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Seal Rock Water District

DATE ACTION REQUESTED: August 31, 2023							
Ordinance		Resolution		Motion		Information	X
Date Prepared: August 18, 2023				Dept.: Administration			
SUBJECT: Aerial Application of Herbicides in the South Beaver Creek Watershed				Contact Person for this Item: Adam Denlinger, General Manager adenlinger@srwd.org. 541-563-4447			

RECOMMENDED BOARD ACTION:

This is an information item only to consider the Aerial Application of Herbicides in the South Beaver Creek Watershed Approved by the Oregon Department of Forestry (ODF), NOAP 2023-553-09307

BACKGROUND:

Update: As of August 30, 2023:

SRWD received notification through the FERNS notification process that the subject timberland owner has filed a new NOAP for Ground -Pressurized / Broadcast (Backpack-Spray) of herbicides on the same lots. A copy of NOAP 2023-553-10095 released yesterday on the Ferns website has been made available to the Board and is posted on the district’s website.

Submission of a new NOAP by the timberland owner does not void the existing NOAP scheduled to go into effect on September 2, 2023.

The proposed new NOAP which includes backpack spray does not change the district’s planned approach to managing raw water conditions affected by the application of herbicides.

Earlier this month the district was notified of the potential for aerial application of herbicides on approximately 475 acres of timberland in the South Beaver Creek Watershed. Staff immediately obtained the Notification of Operation and Permit to Operate Power-Driven Machinery NOAP provided to the Board of Commissioners on August 10th and is included as a supplemental to this staff report.

On August 7, 2023, district staff reached out to Mr. Tyrol Forfar to discuss the aerial application of herbicides and to notify the consultants, HFI Consultants of the district’s raw water intake downstream of the proposed spray area. The district requested that the consultant please consider attending a meeting with the district to exchange information regarding planned spray activities and the district’s raw water intake operation.

On August 10, 2023, district staff attended a consultation with DEQ, Source Water Protection Experts to consult with the department regarding best management practices to protect the district’s Beaver Creek intake from pollutants.

On August 10, 2023, the district also submitted a public comment to the Oregon Department of Forestry (ODF) regarding the Aerial Application of Herbicides under NOAP 2023-553-09307. A copy of those comments is included with this staff report.

At the direction of the SRWD Board on Monday, August 14, 2023, the district coordinated a public meeting with State Representative, David Gomberg, Lincoln County Commissioner, Casey Miller, and the community to discuss the aerial application of herbicides. This was a large group of over 40 attendees joining in the conversation by Zoom and in person.

On August 15, 2023, the district attended a meeting hosted by Representative Gomberg to discuss the next steps in reaching out to the forestland owner. This meeting included representatives from the Governor's Office and Lincoln County Commissioner, Casey Miller.

On August 16, 2023, staff attended the Lincoln County Board of Commissioners meeting to speak in opposition to aerial application of herbicides.

On August 16, 2023, the district attended a 2nd community meeting hosted at the Waldport Community Center and provided an update to the group with regard to the potential for meeting with the forestland owner Mr. Soren Nymark.

On August 16, 2023, the district reached out to the Oregon Health Authority for guidance regarding testing for herbicides/pesticides under state regulations under OAR 333-061 to sample for the following constituents:

(3) Organic chemicals: (a) At community and NTNC water systems, water suppliers must monitor according to this section for the following regulated synthetic organic chemicals (SOC): alachlor, atrazine, benzo(a)pyrene, carbofuran, chlordane, dalapon, dibromochloropropane, dinoseb, dioxin(2,3,7,8-TCDD), diquat, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, endothall, endrin, ethylene dibromide, glyphosate, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane(BHC-g), methoxychlor, oxamyl(Vydate), picloram, polychlorinated biphenyls, pentachlorophenol, simazine, toxaphene, 2,4-D and 2,4,5-TP silvex.

The district's most recent SOC samples performed in July of this year were Non-Detect (ND). Results are included with this report.

On August 17, 2023, district staff provided the attached Public Service Announcement (PSA) regarding the district's response to aerial application of herbicides.

On August 17, 2023, the district received an email from the Governor's office which includes:

- So long as the property owner abides by the Oregon Forest Practices Act, ODF does not have regulatory authority to requirement management/spray changes. Current forest practice rules require that applicators follow the label, protect streamside vegetation, and follow minimum spray buffers (75 ft for fish and domestic use streams, 50 ft for non-fish, non-domestic streams with water). The forestry rules and/or laws would need to be changed to require more than the current legal minimum.
- DEQ is also watching the situation closely and making suggestions to ODF. As you're aware, DEQ is advising Seal Rock Water District on how to best adapt to the proposed application to prevent exposure to residents through their drinking water.
- Under current statute, DEQ's role is advisory unless a pesticide exposure is reported to PARC (the Pesticide Analytical Response Center) or there is a verified water pollution from application. DEQ does not have the authority to intervene more directly.

