

POLICY OUTLINE
OREGON OASIS PROJECT
SENATE BILL 483
HOUSE BILL 3525

(Revised June 18, 2007)

I. Introduction - Current Conditions/Brown Ground.

1. The agricultural region of northeast Oregon along the Columbia River has some of the richest farm soils in the world, but due to restrictions placed on the use of water, this land is under-utilized and its vast potential for growing crops remains largely untapped.

2. Over the past decade, groundwater levels in the region have also declined and severe restrictions have been implemented by the state, including curtailing water use from some wells and completely shutting off others; both of which have been economically devastating to the region. Due to the reduced groundwater allocation by the state, farmers, unable to rely upon an adequate supply of water, are planting low value crops that do not require much water or, in many cases, are allowing their otherwise rich farmland to sit idle. Due to declining groundwater aquifer levels, the Oregon Water Resources Department has severely limited withdrawals from some wells and has completely shut off others within Stage Gulch, Butter Creek and Ordinance critical groundwater areas. All in all, approximately 65,000 acres in northeastern Oregon are classified as critical groundwater acres resulting in severe value reductions and lands sitting idle.

3. Oregon is not attracting new food processors. This is because Oregon's irrigated land base is declining. There is not enough land to supply existing food processors, let alone new food processors. Irrigators in Oregon are unable to place new ground into production.

4. Washington State, on the other hand, continues to develop irrigated land from the Columbia. Approximately 37,685 acres since 1992 have been placed into production through irrigation. In addition, Washington State plans major new irrigation projects and has committed in excess of \$200,000,000 to study storage and other solutions to water problems. Oregon refuses to budge, ruling off-limits significant excess flows of Columbia River water and relegating northeastern Oregon to desert land. The basin plan for the Columbia River, adopted in 1983, included a purported reservation of 30 million acre feet of water for future uses in Oregon. That was before Oregon shifted its position to an almost outright ban on the use of river water. Oregon currently uses approximately 1/15th of the overall allocation envisioned in 1983.

5. Compared to Washington, Oregon uses very little of the Columbia River. The total flow of the Columbia River measured at the mouth of the Columbia is approximately 198 million acre feet (an acre feet being the amount of water necessary to

rise one foot on an acre of land). Of the 198 million acre feet of flow, 93.07% ultimately reaches the Pacific Ocean. The net irrigation withdrawals taken from the Columbia River in total are only 6.93% of the flow. Of those net irrigation withdrawals, the state of Idaho utilizes 52.48%. The state of Washington utilizes 32.8%. Oregon only uses 7.43%, followed by Montana at 7.29%. These calculations include all tributaries of the Columbia, including the Willamette River. As a result, Idaho irrigates 45.4% of its acreage from the Columbia River System. Washington irrigates 25.6% of its acreage. Oregon only irrigates 18% of its total acreage. Clearly, our neighboring states have taken full advantage of the economic benefits occasioned by the withdrawal of water from the Columbia and its tributaries. The incredibly rich farm soil contained within each of our states has been put to great productive use by the states of Idaho and Washington. Oregon's land, on the other hand, has remained a desert. Essentially, Idaho and Washington, through their aggressive water policy, have lured our markets, our customers, and our jobs while we have sat on our hands.

II. Description of Senate Bill 483 and House Bill 3525.

1. Senate Bill 483 and House Bill 3525 (a "teamwork" bill in the House) make available 500,000 acre feet of water per year from the Columbia River for three primary uses and raises funds for needed in-stream water conservation projects. First, 195,000 acre feet are made available to recharge or replace critical groundwater affecting 65,000 acres of land in eastern Oregon. Permittees would be allowed to either utilize the groundwater to recharge or replenish critical groundwater aquifers or to use the water directly in lieu of the critical groundwater allocations.

2. Up to 300,000 acre feet per year will be devoted to permit holders who will use the water to support business development projects. These projects are defined by ORS 285B.050 and include agricultural development or food processing, aquaculture development, development or improved utilization of natural resources, manufacturing or other industrial production, or other activities that represent new technology for a type of economic enterprise that the Oregon Economic and Community Development Commission determines is needed to diversify the economic base of an area.

