



Oregon

Tina Kotek, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Douglas E. Woodcock, Acting Director

SUBJECT: Agenda Item B, November 16, 2023
Water Resources Commission

Director's Report

I. Recent Actions and Updates

A. Staffing Update

Since the September meeting, the Department has filled six positions as of the end of October. Of the positions filled, there are four staff who are new to the agency, one moving from a limited duration position to a permanent position and one promotional transfer in from another agency. Positions filled include the following:

- Senior Technical Analyst
- Fiscal Analyst
- Fiscal Manager
- Water Rights Caseworker
- Physical Hydrogeologist (2)

There are four additional positions with accepted offers that have a start date after October 31st. These will be detailed in the next Director's Report.

B. Irrigation Modernization Funding

House Bill 5030 (2023) authorized \$50M in funding for irrigation modernization projects that leverage federal funding associated with Natural Resources Conservation Service authorized watershed plans, U.S. Bureau of Reclamation WaterSMART grants, or U.S. Environmental Protection Agency grants that are eligible to be on the Department of Environmental Quality's Intended Use Plan, and produce the economic, environmental, and community benefits described in the authorizing statute for OWRD's Water Project Grants and Loans (WPGL) funding opportunity (ORS 541.673). House Bill 2010 (2023) also changed the authorizing statute for Water Project Grants and Loans requiring OWRD to offer two funding cycles a year (instead of one annual cycle).

As both funding opportunities use the same public benefits to evaluate and rank projects, in order to move quickly, not miss the opportunity to leverage federal funds, and to make efficient use of resources, the Irrigation Modernization Funding applications and WPGL applications will be evaluated at the same time using the same Scoring Criteria document. Irrigation modernization projects will be evaluated in the same manner as WPGL projects with one exception. As directed under House Bill 5030, for irrigation modernization projects involving surface water rights where the project conserves water, priority shall be given to projects that legally protect a portion of the conserved water instream commensurate with the amount required under the approach described in ORS 537.470 (the Allocation of Conserved Water Program).

Application materials were posted in early November and the application deadline for both funding opportunities is January 17, 2024. OWRD anticipates bringing funding recommendations to the Commission in May 2024. The bond sale schedule indicates that \$25M of the \$50M will be sold in May 2024 and the remaining \$25M in March 2025. Therefore, OWRD anticipates allocating \$25M to 2024 grant awards and \$25M to 2025 grant awards. As with all our funding opportunities, we will build on lessons learned from the first funding cycle in 2024 to improve future funding cycles.

C. Harney Domestic Well Remediation Fund

The Harney Domestic Well Remediation Fund (Harney Well Fund) was established in 2021 by House Bill 3092, which authorizes the Department to pay for up to 75% of the total cost of replacing, repairing, or deepening a personal domestic well affected by groundwater declines in the Greater Harney Valley Groundwater Area of Concern, not to exceed \$10,000. OWRD is also authorized to pay up to \$3,500 for the cost of abandoning the replaced well.

The Department is working to setup this fund with the intent to begin accepting applications in early 2024. Staff are building off lessons learned from the Water Well Abandonment, Repair, and Replacement Fund (WARRF), but the two funds will need to be operated differently due to differences in their authorizing statutes. Namely, while WARRF applications were accepted on a rolling basis, the Harney Well Fund will have a set application deadline to allow OWRD to prioritize grants as directed in statute. As part of the effort to stand up the Harney Well Fund, OWRD solicited feedback from those involved in authorizing and advocating for the fund on topics such as eligible wells, funding prioritization, and funding application deadline.

D. Cloud Seeding

Cloud seeding is a weather modification technique that may improve a cloud's ability to produce rain or snow by introducing tiny ice nuclei into certain types of subfreezing clouds. These nuclei provide a base for snowflakes to form. After cloud seeding takes place, the newly formed snowflakes quickly grow and fall from the clouds back to the surface of the Earth ([Desert Research Institute](#)).

Over the last year, there has been some interest by legislative members and members of the public in cloud seeding. In Oregon, pursuant to ORS Chapter 558, the State Department of Agriculture (ODA) has authority to administer licenses to authorize cloud seeding, and the statutes prohibit anyone from attempting to cause or prevent “by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere,” without a license from ODA. Further, in 1969, the statute was amended to allow for the incorporation of weather modification districts for areas within counties bordering the Columbia River and having a population of less than 21,000.

OWRD does not have technical expertise related to cloud seeding, nor is the Department aware of recent studies that explore how cloud seeding would impact Oregon. Recent work in Idaho by Idaho Power has concluded that snowpack in Idaho can be increased given certain required conditions ([Idaho Power Presentation](#)). Most cloud seeding programs in other states are operated by a meteorologist performing complex predictive modeling. Staff will be attending a presentation in November to learn more; however, it is important to recognize that OWRD’s current role in cloud seeding is limited.

E. Drought Conditions

Over water year 2023, Oregon experienced regional trends in drought development and abatement. While coverage of overall drought conditions decreased by 20% over the year – primarily in southeastern Oregon – regional changes in drought severity followed a clear transect from southwest to northeastern Oregon. In general, drought conditions in the area south and east of this transect have largely been abated due to an abundant snowpack that melted out later than usual, as well as late spring and mid-summer rain events. Conversely, drought conditions in the area north and west of the transect have deteriorated in large part due to lack of spring precipitation following rapid and early melt out of snowpack. Recovery from current drought conditions in western and northern Oregon is dependent upon abundant snowpack and precipitation this upcoming winter; however, that remains an uncertain future considering the anticipated continuation of El Nino conditions, which typically result in warmer weather in much of the Pacific Northwest, through spring of 2024.