On August 18, 2023, the district met for a 2nd time with Representative Gomberg's Office, and Commissioner Miller to discuss the availability of hosting a meeting with Mr. Nymark.

On August 21, 2023, the district hosted a meeting at the request of a small number of SRWD customers to exchange information and discuss the potential of taking legal action to prevent the aerial application of herbicides under the Safe Drinking Water Act. District staff provided this information to the district's legal counsel for review, and we have reached out to the EPA requesting a meeting with the district to discuss our rights under the Safe Drinking Water Act.

Communicating with the Regional Administrator through the local channels is the proper course of action to obtain assistance, which is the most expedient way to prevent dangerous activity from occurring. District staff have attempted to reach the administrator several times, but as of the date of this staff report, we have not received a response to our replies.

On August 21, 2023, the district reached out to our Oregon association partners to include, Special Districts Association of Oregon (SDAO), Oregon Water Utility Counsel (OWUC), and Oregon Association of Water Utilities (OAWU) for guidance and feedback regarding the aerial application of herbicides in watersheds.

On April 23, 2023, the district again reached out to the consultant for ANE Forests of Oregon C/O HFI Consultants, Tyrol Forfar, and left urgent voicemails requesting an informal meeting with the district to include Representative Gomberg and Commissioner Miller. I spoke with Mr. Forfar, and it seems like Mr. Nymark is open to a meeting. On behalf of the district, I expressed the importance of meeting with the timber owner to exchange information regarding the district's operation and risk relative to the proposed aerial application of herbicides. Mr. Forfar did affirm that aerial application of herbicides has not been removed from consideration and reports that the timber owners are well within their rights under the Oregon Forest Practice Act with respect to this issue.

The district has reached out to EPA Department Director Stacey Murphy with a request for consultation concerning this matter. There appears to be no ability for the district or a citizen to enforce the Safe Water Drinking Act under Section 1431, as that authority is limited to the EPA and their Regional Administrator.

The district has also reached out to ODA to provide assistance to the district under the state's Pesticide Management Plan for Water Quality Protection. Specifically, as it relates to: *"The overall plan relies on the formation of a Water Quality Pesticide Management Team (WQPMT) composed of representatives from each of the four agencies (ODA/DEQ/ODF/OHA) responsible for water quality in Oregon. This team will act as a coordinating advisory team between state agencies and key stakeholders."*

On August 25, 2023, the district reached Christina Higby, Citizen Advocate & Tribal Liaison with the Department of Agriculture to discuss pulling together the WQPMT members for a meeting with the district and Representative Gomberg and Commissioner Miller.

On August 31, 2023, district staff attended a radio program in Newport with Lincoln County Commissioner Casey Miller to raise community awareness regarding the Aerial Application of Herbicides in South Beaver Creek.

Staff want to impress upon the Board and the Community that we are doing everything within our power in response to this issue. Staff are working day and night responding to numerous emails, phone calls, and requests for information related to this issue.

Going Forward:

The district will remain in contact with state agencies and the forestland owner's consultant to monitor the proposed application of pesticides while we continue to formalize a management plan in response to this issue. It is the district's intent to take every precaution necessary to protect the water system, to include:

- Shutting the Beaver Creek intake pump station off during the application of herbicides.
- Allow flow in the creek to move through the stream beyond the POD.
- Sample the raw water and if results are non-detect the district will resume operation, as long as it's safe to do so.
- If hazardous chemicals are detected the district will not use the Beaver Creek system, report results to DEQ and PARC, and continue sampling.

The district has a 5-day supply of water depending on the time of year. However, if necessary, the district will suspend the operation of the intake longer, continue sampling, and move to a secondary source of water until it's safe to resume operation on the Beaver Creek system.

On September 6, 2023, the district will meet with representatives from the WQPMT members to discuss the development of a formal Pesticides Management Plan for Water Quality Protection on Beaver Creek.

The district has been quick to respond to customer requests for information related to this issue. District staff have been working around the clock responding to numerous emails, phone calls, and voicemails in an effort to keep up with the demand for information.

District staff is committed to updating the SRWD Board and our customers regarding any new developments with respect to this issue and will update our website as new information becomes available.

Respectfully submitted:

By:  _____
Adam Denlinger, General Manager