



MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item C, September 1, 2022
Water Resources Commission Meeting

Director's Report

I. Current Events and Updates

A. Staffing Update

Since the March meeting, the Department has filled 61 additional positions as of the end of August, bringing the total number of positions filled over the course of the biennium to 103. Of the positions filled for March 2nd through the end of August, almost two thirds are new to the agency and there are seven promotions. Positions filled include the following:

- Accountant
- Administrative Support Specialist (5)
- Application Developer
- Assistant Watermaster (11)
- Basin Coordinator
- Communications Coordinator
- Community Engagement Coordinator
- Desktop Support Administrator
- Desktop Support Specialist (2)
- Enforcement Section Manager
- Engineer in Training
- Fiscal Analyst
- Grant Coordinator
- Groundwater Data Developer
- Groundwater Data Specialist (2)
- Hydrogeologist (4)
- Hydrographer

- Hydrologist (3)
- IWRS Coordinator
- Modernization Coordinator and Conservation Analyst
- Policy Section Manager
- Procurement & Contract Specialist
- Programmer
- Public Service Representative (2)
- Records Officer
- Southwest Region Manager
- Technical Services Division Administrator
- Temporary Staff (4)
- Water Policy Analyst
- Water Rights Analyst
- Water Rights Application Manager
- Water Rights Transfer Specialist
- Well Fund Coordinator
- Well Inspector (2)
- Water Rights Support (ARPA)

There are eight additional positions with accepted offers that have start dates postdating the September meeting. These will be detailed in the November meeting Director's Report.

B. Planning, Collaboration, and Investments – Grant Awards and Funding Update

In previous meetings, the Commission requested that the Planning, Collaboration, and Investments Section 1) conduct an analysis and evaluation of the option to allocate Feasibility Study Grant (FSG) or Water Project Grant and Loan (WPGL) funding for studies or projects identified by a State Recognized Place-Based Plan; and 2) investigate the potential of authorizing Department staff to increase grant awards in cases where grantees experience cost increases as a result of external factors such as the coronavirus pandemic and inflation.

1. Staff analyzed the options of setting aside funding from FSG and WPGL for the State Recognized Place-Based Plans (SRP). In the analysis of separating out Feasibility Study Grant funding for those studies identified in a SRP, Department staff noted that within the current scoring framework, proposals identified in an SRP are likely to score highly based on their planning, preparation, and engagement processes. Additionally, the Place-Based collaboratives have submitted successful grant applications and are among the highest ranked proposals. Reserving funds for SRP proposals may impact the availability of funding for applications resulting from other types of collaborative planning processes or partnerships. Available grant funds have certain time-bound limitations (General Fund or IRS requirements), which, based on the uncertainty of frequency and timing of SRP proposals, may impact funds being used in the allowed timeframe.

Based on the likelihood of success of SRP proposals within the current framework, and that reserving what has been to date relatively modest funding might reduce funding for other applicants who are ready to investigate proposed projects and merit Feasibility Study Grant funding, staff do not recommend a change.

Similarly, an applicant seeking Water Project Grant and Loan funding for an SRP-identified project is well positioned to score highly based on the planning, preparation, and engagement processes. Already identified in statutory language is a public benefit for projects that promote collaborative basin planning efforts; this public benefit also receives additional preference points as this category received double points. Reserving funding for SRP-identified projects may reduce available funding for other project proposals, some of which might achieve greater public benefits, and create an inequitable funding framework. In addition, available grant funds have certain time-bound limitations for expenditure. As a result, the Department is not recommending setting aside funding for potential projects in SRPs. A more detailed analysis for this recommendation is contained in Attachment 2.

