

**Responses to Public Comments on  
Bull Run Watershed Management Unit (BRWMU) Agreement  
July 2007**

**Topic 1: Land Exchange**

*Public Comment:* Reference to the land exchange should be deleted from the Agreement. The Agreement does not provide sufficient details regarding if and how federal land acquired by the City through the exchange would be protected. City land must be protected from settlement, development, recreation and logging.

*City/Mt. Hood National Forest Response:*

- The intent to pursue a land exchange is an important component of a comprehensive strategy for allowing the two agencies to carry out their respective roles, responsibilities, and missions for stewardship of the Bull Run.
- Prior to signing the “Agreement to Initiate” (ATI) for a land exchange, the Water Bureau will introduce a Council ordinance that specifies policies for protection of City-owned land (both currently owned parcels and land acquired through land exchanges) in the Bull Run Management Unit. The City’s intent is to adopt a policy with the same level of protection as in the Bull Run Act with regard to tree-cutting restrictions on federal land. The City and the Forest Service will also evaluate other mechanisms, such as deed restrictions, to protect land acquired by the City through the exchange.
- The City has implemented a long-standing policy for its lands in the Bull Run to protect them from settlement, recreation and logging which it will continue. If the land exchange process goes forward, the City’s current policy will be enhanced by the adoption of additional City policies described in the prior bulleted paragraph and in the Agreement. The City does not support adopting a prohibition on all “development” of City land because such a prohibition could interfere with the ability to maintain and improve critical water supply facilities that require some type of construction activity. The City has no intent to construct *any* type of facility that is not related to operation and maintenance of the water supply system or the hydroelectric power system.

*Public Comment:* Reference to the land exchange should be deleted. Instead of pursuing the land exchange, the agencies should simplify the special use permit process.

*City/Mt. Hood National Forest Response:* Although there may be some potential for simplifying the administrative process by consolidating multiple individual special use permits into a smaller number of permits, the land exchange has significant benefits for both federal taxpayers and water ratepayers that cannot otherwise be achieved through permit consolidation. Currently, construction or modification of virtually any Water Bureau facility on Forest Service land – no matter how minor or how negligible the environmental impact – must go through a special use permitting process. The permitting

process involves a significant amount of staff time and resources on behalf of both agencies that ultimately provides no net benefit to the end product activity or facility. Both agencies' budgets for watershed protection and management are limited. The significant staff time and money expended on these permitting processes could be better utilized on activities, programs and research to protect the watershed.

If the proposed land exchange takes place, future projects that involve impacts to wetlands or ESA-protected species will still be required to go through state and federal permitting process, just as they currently do. The formal federal land exchange process itself would be required to go through a National Environmental Protection Act (NEPA) review and this evaluation will consider mechanisms such as federal deed restrictions on land conveyed to the City if such action is deemed necessary to ensure a high level of protection. In addition, prior to signing the "Agreement to Initiate" (ATI) for a land exchange, the Water Bureau will introduce a Council ordinance that specifies policies for protection of City-owned land (both currently owned parcels and land acquired through land exchanges) in the Bull Run Watershed Management Unit.

*Public Comment:* We are concerned about fate of City-owned land that would be conveyed to the Forest Service through the land exchange. It would be preferable to swap City-owned land located outside the Bull Run Lake drainage. The Agreement needs to address measures that will be undertaken to ensure that lands conveyed to the Forest Service will be managed in a way that does not adversely affect water quality.

*City/Mt. Hood National Forest Response:*

- We assume this concern is regarding protection of water quality within the Bull Run *water supply drainage*, not the Bull Run Lake drainage.
- Most of the City's "off-watershed" lands within the BRWMU that are not needed for management of the water-supply system are proposed for inclusion in the land exchange. One-third of the total acreage of City-owned parcels proposed for the exchange are located outside the Bull Run water-supply drainage.
- The federal Bull Run Act will apply to City-owned lands that are conveyed to the Forest Service through the land exchange (all proposed City-owned lands in the transfer are within the federally designated Bull Run Watershed Management Unit). These lands will therefore have the same legislative and administrative protections as existing Forest Service land located within the Bull Run Management Unit.

*Public Comment:* We support the proposed land exchange.

*City/Mt. Hood National Forest Response:* The City and the Forest Service believe the proposed land exchange would provide significant benefits in terms of allowing the City to have a clearer stewardship role for the lands on which its major water supply facilities are located, and will allow the Forest Service to increase the amount of late successional/old growth habitat in federal ownership that will be protected from timber harvest.

