

# COMMENTS OF THE OKLAHOMA MUNICIPAL LEAGUE FOR THE OKLAHOMA COMPREHENSIVE WATER PLAN

May, 2011

## I. ANALYSIS OF THE DRAFT OCWP DOCUMENTS

According to the *Statewide Water Assessment*, there is no imperative to change current water law or administration in order to provide the water needs of Oklahomans through 2060. The *Assessment*, which comprises Section 2 of the Executive Report for the Oklahoma Comprehensive Water Plan (OCWP), presents the following conclusions:

The groundwater permit availability analyses identified no groundwater permitting gaps in the state in the near-term or long-term timeframe. Projected groundwater demand in 2060, assuming the continued use of the current supply proportions of surface water and groundwater sources in each basin, could be fully permitted using current law and permitting protocol. . . . [p. 2-36]

The results show that there is sufficient available SW permit capacity in the majority of the OCWP basins in 2060. That is, projected SW demands in 2060 (assuming continued use of the current supply proportions of SW and GW sources) could be fully permitted using current law and permitting protocol. [p. 2-39]

This same conclusion was published in 2008 in a low-cost study by a law student using data available from the website of the Oklahoma Water Resources Board. [See, *Factual Analysis – Oklahoma’s Water Resources*, April 2008, available by request from Oklahoma Water Law Group.]

### a. Foundation for the Final Plan

The OCWP should reflect existing state law. OML’s thinking on this point is based on the following considerations:

1. Existing water rights statutes and administration is not broken and, in fact, has worked well since their inception in 1963 (stream water) and 1972 (groundwater).
2. Stability of water rights and reliability of use of water under a permit is a key to economic development in this state; therefore, these core features of existing water law and administration should not be disturbed.
3. A plan should be capable of implementation with reasonable certainty and should not be dependent on statutory changes that likely will meet with strong opposition, especially from large water users like cities and towns.
4. Although recommendations for change are a legitimate part of a planning process, the plan itself should stand on its own without the changes. At the same time, integral recommended changes should be incorporated within the existing statutory scheme.

### b. Focus of the Plan

It should be noted that potentially significant parts of the OCWP have not been released for comment. These include sections on water management and on implementation strategies. Therefore, OML’s comments are directed to those documents that have been put forward for public scrutiny.

The convergence of conclusions in the reports referenced above underscores three primary flaws in the draft reports for the OCWP.

- The Plan as a Whole. The released documents do not present an overall plan for water development and deployment throughout the state. Notably, the *Reservoir Viability Study* identifies and ranks new viable reservoir sites but there is no indication whether or how such information will be used. Also lacking is a discussion of funding infrastructure development other than a recommendation for the legislature to create a funding source.
- Current Law. The draft reports, primarily *Water Policy & Related Recommendations for Oklahoma* document, do not implement current water law, which has its fundamental policy that water will be used and made available for use. Therefore, parts of the incipient plan rely on controversial statutory, perhaps even judicial, changes that may not be made.

Instead, the draft plan focuses on many recommendations for change in current water law, policy and administration. In light of the above-referenced *Assessment*, these changes are not predicated on findings within the draft reports.

- Infrastructure. The draft reports fail to present a framework for creating an infrastructure system to deliver sufficient water supplies throughout the state. They do not offer practical solutions for capturing unused water or developing undeveloped water resources. These details are relegated to future decentralized planning lacking a unified structure.

It is telling that among the myriad technical studies there was no attempt to quantify the amount of water that pours out of Oklahoma's borders unused and uncaptured for instate uses. The plan fails to recognize a potential source for large amounts of water remaining in each stream on which a domestic use right exists. Consequently, it also fails to identify a method for diverting and storing unappropriated water before it flows out of the state.

By ignoring infrastructure, the draft reports fail to present concrete solutions. For example, there is no action plan for the finding that:

Shortages in available water permits (insufficient permitted water availability for projected 2060 demands) are projected in 21 of the 82 OCWP basins across the state. The shortages begin in the first year of the analysis (2010) in 19 of these 21 basins. [p. 2-39]

Although variables are discussed for so-called "hot spots" in the draft Section 4 of the OCWP, *Regional and Statewide Opportunities and Solutions*, no actual solution is adopted. In short, this is not a plan for action. It is merely a plan for further planning.

### c. The Planning Process

These deficiencies are traceable to fundamental design flaws for the OCWP process on both the public input and technical tracks.

- *Public Input.*  
The many-tiered design of the policy component of the Oklahoma Comprehensive Water Plan gives added weight to proponents who do not hold water permits or do not have a responsibility to make water available for use. How was this done?
  1. Dramatic departure from past water plan preparations:  
Past plans consisted of a technical approach to determine:
    - how much water is currently being used and how much will be needed throughout the planning period,

- how much water is currently available and how much water will be available through the planning period.
2. In contrast, this current process added a component designed to review existing water policy and law and to look for areas to be changed.
- ◆ First, a complex, multi-tiered public input process was created that gave as much weight to input from those who had little or no knowledge or experience in water supply or management as those who did. Likewise, it gave an equal voice to input from those who have no responsibility, role in or accountability for providing water for public water supply or economic development activity in the state.

Many of participants reported a disappointing experience in overcoming what appeared to them to be an overemphasis on ideas for change, whether intentional or inadvertent, by the facilitators of the process.

The inclusion of a significant number of federal agency participants in the state planning process skewed the emphasis of some issues against the interests of municipalities and other users of water in the state.

- ◆ Second, an engineering firm was hired to conduct the technical portion of the state plan. Then, numerous grants were awarded to various academic groups for further studies and input. Also, several advisory panels for specific issues were funded and charged with making reports to OWRB. These so-called stakeholder groups once again included participants who have no responsibility for providing water to the state's citizens and/or promoted federal rather than state concerns.

3. The result:

The process has become a vehicle for advancing proposals for dramatic changes in the existing water law on which municipalities depend for establishing their water rights, infrastructure planning, capital improvement financing, and water rates.

- *Technical Reports.*

Fragmentation. The technical studies center on regional basins and fail to present a statewide perspective or action plan. The basin-by-basin analysis of water supply and permit availability in the *Statewide Water Assessment* does not consider availability from outside the basin nor does it develop a realistic schema for use of out-of-basin resources.

The report, *Water Conveyance Issues & Recommendations*, dismisses outright the feasibility of a statewide conveyance system on purely technical grounds. This is done without analysis of social and economic factors and in disregard for the fact that public water supply systems have developed such systems.

The result is to overemphasize the so-called per basin "gaps" and to overlook available state sources for supply to fill those gaps.

Regionalism. By centering the technical discussion on regional basins only, this portion of the OCWP fails to dispel assumptions that Oklahoma does not have sufficient water supplies. Although regional planning initiated from the local level can lead to efficiencies and cooperation, an exclusive focus on regional issues carries the danger of fostering divisiveness and institutionalizing intra-state rivalry. Therefore, the final technical portion of the OCWP should be an integrated strategy for infrastructure improvements to provide efficient delivery of water at affordable rates throughout the state.