3. In addition, up to 5,000 acre feet per year are devoted for municipal users.

4. The Water Resources Department is instructed to issue permits to persons who will use the water for these purposes provided those persons illustrate the means to deliver the water through ownership or authorized use of a water delivery system. In addition, the applicants for the permits must be certified by the Water Resources Department as capable of employing best management practices. That term is defined in the bill to mean a practice or combination of practices involving the diversion, distribution and application of or the use of water resources that is both cost effective and practicable, adopted for the purpose of achieving greater water use efficiency. The permittee must also execute an agreement with the Department of Water Resources in which that person agrees to use best management practices in the use of water.

5. The Water Resources Department is authorized to charge a fee in the amount of \$10.00 per year for every acre foot of water appropriated and used to support a business development project that is in excess of the water otherwise permitted for use. All monies received by the Water Resources Department pursuant to the bill are paid into the State Treasury and are credited to the Columbia River Water Account which is established by Section 4 of the Act. Approximately \$3,000,000 per year can be utilized in this way.

6. The Columbia River Water Account established under the bill is utilized for developing in-stream water conservation projects managed in coordination with federally recognized Indian Tribes in Oregon whose reservation or trust lands include the Columbia River or the Columbia Basin.

III. Benefits.

A. Anticipated Economic Benefits.

1. The Oregon Oasis Project is not designed to effect parity, nor will it ever bring Oregon in complete parity with its neighboring state of Washington. However, it will inch closer by allowing the additional withdrawal of water from the mid Columbia River main stem. Although the amount to be withdrawn will only increase the net irrigation withdrawals from 6.93% to 7.07%, it will boost Oregon's percentage of the overall withdrawals from 7.43% to 10.68%, still leaving Washington with 31.65% and Idaho with 50.63% of the total withdrawals. However, that tiny additional amount of water will result in vast economic benefits to the region. The additional amount withdrawn will permit farmers to make the agricultural cluster vibrant and robust. It will provide water for 100,000 additional irrigated acres and allow the growth of high market value vegetables and fruits. These crops will be processed in Oregon creating between 5500 and 7300 new jobs and will provide approximately \$220,000,000 in added revenue. In addition, the new irrigated land will result in an increase in state and local property taxes of more than \$25,000,000. The Oregon Oasis Project will aid the state's economy by providing a wide range of jobs from farming to processing, to cold storage and product distribution. Oregon is already a leader in developing and using new "best practices" technology to farm efficiently, and more water for use in the Columbia Basin will expand northeastern Oregon's natural agriculture and processing cluster promoting new research and development that is important to the industry and the state's economy.

2. The Portland and Salem areas receive on average 39 inches per year of rainfall. Hermiston only receives 9 inches per year in rainfall. It takes approximately 460,000 dry land acres to produce the equivalent in crop value as 10,000 acres of irrigated land in northeastern land. One 125 acre irrigated field produces as much crop value as 5,750 dry land acres. With water, one needs 46 times less land in order to generate the same dollar value from crops.

3. In the case of corn, a crop required by ethanol plants, one can generate only 40 bushels per acre on ground without water. This results in a crop value of \$188 per acre every other year. On the other hand, with water, corn crops can generate \$1,000

per acre. Onions can generate \$4,000 per acre, peas and sweet corn \$1300 per acre, and potatoes up to \$3,000 per acre. The economic impacts of additional water in this region are both readily apparent and staggering.

4. Where critical groundwater areas now exist, new surface water rights would ensure the viability of 65,000 critical groundwater acres representing local and state income amounting to approximately \$143,000,000 annually.

5. With the future development of approximately 100,000 irrigated acres over the next 20 to 25 years, an additional \$220,000,000 annually could be obtained in local and state income.

6. We are attaching a legislative briefing paper prepared by the Pacific Northwest Project along with a paper entitled "The Regional Economic Significance of Columbia River Water Rights from the McNary and John Day Pools," as backup supports for these estimates.

B. Benefits for Oregon's Bio-Fuel Initiative.

1. As you know, the Legislature is well on its way to passage of House Bill 2210 which does a number of things to incentivize the production and use of bio-fuels, most notably ethanol and bio-diesel. Some of the more significant incentives in the bill extend a tax credit for production of "bio-mass" which includes most notably "crops grown solely to be used for energy." The bill ultimately requires gasoline dealers to refrain from selling gasoline or diesel fuels that do not contain adequate levels of bio-fuel once ethanol and bio-diesel production reach certain levels in Oregon. The bill requires state government to utilize bio-fuels to the maximum extent economically possible and the proposed legislation also provides for personal tax credits for consumers and easier siting rules for bio-fuel plants and facilities. Altogether, the legislative scheme assumes that the tax incentives will stimulate significant production of bio-fuels in Oregon and result in increased job opportunities. The legislative scheme then anticipates changing the gasoline and diesel mix by requiring higher percentages of ethanol and other bio-fuel, banning certain additives and ultimately moving towards bio-fuels as a substitute for petroleum. It is a grand vision, but one predicated upon an assumption that the supply and easy availability of raw material (bio-mass) for meeting the demand for bio-fuels will expand sufficiently to keep up with the demand. Without water, this will not be the case.

