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## TECHNICAL MEMORANDUM

**DATE:** September 30, 2010  
**TO:** Lee Ritzman, City of Newport  
**FROM:** Jennifer Miller  
**SUBJECT:** **Project Update and Recommended Next Steps**  
**PROJECT:** NWPT0000-0023 – Rocky Creek Water Supply Project  
**COPIES:** file

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### INTRODUCTION

Faced with growing populations, economic growth and the need to protect coastal salmon, Central Oregon Coast communities are evaluating options to meet future water supply needs. The Rocky Creek Regional Water Supply Project (Rocky Creek Project) has been identified to provide Central Oregon Coast communities with greater flexibility in their water supply options while maintaining and restoring instream flows. In fact, the use of Rocky Creek Project as a long-term regional water supply remains one of the most feasible and environmentally preferable alternatives for a regional water supply on Oregon's central coast.

A water rights application was prepared and submitted jointly by the cities of Newport and Lincoln City – representing the Central Coast Water Council (CCWC) – to the Oregon Water Resources Department (OWRD) but has been placed on administrated hold at the request of the CCWC. Recently, an additional and final administrative hold through February 1, 2012 was granted by OWRD. On behalf of the City of Newport, DEA met with OWRD on September 22, 2010 to confirm the requirements to complete the water rights applications. As part of this meeting OWRD indicated that they are interested in issuing a Proposed Final Order (PFO) on the applications soon after the hold ends. Should the water rights application not be completed by February 2012, OWRD will remove the project from review. This could substantively impact not only the potential development of Rocky Creek but also the central coast's long term water supply options.

The purpose of this memo is to provide the City of Newport with a brief history of the Rocky Creek Project (Background Overview), review relevant new information and regulations (Project Updates), and provide a strategy for developing the necessary technical, regulatory, political, and financial requirements to secure a water-use permit (Recommended Work Plan).

## **BACKGROUND OVERVIEW**

Based on the documents reviewed (see References), the following provides a brief chronological overview of project efforts to date:

**1997** – Fuller and Morris report (1997) identifies the need for additional future water supplies. Rocky Creek identified as a potential source.

**1998** – The City of Newport and the City of Lincoln City submit water rights application to OWRD for a permit to construct a reservoir on Rocky Creek – R-83810 and S-83809. Priority date of April 15, 1998.

**1998** – Oregon Trout submits a letter to OWRD commenting on the Rocky Creek water rights applications. Request a transfer of surface water rights to instream rights as a part of the project and more aggressive water conservation measures among the participating communities (letter from Oregon Trout to OWRD, September 3, 1998).

**2000** – First administrative hold requested to OWRD (Davis Wright Tremaine LLC [DWT] 2000a). OWRD approves administrative hold until July 31, 2000 (OWRD 2000a). Second administrative hold requested to OWRD (DWT 2000b). OWRD requests the applicants submit additional information by September 15, 2000 to justify the additional administrative hold (OWRD 2000b). Third administrative hold requested to OWRD on December 11, 2000 (DWT 2000c).

**2001** – The Cities of Newport, Lincoln City, Siletz, Toledo, Waldport and Yachats, the Seal Rock Water District, the Kernville, Gleneden Beach, Lincoln Beach Water District and the Southwest Lincoln County Water District form the Central Coast Water Council (CCWC) to investigate the Rocky Creek Regional Water Supply Project as a means of meeting future water needs for the central coast region.

**2001** – Second request for a third administrative hold to OWRD on February 14, 2001 (DWT 2001). OWRD approves administrative hold with conditions on June 5, 2001 (OWRD 2001). Conditions were to be satisfied by December 27, 2002.

**2002** – The Rocky Creek Regional Water Supply Project - Preliminary Water Management Plan (CH2M Hill, et al 2002) and the CCWC Intergovernmental Agreement (IGA) (CCWC 2001) were submitted to OWRD on February 1, 2002.

As part of the development of this submittal, the following efforts were also conducted:

- Collected and summarize water rights data from OWRD - Summarized permitted vs. certificated water rights for each of the CCWC partners
- Conducted several site visits to evaluate watershed conditions and threats/opportunities
- Worked with Oregon Department of Fish and Wildlife (ODFW) to evaluate potential impacts to fisheries resources in Rocky Creek Basin

- Evaluated potential over-appropriation and Endangered Species Act (ESA)/water quality constraints on mid-coast streams
- Met with CCWC members to define their water supply needs
- Met with environmental organizations (WaterWatch and Oregon Trout) to understand their concerns with the Project and to negotiate win-win solutions
- Presented the project to the Siletz Tribal Council on August 17, 2002

**2002** – Refinements to the Preliminary Water Management Plan were submitted to OWRD on December 30, 2002. Refinements included:

- Expansion of the conservation element requirements
- Updated population and demands assessment, supply-side and demand-side conservation included, addresses overlapping demands between utilities
- Updated operational plan
- Sections describing an Alternatives Analysis, Reservoir Development in the Rocky Creek Watershed and the Potential for Anadromous Fish Restoration

**2003** – Lincoln City began pursuing surface water rights on Drift Creek and was financially unable to pursue both water rights efforts. As a result, the Rocky Creek Project lost momentum and other members of the CCWC began exploring alternative water supply alternatives.