## **Topic 2: Collaborative Processes**

*Public Comment:* The community's role in decision-making is vague in the Agreement. The Agreement should be specific on how public stakeholders will be involved in the planning process on specific projects.

*City/Mt. Hood National Forest Response:* The Agreement makes it clear that public stakeholders are invited to attend and participate in the semi-annual Working Group meetings and that all stakeholders will be communicated with on an annual basis at a minimum through the annual report to stakeholders. Both agencies have extensive public involvement policies and programs that will provide citizens with opportunities to review and comment on particular planned projects and activities affecting the watershed. The Forest Service conducts its planning and projects under the NEPA which provides for extensive public review and comment on any planned activity with the potential to affect the natural environment. The Water Bureau annually conducts a public budget development process that features extensive citizen review and involvement in the development of the bureau's five-year capital plan, which includes all the bureau's projects and activities, at the earliest planning phase. These individual efforts coupled with the coordination that will occur at the planned Working Group meetings will provide stakeholders with several opportunities for review and comment on projects and activities affecting the watershed.

As with other sections of the Agreement, the sections of the Agreement that deals with public outreach and involvement is intended to convey an over-arching statement of intent and values about the two agency's commitment to inform and involve the public in protection and stewardship of the Bull Run. It is not intended nor offered to provide a detailed, prescriptive plan for public participation in anticipation of every possible method or venue for public collaboration.

*Public Comment:* The Working Group should include a specific number of public members. The Agreement should also specify the number of City and Forest Service staff that comprise the Working Group.

*City/Mt. Hood National Forest Response:*

- The Working Group is not intended to be a formal decision-making body but rather a staff level coordinating group to share information for the purpose of guiding individual agency planning, budgeting and program development. Neither agency wishes to delegate its individual authority and responsibility for decision-making to a new decision-making entity.
- All meetings of the Working Group will be open to public participation by any member of the public interested in attending. Both agencies strongly prefer to have an "open door" approach to Working Group discussions that invites all members of the public to participate and be involved rather than designating select members of the public with special status for this purpose. If the Working Group were to include members of the public and take on an official advisory role it would be subject to the

Federal Advisory Committee Act and would require that the agencies enter into a formal agreement to follow federal guidelines on the notification and conduct of all meetings.

- As a staff level coordinating group, the specific City and Forest Service staff that attend the meetings will likely fluctuate from year to year and meeting to meeting and is subject to change based on changes in the organizational structures of the two agencies and the nature of the topics to be discussed at the meetings. There is no way to pre-specify the number or make-up of City and Forest Service staff for a long-term, multi-decade agreement.

*Public Comment:* The Agreement only provides a single, formal opportunity for public participation each year. The Bull Run Advisory Committee and Water Quality Advisory Committee met monthly for many years.

*City/Mt. Hood National Forest Response:*

- The Agreement has been revised to make it clear that public input is welcome at both of the semi-annual City/Forest Service Working Group meetings.
- The Agreement's role is not to provide a comprehensive framework for all public participation related to protection and management of the Bull Run. The City maintains a number of public participation processes and likewise, the Forest Service undertakes their own public involvement process for projects and plans associated with management of federal land. The Water Bureau has a citizen budget committee process that has been open to any citizen who wishes to serve on the committee. It includes a detailed review of the entire Water Bureau budget, including all Bull Run related projects and activities. The Portland Utility Review Board meets on a monthly basis and is used as a venue to discuss and review any Water Bureau project that the board or other citizens would like to discuss. The Mt. Hood National Forest conducts public scoping on a quarterly basis through release of their Schedule of Proposed Actions (SOPA) publication and through project-specific NEPA documents.

### **Topic 3: Fire Protection**

*Public Comment:* We disagree with the Agreement's premise that "a vigorous fire protection and suppression program is required" for the Bull Run. In the long run, fire suppression will have disastrous results for the Bull Run ecosystem. We should accept that fire is a natural disturbance process and not intervene to suppress fire when it occurs. Instead of fighting fires, devices such as sediment traps in the reservoirs and a federally funded filtration plant should be constructed.

*City/Mt. Hood National Forest Response:*

- The City and Forest Service agree that fire is a natural process, but the short-term consequences in terms of the impact on both water quality and ecosystem values is unacceptable. The agencies remain committed to an aggressive fire suppression policy for the Bull Run.
- There is no historical precedent for the federal government to fund the cost of a filtration plant as a mitigation measure to protect water quality in exchange for a Forest Service “let burn” policy for large-scale fires in municipal watersheds. If a filtration plant is ever deemed to be necessary, the capital and annual operation and maintenance costs would almost certainly be funded by the City of Portland.
- Sediment traps hung from log booms at the inlet of streams to the reservoirs would not be an effective way to control sediment and turbidity concentrations at the Headworks intake.