2. Regarding the potential of authorizing Department staff to increase grant awards, staff noted that the current framework permits an applicant to include contingency funding in the grant budget to account for cost increases. Due to the statutory match funding requirement of 25 percent (WPGL) and 50 percent (FSG), any budget increase requires that the additional match funding be secured. The Department has successfully worked with applicants in the past who have experienced budget changes and assisted by either extending the grant period or pointing them to other sources of funding. A current process exists for grantees to submit a budget increase request for review and analysis, and ultimately be forwarded to the Commission for a final decision if appropriate. At this time, the Department recommends that any requests for a budget increase follow the current process and be a decision for the Commission. A more detailed analysis for this recommendation is contained in Attachment 3.

C. Well Abandonment, Repair, and Replacement Fund Update

The Well Abandonment, Repair, and Replacement Fund (Fund) was established through the passage of HB 2145 in the summer of 2021. Its purpose is to provide financial assistance to permanently abandon, repair, or replace a water well used for household purposes when certain criteria are met. The Department is implementing this funding opportunity in two stages. Stage I is to initially meet the urgent public health needs of Oregonians with low to moderate income that have been affected by drought and wildfire. Stage II will focus on comprehensive design for full implementation.

The Department launched Stage I on June 1, 2022. The program was announced via a press release and emails sent to the Governor's Office, Oregon Health Authority, counties, community action programs, well drillers, and homeowners who had reported dry wells to the Department.

The Department created a webpage about the funding opportunity and posted the application forms, guidance for homeowners, frequently asked questions, and contact information. Information is provided in both English and Spanish. A dedicated phone number was set up to provide responsive customer service.

The Department started receiving applications in mid-June. Over 70 applications have been received requesting nearly \$1.1 million in funding as of August 10, 2022. The most impacted areas of the state include Deschutes, Klamath, and Jackson Counties, which have requested over 78 percent of the funding. To date, the Department has received over 200 phone calls and 50 emails from homeowners inquiring about the program and requesting information.

A well fund coordinator was hired and started in July part-time and began processing applications full-time on August 1, 2022. The Department is moving as quickly as possible to review and process applications and enter into grant agreements with eligible homeowners. The Department has completed 23 interim reviews, requested 17 pre-inspections, completed eight pre-inspections, and anticipates entering into at least 15 grant agreements within the next month.

The Department is documenting lessons learned so far through Stage I to identify improvement opportunities prior to considering rulemaking needs during Stage II.

D. Groundwater Allocation Update

The Department hired Kearns and West, a collaboration and strategic communications firm, to help plan and facilitate public outreach meetings ahead of the development of new groundwater allocation rules. The team is planning four hybrid informational exchange workshops at locations across the state, plus one addition online-only meeting, to provide the opportunity for the Department to gather input and feedback from interested parties. The specific content and agenda for the meetings is being developed with our consultant team and will likely include a presentation of the nature of the water supply problem being addressed, the science of the source of water to wells, and Commission direction and goals for updating the Department's groundwater allocation policy to better protect senior water users. After a presentation of this background material, the majority of each meeting will be used for a facilitated listening session during which interested parties can provide their input to the Department. Workshop materials will be provided ahead of the meeting so participants can come prepared with questions and ideas.

The public outreach meetings are planned to occur in the evenings during the following weeks:

- Week of Sept 19 Salem hybrid meeting
- Week of Sept 26 Bend and LaGrande hybrid meetings
- Week of Oct 3 Medford hybrid meeting and online-only meeting (during work hours)

At the conclusion of the public outreach meetings Kearns and West will summarize the major themes of the sessions in a final report. The Department will incorporate these ideas into draft rules updating the Department's process for allocating additional groundwater to new beneficial uses.

E. Drought Update

Thus far in 2022, 17 Oregon counties have received state drought declarations under ORS Chapter 536, with the most recent being issued on June 7. In addition, due to significant drought concerns throughout much of Oregon, the Governor issued Executive Order 22-10 which declared a state of emergency under ORS 401 which allowed the Office of Emergency Management to coordinate with state agencies and plan response efforts to address potential emergency water supply issues. However, late arrival of spring rains in late May and early June staved off early onset of low summer streamflows and provided short-term relief to drought conditions in many parts of the state. Currently, over 35 percent of Oregon remains drought-free, though, severe (D2) to exceptional (D4) drought conditions persist in over 50 percent of the state, according to the US Drought Monitor.