**2005** – As a result of House Bill 3038, OWRD requests the City of Newport and City of Lincoln City submit a statement indicating the number of years they will need to commence and complete construction of the Rocky Creek Project – not to exceed 20 years.

**2008** – City of Newport Water System Master Plan developed to meet Oregon Department of Human Services Drinking Water Program regulations (Civil West 2008). The Master Plan includes the following elements: description of the existing water system, water demands analysis (for the 20-year planning period), supply alternatives and recommendations, Capital Improvement Plan, conservation planning, and financing and rate analysis. The Master Plan also confirmed the City's need to explore future water supply options as soon as possible.

**2010** – OWRD inquires about project status (February 1, 2010). Additional administrative hold requested on March 29, 2010 (DWT 2010) and, on the same day, OWRD approves a final administrative hold through February 1, 2012 (OWRD 2010a)

## PROJECT UPDATES

This section summarizes relevant changes and new information that have arisen since 2002, when the project was last evaluated, and describes how these changes potentially affect the Rocky Creek Project.

**Water Right Applications** – OWRD has extended the administrative hold on the applications until February 2012 and would like to issue a PFO soon after the hold ends. An initial review and public comment period have been completed and OWRD will not conduct another public review until the PFO is issued. Previous work needs to be reviewed and updated as needed. OWRD application requirements are summarized as follows (OWRD 2010b):

- Land use planning approvals from all participating entities
- Completed Form M from all participating entities
- Point-of-use map
- ODFW documentation that project is consistent with Division 33 Rules

Other information that is considered by OWRD to support the PFO, but is not part of OWRD's criteria, includes an updated alternatives analysis, a mitigation strategy, an agreement between the project partners, and updated project costs and preliminary design.

**Water Supply Need** –Analyses of water supplies along the Oregon coast still agree that summer availability of surface flows is extremely limited and that filling reservoirs in winter provides a critical back-up supply for coastal communities to tap during the summer months (CH2M Hill, et al. 2002, Civil West 2008, Bob Buckman, ODFW pers. comm. 2010).

The City of Newport's 2008 Water Management Plan (Civil West, 2008) confirmed the City's need to explore future water supply options as soon as possible. Existing supply is adequate for the current maximum daily demand (MDD = 4.1 million gallons per day). The 2008 Plan provided a preliminary supply deficit analysis, but further analysis is required to determine the MDD for 2030 and beyond. The City of Newport and other municipalities have conservation programs; however, it's not anticipated these programs will substantively alter the overall need for future water. As stated in the 2008 Water Management Plan, "Perhaps the most critical long-term issue facing the City of Newport is that of raw water supply."

With the understanding that the issue of water supply is paramount along the Oregon coast, especially given the need to restore instream flows to restore coastal salmon runs and meet water quality standards, the Institute for Natural Resources (INR) prepared the "Oregon Coastal Community Water Supply Assessment" (INR 2005). The purpose of this study was to better understand the challenges and opportunities facing coastal community water suppliers as a whole and to ultimately improve the prospects for meeting future water needs. The study found that despite popular beliefs, it may be difficult for state economic development officials to match businesses and industries interested in relocating to the Oregon coast with community water supply availability and reliability (INR 2005).

**Potential Project Competition** – Since 2002, members of the CCWC have been evaluating a variety of water supply options but it is unclear how these evaluations may affect water supply alternatives or the future demands scenarios presented in the Rocky Creek Preliminary Water Management Plan (CH2M Hill et.al. 2002). For example, a potential study may be underway to evaluate the feasibility of the Valsetz Water Supply Project (Valsetz Project), which has the potential to serve the needs of both Polk and Lincoln Counties. Central coast municipalities could likely not afford to develop both Valsetz and the Rocky Creek Project; therefore, municipalities and other stakeholders may view these projects as competing efforts. To date OWRD has not received a permit application for the Valsetz Project; however, resolution of the Valsetz Project may be required for the Rocky Creek Project to progress through the permitting process.