*Public Comment:* Both the City and the Forest Service must be prepared to respond to fires. A comprehensive fire plan should be developed. Vehicles should contain fire-fighting equipment and be well maintained.

*City/Mt. Hood National Forest Response:*

- A comprehensive update of the Bull Run Fire Management Plan was completed during the summer of 2006. It describes the roles and responsibilities of the Forest Service, Oregon Department of Forestry (ODF) and the Water Bureau in protecting the BRWMU from wildfire and re-affirms the three agencies’ commitment to an aggressive fire protection program.
- The two agencies that are responsible for wildland fire suppression in the Bull Run – the Forest Service and ODF – have personnel and equipment to respond to fires. The Water Bureau is not certified for wildland fire initial attack, but it has equipment such as fire trucks, portable pumps, nurse tankers, and heavy equipment that can be utilized in the event of a fire.
- All Forest Service and City vehicles entering the watershed during fire season are required to carry fire tools and a fire extinguisher. The Fire Plan also specifies that contractors’ vehicles are required to carry fire tools and fire extinguishers. Both the Water Bureau and the Forest Service incorporate this requirement in all contracts that involve entry into the Bull Run during fire season.

#### **Topic 4: Road Decommissioning and Road Maintenance**

*Public Comment:* The Agreement should specify that the road decommissioning program will be completed within a five-year period, rather than a 10-year period.

*City/Mt. Hood National Forest Response:* The City and the Forest Service agree that it is desirable to complete the road decommissioning program as soon as possible and both

agencies have been actively working to obtain federal funding to complete the remaining work in less than 10 years. However, the Forest Service is concerned that it may not be realistic, given federal funding constraints and the increased difficulty with obtaining Congressional earmarks, to specify that the program will be completed within five years. Both agencies will continue to make every effort to secure federal funding to complete the remaining roads decommissioning within the Bull Run Watershed as soon as possible.

*Public Comment:* The City should not be harnessed with the financial responsibility for maintenance of roads located on Forest Service land.

*City/Mt. Hood National Forest Response:* The reality of current and expected future federal budgets is that the Forest Service will have virtually no funding for maintenance and capital improvement of roads in the Bull Run. The Water Bureau is the primary user of the road system and the roads are now almost exclusively used for water supply and potential fire suppression purposes. The City began taking over responsibility for routine maintenance of Forest Service roads almost 10 years ago-- the Agreement is a mechanism to formally acknowledge this transfer of responsibility. The rate impacts of road system capital improvements will be minimized as a result of the City obtaining a long-term easement for maintenance of the necessary roads located on Forest Service lands which will allow the City to capitalize the costs of long term road improvements.. Long term capital improvement of the road system would require \$30 million. If applied over a 5 year span in the Water Bureau's capital improvement program, the rate impact of the road CIP program is less than 0.1% per year.

### **Topic 5: Security and Access Management**

*Public Comment:* The Agreement should be modified to state that shooting of firearms into the BRWMU is not permitted and that fines will be levied against those who shoot into and/or trespass illegally into the BRWMU.

*City/Mt. Hood National Forest Response:* The purpose of the Agreement is primarily to clarify roles and responsibilities of the two agencies, not to serve as a comprehensive management plan that specifies a detailed list of prohibited activities within the BRWMU. This particular suggestion will be considered for the Security and Access Management functional plan.

*Public Comment:* The public closure policy for the "east buffer area" adjacent to Lolo Pass Road should be beefed up and enforced.

*City/Mt. Hood National Forest Response:* As noted above, the purpose of the Agreement is primarily to clarify the roles and responsibilities of the two agencies. Both agencies have an ongoing interest in maintaining adequate security for the BRWMU, including the eastern portion of the Unit along Lolo Pass Road. The City has increased the number of security personnel it deploys in and around the Unit and is developing additional signage to be placed on the Pacific Crest Trail where it enters the Unit. The City and the Forest

Service will conduct further evaluation of security and access-control activities when the Agreement goes into effect and the Security and Access Management functional plan is developed.

### **Topic 6: Dispute Resolution/Caveats and Assurances**

*Public Comment:* The footnote associated with Section IV.E. should be explicit in stating that the existing provision in the Bull Run Act for binding arbitration for certain issues (those related to disputes over water quality or water quantity impacts) will be retained.