While the spring rains were beneficial in sustaining average to above average streamflows well into summer, helped replenish soil moisture, and delayed calls for storage releases, many reservoir systems suffered from shortened irrigation seasons and will likely have little to no carryover to begin the next water year. Additionally, onset of well above average temperatures in July has exacerbated evaporative demand statewide and led to flash drought conditions in parts of western Oregon, while also necessitating storage releases for temperature control downstream of some reservoirs. Seasonal forecasts favor above average temperatures and average precipitation, likely allowing drought conditions to persist through the remainder of the water year.

F. Klamath Basin Update

This has been another challenging water year in the Klamath Basin. All surface water out of stream water use has been regulated off in the Williamson River and tributaries, which includes the Sprague River. This regulation began around March 1, which coincided with the beginning of the irrigation season. This is the third consecutive year with no surface water available for irrigation. The Wood River, above Crooked Creek, has also seen regulation orders issued to all out of stream water users. This is the second consecutive year where all out of stream water use is regulated off.

The Klamath Project is also experiencing another year of limited supply for irrigation. The interim operations plan issued by the Bureau of Reclamation (BOR) in April authorized the project irrigation districts to divert up to 50,000 acre feet (af) of water. The plan included a provision to increase the allowed quantity if favorable water conditions resulted in increased inflow into Upper Klamath Lake. Late spring precipitation did result in additional flow. The BOR increased the amount of water available for project diversion to 82,000 af. The BOR sent a letter to the districts on August 18 informing them that the full amount, 82,000 af, has been exhausted and that all diversions of water from Upper Klamath Lake and the Klamath River are to stop immediately. The limited supply of surface water to the project has again place pressure on groundwater. Groundwater levels are continuing to decline resulting in over 160 new “dry” domestic well complaints. Staff are working to visit the wells to validate the complaints.

The Klamath Basin Watermaster district office moved to a new location this spring to accommodate staff and equipment needs. Two Assistant Watermaster positions were vacant for most of the spring and early summer; both have recently been filled.

II. Upcoming Commission/Board Schedules

<u>Commission / Board</u>	<u>Date</u>
Land Conservation and Development Commission	September 22-23
Parks and Recreation Commission	TBD
Fish and Wildlife Commission	September 17
State Land Board	October 11
Environmental Quality Commission	September 22-23
Watershed Enhancement Board	October 25-26
Board of Agriculture	November 15-17

Attachments:

1. Rulemaking Calendar
2. Funding for State Recognized Place-Based Plans Within Existing Funding Opportunities
3. Process to Increase Current Grant Awards

Oregon Water Resources Department Current/Anticipated Rulemaking

Line	Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
1	Division 10 –Critical Groundwater Areas (CGWA)	Conform Rules with ORS 537.730–742 / Establish Framework for CGWA Designations	Ivan Gall, Justin Iverson	Yes	2023	Preparing for Additional RAC Meetings
2	Divisions 200 205 & 240 – Well Construction Licensing	HB 3030 and SB 688 Implementation Relating to Temporary Authorizations for Armed Forces Spouses	Kris Byrd	Yes	2023	Preparing for RAC
3	Divisions 190 225 & 260	Updates to Rules / HB 2145 (2021) Implementation Relating to Exempt Map and Recording Fee / Civil Penalties	Kris Byrd, Travis Kelly	No	2023	Preparing for RAC
4	Division 215	Replace Erroneously Repealed Section Relating to Dedicated Measuring Tubes (690-215-0200)	Kris Byrd	No	2023	Preparing for RAC
5	Division 512 – Malheur Lake Basin Program	Update to Rules Following Publication of Groundwater Study	Ivan Gall, Justin Iverson	Yes	2023	Not Started
6	Division 380 – Water Right Transfers	HB 3103 (2021) Implementation Relating to Stored Water Character of Use Transfers	Dwight French, Lisa Jaramillo	No	2023	Preparing Draft Rules