2. In the New York Times article, *Life on the Ethanol Guzzling Prairie*, February 11, 2007, Timothy Egan discusses how bio-fuel plants are revitalizing parts of the formerly economically depressed farm belt. The article focuses on how decentralized this budding industry is and how important it is for ethanol plants to have a plentiful and close supply of raw materials in order to keep costs at a level competitive with petroleum.

3. The article observes that corn prices have almost doubled recently due to the demand by ethanol producers. These increased corn prices will be felt not only by consumers of corn products but also by the ethanol producers themselves who will have to pay higher prices for their fuel and thereby experience tighter profit margins.

4. In our view, the only real solution is to incentivize an increase in production of corn and bio-fuel precursors such that the supply and local availability of the raw material keeps up with the new demands placed upon those commodities. Of course, the added production should supplant, not replace, current production of other crops. Oregon cannot produce sufficient corn and other bio-mass to meet even the projected local demand while maintaining its current levels of agricultural production unless it can bring new acres into production for that purpose. The only way to bring in new acres is to provide sufficient access to irrigation water. The Oregon Oasis Project will fill that need and make it possible to meet the demand which will result from the state's bio-fuel initiative.

5. If the state does not adopt the Oregon Oasis plan, or something like it, there will likely be a lack of local supply of bio-fuel precursors. The consequences of unavailability of local supplies of corn and other bio-mass will likely be:

- a. increased local and national demand for bio-fuel crops which will further increase the prices of these commodities;
- b. increased raw material prices which will result in narrower profit margins for bio-fuel producers, thereby counteracting the incentives which House Bill 2210 is designed to provide;
- c. the lack of local supply of bio-fuel crops which will require bio-fuel producers to also incur transportation costs inherent in the importation of those raw materials, further diminishing the ethanol producers' profit margins and making bio-fuel less competitive with petroleum; and
- d. as a final irony, the lack of a local supply of bio-fuel crops will also require the emission of significant carbon dioxide as vast quantities of petroleum are used to transport, by truck or rail, the bio-fuel crops from the Midwest, long distances to the bio-fuel plants in Oregon. Thus, the attempt to manufacture bio-fuel for the purpose of decreasing carbon emissions will result in an increase of those emissions due to inefficiencies in the availability of raw product.

6. Many of these adverse consequences can be eliminated given an adequate supply of bio-fuel crops. The Oregon Oasis plan embodied in Senate Bill 483 will go a long way towards making such a local supply readily available to local ethanol and bio-fuel producers.

7. Although Pacific Ethanol is locating a plant in Boardman, Oregon, so far no Oregon farmers have signed contracts to provide corn from their '07, '08 or '09 projected harvests. This is because there is no available irrigated land from which to supply these bio-mass crops.

C. Clean Air Impacts.

1. Making available the additional water for 100,000 additional agricultural acres will permit the production of corn for bio-fuel uses. Devoting many of these acres for the production of corn will contribute to the quality of our air.

2. One acre of corn produces enough oxygen per day in the midsummer to meet the daily respiratory needs of 130 people. Growing corn and the oxygen it produces will help reduce greenhouse gases in the atmosphere. The process of photosynthesis by which green plants use sunlight energy to convert water and carbon dioxide into oxygen and organic compounds is the basis for virtually all life. Sugars, which are the first products of photosynthesis, are converted into starch, protein, oil, cellulose, lignin and thousands of other chemical compounds. Some plant species are more efficient than others in converting carbon dioxide and water into oxygen and organic matter. These more efficient plants, which include corn, have unique photosynthetic systems which permit carbon dioxide to be converted into organic matter at a faster rate as compared to the more common systems of other plant species. Given that one acre of corn produces enough oxygen per day in midsummer to meet the respiratory needs of approximately 130 people, 100,000 acres could produce enough oxygen to meet the daily respiratory needs of much of the population of eastern Oregon.