**Developing Water Rights** – Based on the analysis of water rights and existing fish habitat and water quality conditions, it appears that many of the undeveloped water rights presently held by many central coast municipalities will still be difficult to fully develop. Even though these municipalities may hold water right permits, the actual ability to develop those rights is not certain. Virtually all of the surface water bodies for which there are outstanding (undeveloped) water right permits still have substantive constraints because of federal Endangered Species Act listings, critical fish habitat and water quality limitations. Several rivers, such as the Siletz and the Yaquina, have been designated as core areas for salmon habitat and restoration. Successful development of water rights in these subbasins has only become more difficult in the last decade.

**Project Design and Costs** – Preliminary design and geotechnical investigations were performed to support the initial dam and reservoir design. From a geologic, geotechnical and seismic perspective, the dam site and reservoir areas were deemed suitable. The preliminary designs and geotechnical investigations should be evaluated in light of current seismic standards and OWRD requirements. Preliminary transmission and treatment alternatives should be reviewed and re-evaluated if necessary. In addition, cost estimates for the Rocky Creek Project are no longer valid and will need to be updated.

**Regulatory Environment** – The regulatory environment has experienced some changes since the original work was conducted on the Rocky Creek Project; however, much of the findings described in the 2002 Preliminary Water Management Plan remain the same. Resource agencies see the value in developing the Rocky Creek Project because of the large amount of storage available and the subsequent flexibility it can provide. Entities concerned with fish populations on the central coast understand the Rocky Creek Project can alleviate late summer, low flow pressures currently experienced by those rivers and streams designated as core areas for salmon restoration (Bob Buckman, ODFW pers. comm. 2010).

Rocky Creek itself has been considered for anadromous fish restoration, though existing fish barriers and ongoing watershed logging practices presented substantive limitations to successful restoration. While restoration of anadromy to Rocky Creek is not off the table (Bob Buckman, ODFW pers. comm. 2010), it is expected to be a very expensive endeavor and the region will still be faced with meeting future water supply needs. The Oregon Coast Coho Conservation Plan (ODFW 2007), which was

prepared to improve the status of coastal coho, does not mention the potential to restore anadromy on Rocky Creek.

Project impacts and the potential for mitigation are consistent with descriptions in the 2002 Preliminary Water Management Plan. Though there will be impacts to forested, wetland and riparian areas, the impacts will not eliminate resources unique within the central coast ecoregion and there will be no impact to anadromous fish species.

An alternatives analysis was prepared as part of the original submittal; however, an updated alternatives analysis will be required as part of the permitting process but will also be important in terms of developing support for the project and communicating with all stakeholders.

**Mitigation** – OWRD is required to coordinate with Oregon Department of Fish and Wildlife (ODFW) as part of the permit process. Through this coordination, ODFW will clarify their mitigation requirements, which will include a response to their Division 33 Habitat Mitigation Policy. Mitigation opportunities are available to compensate for the impacts. Mitigation for the impacts to the on-site resident fisheries and habitats will most likely be off-site with the intent of improving fisheries habitat and/or passage along a core salmon-bearing stream along the central coast.

In addition, similar to prior discussions, the resource agencies and other environmental stakeholders continue to indicate they will expect mitigation in the form of decreased pressure on core salmon-bearing streams during low flow periods. These specific mitigation measures were not provided in the prior submittals to OWRD. Mitigation beyond ODFW's requirements is optional according to OWRD and the state water rights permitting process; however, the Rocky Creek Project partners may elect to coordinate with other environmental stakeholders to minimize the potential for future legal action. As part of the September 22, 2010 meeting, OWRD suggested that a mitigation strategy be developed and submitted to support the PFO. A preliminary operating plan for the Rocky Creek Project, which demonstrates how the Project will decrease late season pressures on core streams, may be an essential component of a mitigation strategy that can be supported by the environmental stakeholders.

**CCWC** – The CCWC has not met in approximately eight years and the participating municipalities have likely seen leadership and staffing changes during this period. For this analysis, it is assumed that the Rocky Creek Project is only financially viable through the partnership of the CCWC – particularly the cities of Newport and Lincoln City. It is likely the CCWC partners are still interested in the Rocky Creek Project as a future regional water supply but this should be confirmed.

The Siletz Tribe has expressed an interest in participating in the Rocky Creek Project. The Tribe is not a unit of local government and it may not be possible under ORS Chapter 190 for it to be a member of the CCWC; however, there may be other ways in which the Tribe can participate.

Moving forward, a communications plan may help facilitate the re-establishment of the CCWC by ensuring a consistent message among the partners and the public. In addition, OWRD would like to see

some documentation of a partnership, such as an updated Intergovernmental Agreement (IGA), to support the PFO.