Line	Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
7	Division 77 – Instream Water Rights	Updates to Rules / Streamline District Lease Process / Consistency with SB 199 (2013) & SB 206 (2015) / Instream Leases and Transfers of Stored Water	Dwight French, Lisa Jaramillo, Sarah Henderson	No	2023-2024	Preparing to Reconvene RAC
8	TBD – Klamath Groundwater	Regulation of Wells in the Klamath Basin	Ivan Gall	Yes	TBD	On Hold
9	Division 340 (Formerly New Rule Division 87)	Municipal Reclaimed Water Registrations	Dwight French, Kerri Cope	No	TBD	On Hold

* There are additional rulemakings in backlog that will likely remain on hold for the remainder of the biennium.

Funding for State Recognized Place-Based Plans Within Existing Funding Opportunities

Document Purpose

The Commission requested an analysis of the option to allocate funding for State Recognized Place-Based Plans (SRP) out of the Department's existing funding opportunities. The current funding opportunities are Feasibility Study Grants, and Water Project Grants and Loans.

Information and Analysis

The below information describes the current practices of each funding opportunity, an analysis, and a staff recommendation.

Feasibility Study Grants (FSG)

1. **Current Practice** - Currently the FSG application includes questions with a focus on water planning and community engagement focus:
 - **Water Planning and Preparation.** Identify the plan or planning effort that identifies the study or future project (if applicable). Describe how this study informs plans or preparations for a more secure water future.
 - **Community Engagement.** Describe if any opportunities were provided for meaningful engagement, suitable for the public who may be interested in, or affected by the study or project implementation. Describe if there were any specific strategies to engage environmental justice communities.
 - **Community Interests and Concerns.** If community interest or concerns were identified, describe the plans to address them in this study or future efforts. (Note: you may attach Letters of Support to the application.)
2. **Statute/Rules** - The statutory priorities are [ORS 541.561 \(5\)](#) (a) for above-ground projects proposing to augment use stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values; and (b) priority projects identified in a state-wide assessment and inventory. No other priorities are identified.
3. **Analysis and Recommendation** -
 - An applicant with a water plan, and especially the SRPs, are likely to score highly based on their planning, preparation, and engagement processes.
 - Place-Based Planning groups have submitted successful grant applications and are current and past grantees. They are among the highest ranked applications reviewed.
 - The timing and number of feasibility study applications identified in the SRPs is unknown and may be variable depending on the collaborative group's progress and complexity of projects. This may impact or may place funding with time-bound limitations at risk if unused.
 - Reserving funds for SRP proposals may impact proposals which result from other types of collaborative planning processes or partnerships and that also merit funding. Impacts to available funding may delay study timelines and project preparation.
 - Available grant funds have certain time-bound limitations for expenditure (General Fund or IRS requirements) which based on the uncertainty of frequency and timing of SRP proposals, may impact funds being used in the allowed timeframe.

- Based on the likelihood of the Place-Based Planning group’s success within the current framework and reserving funds might reduce funding for other applicants ready to investigate proposed projects, and that also merit feasibility study grant funding, the Department is not recommending setting aside funds.

Water Projects Grants and Loans (WPGL)

1. **Current Practice** - WPGL provides funding for water supply projects that achieve economic, environmental, and social/cultural public benefits. Those proposed projects that are most likely to achieve the greatest public benefits are recommended for funding. The public benefits are identified in statute and rule.

The public benefit reflecting collaborative basin planning is listed below in an excerpt from our Scoring Criteria guidance document.

3f. Does this project promote collaborative basin planning efforts, including but not limited to efforts under the state Integrated Water Resources Strategy?