*City/Mt. Hood National Forest Response:* The Portland City Attorney's Office has conducted a complete review of the Agreement and all applicable federal, state and local laws governing the Bull Run Management Unit. The City Attorney has concluded that nothing in this agreement can supersede any provision of law, including the arbitration provisions of the Bull Run Act. To avoid misunderstandings, the agreement language has been altered to read as follows:

“If any dispute arises regarding any party's compliance with the terms of this agreement, all parties will attempt to resolve such dispute in good faith through the dispute resolution (DR) procedures established in this agreement. Each party will be responsible for its own expenses under this DR process and will be jointly responsible for expenses of mediator services. The DR process does not preclude use of the binding arbitration provision in the Bull Run Act.<sup>5</sup>”

The footnote in the section has been revised to read as follows:

“Note: PL 95-200 provides for binding arbitration of disputes related to water quality standards and the impacts on water quality or quantity of activities occurring in the watershed. Nothing in this agreement affects the availability of arbitration under the law. Since, however, the law provides for arbitration of only a fairly narrow set of issues, the parties do not anticipate that most disputes under this agreement would fit into the arbitration process. In addition, the City and Forest Service included the dispute resolution language and process shown here to foster predictable processes and mutually favorable resolutions to disputes.”

*Public Comment:* Concern was expressed that Caveat A.2 would allow evasion of anti-degradation provisions of the Agreement and allow the harvest of timber.

*City/Mt. Hood National Forest Response:* As noted above, the Portland City Attorney's Office has noted that nothing in this agreement can or does change federal law; nothing in the agreement can reduce the parties' legal obligations under the Bull Run Act to restrict timber cutting and protect the environmental conditions in the Bull Run. However, since the language of this caveat raises concerns, it has been redrafted as follows:

“This Agreement in no way restricts the Forest Service or the City from participating in other cooperative land protection and land management arrangements with other public or private agencies, organizations, and individuals, consistent with law.”

*Public Comment:* Some parties expressed concern that Caveat A.5 is an “escape clause” that would eliminate citizen suit provisions of federal law, reduce the usefulness of the Agreement, and make the agreement itself “non-actionable in the event of breach.”

*City/Mt. Hood National Forest Response:* As noted above, the Portland City Attorney’s Office has noted that nothing in this agreement is intended to have, and nothing in this agreement can have, the effect of reducing any citizen rights under any law, statute, or regulation. Caveat A.5. does express the parties’ intention, however, that the Agreement itself is a general expression of cooperative intent, not a binding contract, and that neither the parties nor any third party can sue to enforce the Agreement. Any binding decisions made in the future under the cooperative approach envisioned by the agreement will be subject to full public involvement and review under applicable law.

### **Topic 7: Scope and Term of the Agreement/Governing Laws and Regulations**

*Public Comment:* Section I.A. and Section IV.C.4 should be revised to state that term of the Agreement will be 20 years, rather than 30 years.

*City/Mt. Hood National Forest Response:* The Water Bureau and the Forest Service would prefer to retain the term of the Agreement as 30 years because of the extensive amount of time and effort that went into developing the document. In addition, the five-year frequency of the review and updated called for in Sec. IV.C.4 will provide a mechanism for integrating changed circumstances into the Agreement. However, if reducing the term of the Agreement to 20 years would help build more trust between the agencies and public stakeholders, the agencies agree to revise it to 20 years. The agreement has been revised accordingly.

*Public Comment:* Section I.B. of the Agreement should be revised to state that the Bull Run will be managed in compliance of the Clean Water Act and other applicable federal laws.

*City/Mt. Hood National Forest Response:* The second item in the bullet list below paragraph no. 2 in this section has been revised to read: “Compliance with the requirements of the Safe Drinking Water Act, Clean Water Act, and all applicable federal, state, and local laws and regulations.”

*Public Comment:* Reference to PL95-200 in Section I.B. should be modified to state that it was amended by the 1996 Oregon Resource Conservation Act and the 2001 Little Sandy Protection Act.



*City/Mt. Hood National Forest Response:* The general term “as amended” was meant to be inclusive of all legislative amendments to PL95-200, but the section has been revised to make it clear which specific Congressional legislation amended PL95-200.

*Public Comment:* Wildlife protections should extend beyond just threatened and endangered species protected by the Endangered Species Act.

*City/Mt. Hood National Forest Response:* The intent of both the City and the Forest Service is to protect all fish and wildlife species. Language in Section I.B of the Agreement has been modified to make this clear.

*Public Comment:* Please substitute the term “protect and manage” for “manage” throughout the document. Use of the term “watershed” in various places in the Agreement is vague because it is not clear whether it refers to the water-supply drainage portion of the Bull Run Watershed Management Unit or the entire Management Unit.