D. Relief from Soaring Corn Prices and Help for the Hungriest of Our Population.

1. On November 2, 2006, the Oregonian published an article, "Farmers Will Share with the Hungry." The article outlines how an eastern Oregon consultant, Fred Ziari, heard the pleas of an urban food bank and state and local politicians for market grade produce. Ziari rose to the occasion, organizing five local farmers and NORPAC to send 173,000 pounds of frozen peas to Oregon's poor. Ziari, supported by Governor Kulongoski and Mayor Potter, moved forward to form a nonprofit group called "Farmers Ending Hunger." Food banks and schools have already left their orders for more produce donations of onions, potatoes, carrots and other crops from the 2007 growing season. Farmers participating in "Farmers Ending Hunger" donate 3% of their crops to help Oregon's hungry. These farmers are willing to donate portions of their harvests to feed Oregon's urban areas where many of Oregon's hungriest population live. These are among the very same farmers who ask that we put 100,000 new acres into production in eastern Oregon. The new acres will not only support the local economy and Oregon's bio-fuels initiative, but will also aid the state's hungry population, bringing in more revenues to state and local agencies strapped by reductions in federal timber replacement payments and struggling to pay for schools, public safety, higher education and healthy kids initiatives.

E. Preservation of Farmland.

1. From 1987 to 2005, there have been 14,840 acres of farmland brought into urban growth boundaries. This represents approximately 33% of all land brought into various UGBs. The number includes only those acres taken directly into UGBs and not land used for other purposes, such as destination resorts.

2. Farmland is the only classification of land for which there is no guaranteed 20-year supply (as opposed to industrial land). As more and more farmland is converted to non-farming uses by way of Measure 37 and other zone changes, the only method available for replacement of the lost acreage is the Oregon Oasis plan which can instantly turn arid acres into lush new productive farmland.

F. Mitigation Fund.

1. Section 3 of Senate Bill 483 and House Bill 3525 allow the Water Resources Department to charge an annual fee of \$10.00 for each acre foot of water appropriated under the Act that is used to support a business development project. All money which is received by the Department is paid to the State Treasury and credited to the Columbia River Water Account which is established by Section 4 of the Act. The monies deposited into that account are continuously appropriated to the Water Resources Department for administering the Act and for developing in-stream water conservation projects managed in coordination with federally recognized Indian Tribes in Oregon whose reservation or trust lands include the Columbia River or the Columbia Basin.

2. As permits are issued for water devoted to these new business development projects, up to \$3,000,000 per year will be accumulating in the Columbia River Water Account.

3. Since these are payments into a capital fund, if backed by the full faith and credit of the state, the Columbia River Water Account could ensure a reliable flow of payments to permit the state the option of borrowing against these revenues, an equivalent of about \$153 per acre foot at 5% interest over 30 years. This would equate to bond proceeds of approximately \$45,000,000. That could finance a significant amount of mitigation activity in the tributaries of the Columbia, all inuring to the health and vitality of Columbia River salmon.

4. The Tribes and others have financed mitigation projects which have had a significant amount of success. Many more such projects could be initiated by means of either using or securitizing the Columbia River Water Account.

G. Encouraging Best Management Practices.

1. Section 2(2) of both Bills provide that any person who applies for a permit for additional Columbia River water for the purpose of supporting a business development must be certified by the Water Resources Department as capable of employing best management practices and must execute an agreement with the Department in which the person agrees to use those best management practices in the use of water. Best management practices is defined in Section 1 of both Bills to mean “a practice or combination of practices involving the diversion, distribution and application of or use of water resources that is both cost effective and practicable, adopted for the purpose of achieving water use efficiency.”

2. Many of our eastern Oregon farmers lead the world in water conservation through the use of best practices. For instance, central pivot irrigation systems use 50% less water than traditional flood systems. In addition, they use 25% less water than older style pivots. Drip irrigation systems currently in use consume 33% less water than do pivots and variable frequency drives on pumps consume 25% less electricity for powering the irrigation systems.