Collaborative basin planning efforts incorporate public processes that are transparent and inclusive of diverse interests.

Application tip: *Demonstration of a collaborative planning effort may include publicly noticed meetings, posting agendas and decisions so they were publicly available, the inclusion of multiple types of water users represented in the process (e.g., instream interests, agricultural, municipal, domestic and industrial users), evidence that the project is supported by the community, and evidence that the project was identified in a Place-Based Integrated Water Resources Plan or another collaboratively developed strategic plan.*

Scoring Scale:

Exceptional: 12 pts.	Project was identified in a collaboratively developed plan that is supported by all basin interests and where the public had meaningful opportunities to engage
High: 6 pts.	Project was identified by a collaborative group that includes representation of multiple interests, where the public had meaningful opportunities to provide input
Medium: 3 pts.	The project promotes the goals of a collaborative basin planning effort
Minor: 1 pt.	An effort was made to engage and elicit input from the public, <i>OR</i> benefit claims are <i>unsupported or unquantified</i>
No Benefit: 0 pts.	<i>No change/impact</i>
Minor Detriment: -1 pt.	Stakeholders with differing perspectives and/or the public (as appropriate) were <i>not consulted</i> about the project and did not have opportunities to provide input
Medium Detriment: -3 pts.	Stakeholders with differing perspectives and/or the public (as appropriate) were <i>excluded</i> during project development

2. **Statute/Rules** - According to [ORS 541.673](#) each public benefit category shall be of equal importance, however, statute and rule also indicate that a ‘preference’ shall be given to “partnerships and collaborative projects” (not defined) ([ORS 541.677](#)). The current method to award that ‘preference’, is that the scores for this public benefit are doubled and reported as “other” in the scoring.

Per statute and rule, “The Commission shall modify the project selection process as necessary to better achieve the outcomes described in [subsection \(1\) of this section.](#)” Please note, there are additional criteria and preferences which are also described as target outcomes for scoring and ranking beyond this preference in statute and rule.

3. **Analysis and Recommendation**

- An application seeking funding for a project identified through the Place-Based Planning (PBP) process is likely to achieve multiple public benefits and is well positioned to score highly based on the planning, preparation, and engagement processes.
- The Commission may enter into a process to explore options for attributing a ‘preference’ for partnerships and collaborative projects beyond that which are already in place. Depending on the preferred options rulemaking may be necessary.
- The PBP groups are currently well positioned to propose projects that are likely to achieve public benefits and be successful in WPGL as it currently exists.
- The PBP groups would benefit from focused Department support, technical assistance, and access to available data.
- Reserving funding for SRP identified project proposals may conflict with other statutory preferences.
- The timing and number of future water supply projects identified in the SRPs is unknown and may be variable depending on the collaborative group’s progress and complexity of projects. This may impact or may place funding with time-bound limitations at risk if unused.
- Reserving funding for the four PBP groups may negatively impact projects proposed as a result of other types of collaborative planning processes or partnerships and create an inequitable funding framework.
- Reserving WPGL funding for the four PBP groups may reduce available funding from projects likely to achieve greater public benefits and likely to achieve targeted outcomes.
- Available grant funds have certain time-bound limitations for expenditure (General Fund or IRS requirements), which, based on the uncertainty of frequency and timing of SRP proposals, may impact funds being used in the allowed timeframe.
- Based on the likelihood of the PBP group’s success within the current framework and that reserving funds may be in conflict with other targeted outcomes, would require a process to modify the selection process, and may reduce funding for other proposals likely to achieve greater public benefits, the Department is not recommending setting aside funds.

Process to Increase Current Grant Awards

Document Purpose

In November 2021, the Water Resource Commission (Commission) requested that the Department investigate the potential for Department staff to be authorized to increase grant awards in cases where a grantee has been impacted by rising costs and other external factors.

