne by individual county citizens. Individuals, like all others, may bear their proportional share upon properly enacted county or state legislation.

9. The Task Force finds that no meaningful solution to the widespread problem of groundwater level declines and overdraft can be achieved through the restricted development of 330 residential lots, and that other actions are needed to address meaningful recovery of groundwater levels, or at the very least, prevent further declines of groundwater levels in the critical areas.

10. The Task Force finds that it is important to employ the most environmentally sound and cost-effective method of providing safe water supplies to its rural residents. Unless and until municipal or quasi-municipal systems are created, individual domestic water wells are presently the most environmentally sound and cost effective method of providing safe and reliable residential and domestic water supplies.

11. The Task Force finds that for purposes of demonstrating compliance with development standards for land use permits, water is "available" for rural domestic and other exempt uses of groundwater in the critical areas in Umatilla County.

12. The Task Force recognizes that existing houses and development are allowed to expand and rely on exempt wells, provided the wells are utilized within the parameters of Oregon Water Law.

13. The Task Force, in order to fulfill a portion of its mission, makes the following recommendation with regards to existing and future domestic and other exempt water uses in the critical areas.

RECOMMENDATION

The Umatilla County Critical Groundwater Task Force hereby recommends to the Umatilla County Board of Commissioners to confirm the following interim policy in partial fulfillment of its objectives and mission:

Until a 2050 plan is developed to direct development, allocation, and management of groundwater in the Umatilla River Basin in Umatilla County, the citizens within the critical areas may continue to install domestic wells, as authorized by state statute, and as they have been historically allowed to do. In the interim, applicants to Umatilla County for zoning permits, land partitions, or rural subdivisions, existing as of the date of this Resolution, will not be required to pay impact fees, conduct water availability studies, provide mitigation measures, or have any other domestic water supply condition imposed on them by the county until a 2050 plan is developed, or as duly authorized by County Ordinance.

Insofar as the county is required to adopt findings to approve land use permits, the county will rely on this document to defend the assumption that new exempt wells do not make a significant adverse impact on the groundwater resource. The county will assume exempt wells are appropriate and permissible.

In the event adjoining property owners or other interested parties raise concerns about a potential negative impact to groundwater supply of a proposed development, the county will continue to defer to OWRD. The county will rely on the findings in this document to allow development of exempt wells. Until such time as the county is granted authority to manage or regulate water use, claims about well interference, inadequate water supply, etc., shall not be treated as a land use matter and shall be deferred to the OWRD for regulation under Oregon water law.

Dated this 15th day of January, 2005.

Kent Madison, Chair
Harmon Springer, Vice-Chair
Umatilla County Critical Groundwater Task Force

EXHIBIT B

Adopted Alternative Language for 11th paragraph, page 2 of recommended resolution, supersedes and replaces the paragraph in the recommended resolution.

WHEREAS the impetus for creation of the Task Force was:

Statewide Planning Goal 5, which requires protections for essential natural resources (e.g. groundwater);

The reality of the long-term groundwater declines in the critical areas;

The interests, concerns, and objectives by some homeowners who believe that their domestic water supplies are placed at risk by groundwater uses on neighboring properties;

Encouragement by various state bodies for the county to address these issues in the land use context during the periodic review process;

Periodic review, which impelled the county to consider a temporary moratorium on new housing on rural residential zoned lands in the critical areas pending development of a plan which complies with state Goal 5;

Subsequent support by the general public to, instead move ahead immediately with the development of the plan.