3. The Columbia-Snake River Irrigators Association has promulgated a list of best management practices for mainstream Columbia-Snake River pumpers. These practices emphasize adoption of high efficiency water use practices that meet production and cost effectiveness needs of large-scale commercial agriculture and have applicability to smaller agricultural and residential circumstances. The Columbia-Snake River Irrigators Association use farm or irrigation site inspection checklists that can be prepared by irrigators or water right holders for self-auditing. For those requesting review, onsite evaluations of the inspection checklists are made. Required provisions include measuring and reporting water use at least monthly, totaling peak diversions using electronic reporting methods, using multi-speed drives, high efficiency motors, or pump staging for specific system configurations, using booster pumps with multi-speed drives, checking pumping systems on an annual basis, using closed pressurized systems for transmission with conveyance losses under 2% and assuring that standards for crop water use are met or exceeded as established by the WSU Crop Water Use Irrigation Guide. A copy of an example of best practices along with forms utilized by participants in the Columbia Snake River Irrigators Association program is attached to these materials.

H. The Tribes Need Water for Economic Development, Too.

1. The Confederated Tribes of the Umatilla Indian Reservation have argued that the Treaty of 1855 reserves tribal members rights to fish at all usual and accustomed stations in the Columbia Basin. The Treaty does, in fact, provide for that reservation but adds that it is “in common with the citizens of the United States.” The Tribes have requested past legislatures to quantify and settle the amount of that reservation in the Columbia River and in the Umatilla River. *See* Testimony of William Burke, Chairman of the Water Commission of the Confederated Tribes of the Umatilla Indian Reservation, concerning Senate Bill 820 before the House Committee on Water, May 15, 2003.

2. In addition, the Tribes seek over 100,000 acre feet for their own commercial purposes including water needed for the Wanapa Energy Center. The project has already earned approval from the Environmental Protection Agency, Bureau of Reclamation, Bonneville Power Administration, and Bureau of Indian Affairs. There is no date set for starting construction because the construction date for this power plant hinges on a long-term power purchasing agreement that would help finance the facility. Both Hermiston and the Port of Umatilla initially agreed to provide water for the plant’s cooling operations, but the city decided it needed to retain its water right to ensure it had an adequate supply to meet future growth. The plant will require 5,500 gallons per minute which would represent a little less than 8% of the Port of Umatilla’s 70,000 gpm water right from the regional water system.

IV. Concerns Addressed.

A. Insignificance of Withdrawal.

1. The 500,000 acre feet which the Oregon Oasis Project needs to fully implement its economic and environmental goals increases the total net irrigation withdrawals from the river from 6.93% to only 7.07%, or 14/100ths of a percent. In addition, it only increases Oregon's share of the total net withdrawals from 7.4% to 9.25%, leaving Washington with a whopping 32.15% and Idaho with 51.45% of the total net withdrawals. That is hardly parity. But parity is not required to accomplish the generation of such significant economic development and other advantages. Only this tiny amount of additional water is needed.

2. Daily flow fluctuations at McNary Dam are 50 times greater than what the Oregon Oasis Project would withdraw in its highest withdrawal month. During drought water conditions, on a daily flow basis, the Oregon Oasis Project withdrawal in July would be 1,865 cubic feet per second at a time when flows at the McNary Dam fluctuate between 70,000 and 110,000 cubic feet per second. The McNary Dam natural flow variation is 21 times greater than the peak at diversion that would be caused by the Oregon Oasis Project.

3. In its findings from the Reservoir Operations/Flow Survival Symposium on November 9-10, 2004, the Independent Scientific Advisory Board (ISAB) analyzed potential modifications at the Hungry Horse and Libby Dams that would have added 6,000 to 8,000 cubic feet per second of water to the river system. ISAB noted that this addition would lead to effects on salmon that would be too small to measure against ordinary measurement error and background variation due to other causes. (Report at p. 14.) Because the Oregon Oasis Project will produce a peak withdrawal of only 1,865 cubic feet per second in July, there is little question that its impact would not even be measurable as against ordinary measurement error and background variation.

B. No Detrimental Impact on Fish.

1. In *National Wildlife Federation v. National Marine Fisheries*, U.S. Dist. Court of Oregon, the National Wildlife Federation sought additional injunctive relief requiring the Army Corps of Engineers to increase the amount of water in the Snake Columbia River system to effect an augmentation of flow, thereby creating more natural conditions for migrating fish and decreasing their travel time to the ocean. Judge Redden denied that particular request observing: [i] in its report on February 10, 2003...ISAB (Independent Scientific Advisory Board) noted as a preliminary matter that "many questions remain" regarding the "relationship between river flows and salmon production." In summarizing the present science on the issues, ISAB noted that "the benefit to salmon of...incremental adjustments [to flow] has not been well quantified"...ISAB then stated, "a different perspective emerged from this latest review. We realize that the prevailing rationale for flow augmentation is inadequate. It is neither

complete nor comprehensive. There is room for alternative explanation of data that have scientific justification and practical value for managing the hydrosystem from multiple uses including salmon recovery.” “The prevailing flow augmentation paradigm which asserts that in-river smolt survival will be proportionally enhanced by any amount of added water is no longer supportable. It does not agree with information now available.” *Order and Opinion of Honorable James A. Redden, December 29, 2005.*

2. The augmentation modification would have involved orders of magnitude of flow over that drawn by the Oregon Oasis plan.