Information and Analysis

At the Commission's request, staff reviewed the statute and rules of the Department's two funding opportunities, Feasibility Study Grants (FSG) and Water Project Grants and Loans (WPGL), the Planning, Collaboration, and Investments Section's (PCI) existing *Budget Request Increase Evaluation Process*, and internal practices.

1. Statute/Rules

	Statute	Rules
FSG	<i>No language regarding award amounts or amendments (except \$500,000 is maximum for award)</i>	690-600-0040 Grant Agreement and Conditions (1) The Director or designee will establish grant agreement conditions for each grant. Grantees shall comply with all grant agreement conditions. (2) The Department will only enter into new agreements or amendments to existing agreements with prior grantees of the Program if all reporting obligations under existing or earlier grant agreements have been met.
WPGL	<i>No language regarding award amounts or amendments</i>	690-093-0160 Authority of the Director (1) The Director is authorized by the Commission to enter into agreements with applicants who have been awarded a grant or loan by the Commission. (2) The Director may: (a) Contract with regulated lenders, state or federal agencies or others to provide services to the program. (b) Take such steps as are needed to: (A) Ensure repayment or recovery of loan funds; and (B) Prevent project funds from being diverted from the originally approved purpose. (c) Delegate to staff, in writing, authority to approve, deny, or amend agreements consistent with these rules. (3) The Director or the Director's designee may conduct periodic inspections of water projects with reasonable notice.

2. Current Practice

There is an established framework for grant budget increase requests. The framework includes gathering required information from the grantee, such as the amount requested and reason for the request, evaluating the status of the program budget, and evaluating the status and compliance of the grantee seeking the funding increase.

PCI follows the *Budget Request Increase Evaluation Process* to evaluate the request, which includes evaluating the following questions:

Grant Program Budget Status

1. Feasibility Study grant only: Has the project reached the \$500,000 maximum?
2. Are there available funds in the Program budget to meet the grantee's requested increase?
3. Are sufficient funds available for the current grant cycle to accommodate anticipated grant awards, if the increase is approved?
4. Are sufficient funds available for the remainder of the biennium's grant cycles?
5. Other Program considerations?

Grant Agreement Status

6. Is the grant currently in compliance?
7. Is there an available balance with their Match funds?
8. Will the requested increase enable the grantee to bring the project, study or plan to **full** completion as originally described in the Grant Agreement's Project Description or Statement of Work?
9. Does the requested increase represent new or additional tasks beyond the original scope of work? Unless there are justifiably unforeseen circumstances, the request would be denied.
10. What is the justification for the requested increase? Is there a reasonable expectation that these additional funds should have been anticipated?

The Grant Coordinator conducts the initial evaluation and recommendation. The evaluation results and recommendation are reviewed and discussed by the PCI Manager and Administrative Services. Requests that staff recommend for a budget increase are then reviewed by the Deputy Director and forwarded to the Commission for a decision.

3. Current Grant Budget Development

Grantees may include contingency fees within the current application process when crafting their grant budgets. Grantees are encouraged to do so verbally during pre-application conferences; however, application instructions could be improved to specify this opportunity. Increases in an applicant's grant budget does impact the match funds required and applicants should be aware of this impact.

4. Analysis and Recommendation

- There is nothing in the statute or rules that prohibits the Department or the Commission from increasing grant award funds.

- A current process exists for grantees to submit a budget increase request for review and analysis, and ultimately be forwarded to the Commission for a final decision if appropriate.
- A readily available option to increase grant funding available is likely to impact the funds available for future funding cycles.
- Additional process development would be required to determine the criteria for staff approval of budget increase requests.
- Due to the statutory match funding requirement of 25% (WPGL) and 50% (FSG) any budget increase requires that the additional match funding be secured by the grantee. This requirement may prohibit additional funding.
- The Department has successfully worked with applicants in the past who have experienced budget changes and provided assistance by either extending the grant period or pointing them to other sources of funding.
- At this time, the Department recommends that any requests for a budget increase follow the current process and be a decision for the Commission.