**Water Management and Conservation** – In 2002, the Oregon Water Resources Commission adopted new administrative rules governing municipal water use permit extensions. Particularly relevant to the Rocky Creek Project is the rule pertaining to water management and conservation plans (OAR Chapter 690, Division 86). Division 86 was reorganized to clarify the tie between municipal permit extensions and development of water management and conservation plans. The revised rule also set forth detailed and specific requirements for the contents and approval of the plans. As a condition of approval of the Rocky Creek water right applications, water management and conservation plans may need to be developed and implemented in each of the municipalities benefiting from the Rocky Creek Project within three years of permit issuance. It's recommended the cost associated with this effort be included in the overall project costs.

It's predicted that environmental stakeholders will scrutinize the needs assessments for the partners by evaluating the status of water management and conservation plans. While plans that meet the Division 86 requirements are only required as a condition of the permit, it may benefit the partners to summarize the status of their water management and conservation plans in support of their needs assessments.

**Project Financing** – A strategy to finance the project has yet to be established. The current IGA states that CCWC members will pay their portion of project costs based on proportionate water use. Member financing strategies should be explored. Moreover, state and federal sources of funding should be explored to help minimize CCWC member project costs. For the PFO, OWRD needs to understand that the project is financially feasible based on general project cost and funding sources.

## **RECOMMENDED WORK PLAN**

The objective of the following work plan is two-fold. First is to determine if the project is still feasible and supported by the project partners. Second is to obtain the PFO for the Rocky Creek Water Supply Project. To provide flexibility, the work plan has been structured in three phases.

### **Phase 1 – Project Feasibility**

Phase 1 of the work plan is primarily intended to confirm that the Rocky Creek remains a financially viable and technically sound project. Phase 1 is intended to answer the following questions:

- Is there still a need for a regional water supply project like Rocky Creek?
- Are the project partners still interested in developing Rocky Creek?
- What will the Rocky Creek Project look like and what will it cost?
- What is the anticipated mitigation?
- How will Rocky Creek be paid for?

The following is an outline of the tasks required to complete Phase 1:

#### **Task 1 – Re-Establish Partnerships**

- **Communications Plan** – Develop communications plan to foster project support
- **Partnerships** – Confirm Lincoln City and others as partners
- **CCWC** – Re-establish the CCWC and update the IGA

#### **Task 2 – Update Project**

- **Project Design** – Review conceptual project design and alternatives evaluation (e.g. dam, treatment, transmission, operations). Should updates be required, develop scope of work (SOW) to be completed in Phase 2.
- **Form M Needs Assessment** – Review needs assessments to prepare Form M. Should updates be required, develop SOW to be completed in Phase 2.
- **Water Management and Conservation** – Evaluate status of water management and conservation strategies for project partners (will include rough cost estimate for Division 86 compliance)
- **Land Use** – Review land use approval requirements for each partner (will include SOW for Phase 2 deliverables)
- **Operations** – Develop SOW for conceptual operating plan in support of optimization and mitigation
- **Project Costs** – Update overall project costs

#### **Task 3 – Develop Mitigation Strategy**

- **Coordination** – Coordinate with the partners and environmental stakeholders to evaluate expectations and opportunities
- **Strategy** – Prepare preliminary mitigation strategy (will include SOW for Phase 2 deliverables)

#### **Task 4 – Establish Funding Strategy**

- **Funding Opportunities** – Evaluate partners' funding strategies and explore state and federal funding sources to minimize partner costs
- **Funding Strategy** – Identify potential funding actions for Phase 2

The deliverables from Phase 1 are expected to include the following:

- Communications plan
- Updated IGA
- Updated conceptual project design, operating plan and project costs
- Evaluation of needs assessment, water management and conservation plans and land use approval process



- Preliminary mitigation strategy
- Preliminary funding strategy

## **Phase 2 – Update Application**

Should it be determined through Phase 1 that Rocky Creek is still feasible, the goal of Phase 2 will be to prepare the remaining materials required to satisfy OWRD's requirements. Based on recent conversations with OWRD and resource agencies we expect the following submittals to be required for the February 1, 2012 OWRD deadline:

- Land Use Approvals
- Form M (requires current needs assessment for each partner)
- Map(s) of Service Area

The following deliverables are not required as part of OWRD's criteria but have been suggested by OWRD to support the applications and the PFO:

- Preliminary Project Design
- Agreement between project partners
- Mitigation strategy
- Updated alternatives analysis

## **Phase 3 – Application Submission and Review**

The application review process will involve the following steps:

- Submit application material
- Application completeness review (30 days)
- Issuance of Proposed Final Order
- Protest Period (45 days)
- Issuance of Final Order and Permit

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