3. The best science now suggests that it is not river flows which determine salmon survival but, rather, water temperature which has the greatest causal relationship with salmon health. The University of Washington conducted a study in 2004 (*A Resolution of the Flow Survival Debate*), showed that during one flow period of 60,000 cubic feet per second salmon survival rates were 70%. During another time period, at the same 60,000 cubic foot per second flow rates, survival rates were only 20%. The study observed that the driving factor was temperature, and flow was not controlling temperature. Muirs’ December 2004 study, commissioned by NOAA, also states that “the effects of flow and temperature were confounded, making it difficult to confidently predict the effect of either variable independently.”

4. Many have suggested that travel time to the ocean, which is directly related to river flows, is the determining factor for salmon health. However, critiques of the Muir 2004 study also show from Muir’s data that during July and August of 2002, temperatures moved above 19 degrees Celsius. There was a large variation in flows ranging from 229,000 cubic feet per second to 144,000 cubic feet per second. Across this flow regime, travel time to the ocean ranged from 4.8 days (at 229,000 cubic feet per second) to a high of 8.7 days (at 160,000 cubic feet per second). The salmon survival rate varied as well, but the highest rate of survival (.81) corresponded to the longest travel time (8.7 days), while the lowest survival rate (.45) occurred at a travel time of 5.6 days. From this data, there was no way to conclude that there is any relationship between travel time and salmon survival. Regardless, even if one adheres to what are now highly questionable theories relating to salmon survival, a peak withdrawal of 1,865 cubic feet per second will not even be measurable. The risk of any harm to salmon occasioned by the Oregon Oasis Project is barely discernible.

C. No Federal Impediments.

1. Contrary to rumors which have been spread regarding the Oregon Oasis plan, there are no federal impediments which would prevent Senate Bill 483 or House Bill 3525 from becoming operative. First, there is no need to prepare an environmental impact statement under the National Environmental Policy Act (NEPA) because the legislation occasions no federal action whatsoever.

2. Senate Bill 483 and House Bill 3525 envision utilizing excess capacity from existing pumping facilities. Because no expansion of facilities or construction of

new facilities is required, there will be no need for Army Corps permits or any other regulatory permits from the federal government.

3. Existing pumping stations include:

McNary Pool

Bureau of Reclamation - Sandstation
G-2 Farms, located after the Sandstation
Stahl Farms, located after G-2 Farms
JSH Farms, also located after the G-2 Farms
Hawman Farms, located near Hat Rock Park
Flying C Ranch, located near the prison

John Day Pool

Amstad Farming Co., located West of the Umatilla River
NC Farms, located West of the Umatilla River
Basin Farming, located at the County line
Western Empires, located in Irrigon
Potlatch, located in Boardman
Westland Enterprises, located West of Boardman
Karl Smith, located on the West side of Boardman
Port of Morrow, located in Boardman
Kaizen Holdings, LLC, located in Irrigon
Columbia Improvement District (CID), located in Boardman
Earl Aylett, located in Irrigon
West Extension Irrigation District, located in Irrigon

4. Oregon will have no exposure under the Endangered Species Act (ESA) for any alleged “take” since environmental plaintiffs will not be able to make a showing that a violation of the ESA is at least likely in the future given the lack of any measurable impact on fish of the withdrawal of 1,860 cfs at peak periods for the Oregon Oasis plan. Although the criteria for injunctive relief are quite liberal under the ESA, plaintiffs must still make showings that violations are at least likely in the future.

D. Responses to Water Watch Criticism.

1. Water Watch has issued a statement of opposition to Senate Bill 483. Water Watch contends that Senate Bill 483, circumvents state rules that protect imperiled salmon and steelhead. It is true that OAR 690-33’s “sensitive stock” rules set seasonal limits on new water appropriations. But these are the very rules which have halted Oregon’s agricultural development and have allowed the states of Washington and Idaho (which have not adopted similar rules) to leap ahead of Oregon in the development of their fertile agricultural ground adjacent to the Columbia River and in the Columbia Basin. When one views the rule from the perspective of one which prohibits a peak additional withdrawal of 1860 cfs of water (an effect

which is not even measurable) the rule in application does more to inhibit economic growth than protect sensitive stock.