*City/Mt. Hood National Forest Response:* The Water Bureau and the Forest Service believe that protection is inherently a part of managing lands within the BRWMU. The term “management” is part of the legal name for this congressionally designated area. The word was used in PL95-200 and was clearly intended to convey that the unit’s management would be for the purpose of producing “clean, raw, potable” drinking water. Adding the word “protect” to every use of the word “manage” in the agreement would imply that “manage” includes activities in the unit that are not consistent with the explicit purpose established in PL95-200. The revised Agreement has been revised to include a definition of “management” in this context and makes it clear that management includes protection.

*Public Comment:* In the list of natural resources stewardship principles on page 4, the last item should be revised to add that the watershed will be protected from logging, recreation, and development.

*City/Mt. Hood National Forest Response:* While similar language has been included elsewhere in the document, the stewardship principle on page 4 that calls for engaging the “agencies’ and communities’ passion for the natural environment” is not a prescriptive statement. The bulleted statements in this portion of the Agreement, including this item, are visioning statements that describe over-arching principles and are not intended to be prescriptive, detailed or comprehensive in terms of the activities that are or are not allowed in the watershed.

## **Topic 8: Noxious Weed Control**

*Public Comment:* The Security section of the Agreement should state that the City, Forest Service, BPA, BLM, and agents thereof will implement best available practices to prevent inadvertent introduction of non-native species into the BRWMU

*City/Mt. Hood National Forest Response:* The Forest Service and the Water Bureau agree that control of non-native, invasive species into the BRWMU is an important issue and if the Agreement is implemented the agencies plan to address this issue in the functional plans for road maintenance and road decommissioning. Regarding the participation of the Bonneville Power Administration and the Bureau of Land Management, the Agreement is only between the City and the Forest Service and does not make commitments on behalf of BPA and BLM. The Forest Service and the Water Bureau will invite both of these agencies to participate in the development of non-native species controls and will seek to achieve policies and practices by these agencies that are consistent with those adopted by the City and the Forest Service.

*Public Comment:* The Agreement should state that conservation education that takes place in the BRWMU shall include effective measures to limit the introduction and further spread of invasive species.

*City/Mt. Hood National Forest Response:* As mentioned above, control of invasive species will be addressed in the functional plans for road maintenance, road decommissioning, and the access/security programs as well as in any NEPA documents that are required for projects. All conservation education that takes place in the BRWMU will be subject to the non-native plant control policies and practices adopted by the City and the Forest Service.

## **Topic 9: Miscellaneous Issues**

*Public Comment:* Expanding citizen pride in the watershed will strengthen the Agreement and ultimately help support the decisions by which the Water Bureau and the Forest Service can guarantee a healthy watershed. Two example ways to build this pride would be to: 1) connect Dodge Park to the Springwater Corridor Trail and make it a destination park for bicyclists and hikers; and 2) establish a new Rose Festival event that involved relaying a tree seedling and a bottle of Bull Run water from the watershed to downtown Portland.

*City/Mt. Hood National Forest Response:* The Water Bureau and Forest Service strongly support expanding citizen pride in the watershed. The combination of the conservation education programs described in Section III.H and involvement of the public in collaborative processes (as described in Section IV of the Agreement) are in part intended to expand citizen pride in the watershed and build support for the programs and plans for stewardship of the watershed. The suggestion for a connecting trail between Dodge Park to the Springwater Trail is being considered by the agencies whose jurisdictions such a trail would cross including the City of Sandy and Metro. The Water Bureau is planning several improvements to Dodge Park that will make this site a better destination in the event the suggested trail becomes a reality.

*Public Comment:* The Agreement should go before City Council for a full public hearing and discussion at least two weeks before it's placed on the Council agenda. The Forest Service and the City should move slowly on adopting the Agreement so that stakeholders can come to a consensus on its adoption.

*City/Mt. Hood National Forest Response:* The Forest Service and the City have moved slowly in developing and adopting the Agreement. The process to develop the Agreement has been 7 years in the making. It began in 2000, when a neutral third party (RESOLV, Inc) was hired to interview a wide array of stakeholders, including many of the same public stakeholders that commented on the draft Agreement. The Water Bureau and the Forest Service conducted an informal review of the preliminary draft of the Agreement in 2005 and met with key Bull Run stakeholders during that process. The Federal Register review-and-comment process that was undertaken in 2007, including the two public workshops held in February to discuss the Agreement, represents an extensive public involvement process. The Agreement will be brought before Council for public discussion as a regular agenda item which includes five days notice in the Council Agenda, two readings of the item in separate Council meetings, a hearing with public testimony at the first reading and a 30 day period after the second reading before the Agreement would be authorized by the City.