2. Water Watch criticizes Senate Bill 483's direction that all state agencies are required to appeal or amend all rules of the agencies as necessary to make the agencies' rules consistent with Senate Bill 483. This is hardly a criticism at all, since it is merely a statement that statutes take priority over administrative rules. Any agency must ensure that administrative rules promulgated by the agency conform to statutory directives.

3. Water Watch criticizes Senate Bill 483 suggesting that the water allocations are permanent. The sunset provisions would affect any portions of the 500,000 acre foot annual allocations which are not allocated by the Department of Water Resources during the lifespan of the legislation. It is true that permits granted under Senate Bill 483 and House Bill 3525 would be permanent in nature. Such permanence would be required to incentivize farmers to invest in the infrastructure necessary to bring the water to their land. What is important is the fact that the insignificant withdrawal envisioned by the Bill will not result in any measurable impacts on salmon and the river.

4. Water Watch suggests that Senate Bill 483 does not protect the commercial and recreational fishing industry. However, their criticism is just another way of restating the criticism which has been rebutted in number 1 above since there will be no discernible impact on fish.

5. Water Watch criticizes Senate Bill 483 as not resulting in the replenishment of groundwater. This is untrue. By eliminating or reducing reliance on critical groundwater aquifers, the groundwater will naturally replenish. In addition, Senate Bill 483 and House Bill 3525 allow for recharge projects which will have the effect of significantly improving critical groundwater levels.

6. Water Watch suggests that Senate Bill 483 exempts a small group of water users from any future legislative action that would require a fee for water use. This argument is a red herring in that Water Watch's prospective policy view does not reflect current state policy. It is hardly criticism that proposed legislation will interfere with a special interest group's vision for the future.

7. Water Watch suggests that water is currently available from the Columbia River for new winter storage projects and that the proponents of Senate Bill 483 would rather not invest in the necessary infrastructure to store winter water. Washington state is investing \$200,000,000 just to study storage possibilities. The infrastructure costs associated with storage projects necessary to provide any near term relief to farmers in eastern Oregon would be prohibitive. As opposed to storage proposals, Senate Bill 483 costs the state nothing. Water Watch evidently prefers more "big spender" government programs.

8. Finally, Water Watch suggests that Senate Bill 483 puts a small group of water users above the current law by apportioning 500,000 acre feet without any

demonstration that the users can actually put the water to beneficial use without waste. This could not be farther from the truth. Senate Bill 483 requires that any permittee must not only be certified as capable of implementing best practices but must, in fact, adhere to best practices when applying water provided by the Oregon Oasis Project.

E. Responses to CTUIR Criticism.

1. The Tribes have suggested that Senate Bill 483 does not provide explicit protections for Columbia River in-stream flows and does not protect the Tribes' legal rights and culture related to the fishery. The small amount of water taken in relationship to the flows and volumes presents no threat to the Columbia River and does not degrade current protections for salmon. Notwithstanding the insignificant amount of diversion provided in Senate Bill 483, the Bill sets up a fund for fish mitigation and conservation projects in consultation with the Tribes.

2. The Tribes suggest that Senate Bill 483 would provide for new unrestricted direct diversion from the Columbia River inconsistent with recovery goals in the Endangered Species Act programs and the Tribes' treaty fishery recovery goals, plans and regional consensus. However, the Tribes' recovery plan calls for dam breaching and fish and wildlife as the explicit beneficiary of all actions concerning the Columbia River. The Tribes' criticism of Senate Bill 483 could probably be leveled against all of the current policies of the state of Oregon. Senate Bill 483 and House Bill 3525 are consistent with ESA and its recovery goals because they improve salmon circumstances in the tributaries and do not harm recovery goals in the mainstream of the Columbia River.

3. The Tribes suggest that Senate Bill 483 does not provide priority to critical groundwater users whose water has been curtailed nor to municipalities and other entities whose water needs are seemingly more critical. However, Senate Bill 483 and House Bill 3525 does explicitly provide for surface water in lieu of groundwater and for recharge of critical groundwater aquifers and specifically devotes 195,000 acre feet per year for those purposes. Senate Bill 483 and House Bill 3525 also devote 5,000 acre feet of water per year for municipal uses.

4. The Tribes object to S.B. 483 and H.B. 3525 on the grounds that the Oregon Oasis Plan does not support implementation of "Phase III" of the Umatilla Basin Project. "Phase III" is not officially part of the Umatilla Basin Project. Several years ago, a proposal, denominated "Phase III," suggested that the Westland Irrigation District should be permitted to pump water from the Columbia River in exchange (on a bucket for bucket basis) for water that it currently pumps from the Umatilla River. Unfortunately, the cost of the project was estimated by the Bureau of Reclamation to exceed \$200,000,000. The Bureau of Reclamation was unable to justify the expense. Since that time, "Phase III" has morphed into another discussion with the federal government relating to the Tribes' efforts to assert a water right over use of the Umatilla River and, in part, the Columbia River. The Tribes wish to settle the issue of official recognition of water rights. The water rights, including those for commercial, agricultural and industrial use, which the Tribes assert, were never expressly provided for in the Treaty of 1855 and

congressional legislation which authorized the Umatilla Basin Project has specifically disclaimed any effect on a determination of whether or not such rights exist. The Oregon Oasis Plan is not inconsistent with the Tribes' efforts. H.B. 3525 and S.B. 483 are both predicated on the belief that small amounts of water can be taken year round from the Columbia River without harm to salmon recovery. The Tribes' needs can and should be included. There is no reason why the Tribes could not themselves be beneficiaries of the legislation by making application for river water to augment critical groundwater or, in the alternative, for new business development projects such as the golf course and industrial park for which the Tribes wish to have a recognized water right. In fact, the Oregon Oasis Project would be amenable to including a specific and quantifiable water right dedicated to use by the Tribes within the legislation.

F. Negotiations Between the Tribes and the Federal Government.

The Tribes have suggested that they might litigate against the federal government in an effort to gain a federally recognized water right. In an effort to avoid litigation, the parties and other major stakeholders agreed to establish a Native American Indian Rights Assessment Team to explore whether there might be a legal basis for recognizing such a federal water right. The Native American Indian Rights Assessment Team is currently being formulated and will not be conducting its business in public. Its meetings will be conducted in secret, arguably under the cloak of settlement discussions in an effort to avoid litigation. The Oregon Oasis Project has actively opposed secret government discussions relating to the John Day drawdown and has authored several public records requests to gain access to state records relating to the drawdown proposal. For the same reasons, the Oasis Project is also opposed to a governmental process for the purpose of establishing water rights conducted out of public view and in a way not subject to open meetings and open records laws. Whether the Treaty of 1855 contemplated federally recognized Columbia River water rights for tribal industrial and commercial use is certainly a legal matter, but one which should be argued and briefed in the sunlight, subject to public view and open to public participation.

V. Conclusion.

A. Benefits Greatly Outweigh Manageable Risks.

1. From the foregoing discussion, it is apparent that the risks to salmon recovery are extremely low if not immeasurable. These risks are more than offset by the almost sure benefits which will be occasioned by the Oregon Oasis Project. The vast economic benefits, including numerous new jobs and the growth potential for rural communities, the contributions to Oregon's bio-fuels initiative, the benefits to clean air and the recognition of northwestern Oregon as deserving of economic growth are certainly worth the minimal risk.

B. A Partial List of Our Supporters.

City of Hermiston*
City of Boardman*
City of Irrigon*

City of Echo*
City of Umatilla*
Morrow County*
Umatilla County*
Port of Morrow*
Port of Umatilla*
Columbia Basin Board of Realtors*
Oregonians For Food and Shelter*
Oregon Farm Bureau*
Oregon Ag Cooperative Council*
ORECA*
Umatilla Electric Cooperative*
Oregon Wheat Growers League*
Association of Oregon Counties*
Water for Life*
Hermiston Irrigation District
Umatilla Chamber of Commerce
Hermiston Chamber of Commerce
Irrigon Chamber of Commerce
Hermiston Rotary
Hermiston Kiwanis
City of Pendleton
City of Stanfield
Heppner Chamber of Commerce
Stanfield Irrigation District
West End Irrigation District
Carpenters Industrial Council
AFSCME
IBEW Local 125
Oregon State Building and Construction Trades Council
Teamsters Joint Council 37
Oregon Nurseries Association
Associated Oregon Industries
NORPAC

*Have adopted formal resolutions.