II. Upcoming Board and Commission Meetings

Commission / Board

Land Conservation and Development Commission
Parks and Recreation Commission
Fish and Wildlife Commission
State Land Board
Environmental Quality Commission
Watershed Enhancement Board
Board of Agriculture

Date

November 2-3, 2023
November 14-15, 2023
December 14-15, 2023
December 12, 2023
November 16-17, 2023
January 23-24, 2024
November 14-16, 2023

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Attachments:

1. Rulemaking Calendar
2. Litigation Update

Oregon Water Resources Department Current/Anticipated Rulemaking

Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Groundwater Allocation	Updates Process and Definitions in Rule for Sustainable Evaluation of New Water Rights, Protective of Senior Right Holders	Annette Liebe, Justin Iverson, Laura Hartt	Yes	Mid-2024	RAC 1-6 complete. Next RAC December 14, 2023
Division 512 – Malheur Lake Basin Program	Update to Basin Rules Following Publication of Groundwater Study	Ivan Gall, Tim Seymour, Kelly Meinz	Yes	Fall 2024	RAC 3 complete, next RAC November 25, 2023
HB 3293 (2021) Water Project Community Engagement Plans	Rules regarding best practices for equitable community engagement plans for funding programs	Dr. Kim Fritz-Ogren, Charlotte Regula-Whitefield, Laura Hartt	No	2024	Research and planning underway
HB 2020 (2023) Voluntary Agreements	Establish statewide criteria for voluntary water agreement ORS 537.525 within a shared reservoir	Ivan Gall, Tim Seymour, Laura Hartt, Kelly Meinz	Yes	2024	Research underway and planning underway
Divisions 205, 240 Welder Requirements for Well Construction	HB 3343 (2023)	Annette Liebe, Kris Byrd, Kelly Meinz	Yes	March 2024	RAC scheduled November 2, 2023

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STATE COURT CASES (TRIAL LEVEL)			
Case	Court / Case #	River Drainage or Basin and Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>Fort Klamath, et al. v. OWRD</i>	Marion Co. 21CV37688	Klamath - PJR of Order approving temp transfer of Crooked Creek water, KA 67, T13673	Appeal filed. See Appellate notes below.
<i>Golden Rule v. OWRD</i>	Harney Co. 19CV53051	Harney - PJR of order related to Court of Appeals matter	COA ruled on A172879-172880; stayed pending a decision 8/9/21. Appellate judgment issued 09/12/22 and lifted the stay but petitioners have not taken any action to persue the case further in trial court.
<i>Gould v. OWRD</i>	Marion Co. 21CV48665	Deschutes - PJR of order granting temporary change in place of use and points of diversion. Pinnacle Utilities has moved to intervene.	Document production finished; Depositions ongoing; trial set for Jan 16-19; Court affirmed OWRD's order maintaining automatic stay (order signed Aug 24, 2023)
<i>KBA</i>	Klamath Co. Case 00001	Adjudication of water rights in the Klamath Basin	The court issued its order on the motions to present non-record evidence on the tribal claims on 07.07.2023
<i>KID 3</i>	Marion Co. 21CV39570	Klamath - PJR of April 6, 2021 Order to BOR; challenges OWRD's method of calculating whether stored water is being released	Court granted motion to stay 04.15.2022; KID filed new PJR against withdrawal
<i>Pinnacle Utils v. OWRD</i>	Deschutes Co. 22CV08683	Deschutes - Challenge to OWRD order denying limited license application	Trial reset to April 9, 2024
<i>Earth and Waterworks v. OWRD</i>	Union Co. 22CV24108	Grand Ronde - PJR of Department order to abandon a well.	Case settled 10/17/23 ; general judgement signed 10/19/23
<i>Sprague River Cattle v. OWRD</i>	Marion Co. 22CV27077	Klamath - Takings and declaratory judgment claim.	Jan. 22, 2024, Hearing on Motion for Summary Judgement Trial date set for May 2024.
<i>Rogue River v. OWRD</i>	Marion Co. 23CV19220	Klamath/Rogue - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.	Case consolidated with MID.
<i>MID v. OWRD</i>	Marion Co. 23CV19218	Klamath/Rogue - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.	Case consolidated with Rogue River.

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Bridgeview Vineyards, Inc. v. OWRD, et al.	Josephine Co. 23CV28757	Illinois - Petition challenging OWRD's cancellation of water-rights permit # T-9175.	
Brown Saylor Ranch, LLC, et al v. OWRD, et al	Umatilla County 23CV26568	Umatilla - Petition challenging a Notice of Violation that OWRD issued after determining that Petitioner's were irrigating land outside of their permitted place of use.	Response to PJR due 8/23/23.
Lloyd Piercy v. OWRD, et al.	Umatilla County 23CV27740	Umatilla - A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project.	Response to PJR due 8/14/23
New Foothills Properties LLC, et al. v. OWRD, et al	Umatilla County 23CV27892	Umatilla - A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project.	Response to PJR due 8/14/23
NBCC, LLC, et al v. OWRD, et al	Marion County 23CV32928	Klamath - PJR Case Regarding Water Rights.	Response to PJR due 10/2/2023.
Winchester Water Control Dist. v. OWRD, et al	Marion County 23CV33445	Umpqua - Petitioner district contends OWRD wrongfully denied amendment to their water right registration statement that claims less water than is actually held in reservoir.	Response to PJR due 10/2/23.

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STATE COURT CASES (APPELLATE LEVEL)			
Case	Court	River Drainage or Basin and Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>KID 2</i>	Court of Appeals A175510	Klamath - Intervenor's Notice of Appeal from the limited Judgment denying Applicant's Motion to Intervene	NOA filed 2/24/21. The court has requested the parties' position as to whether this matter is moot. All agree that it is, but the fisheries/environmental intervenors have also moved to vacate the underlying judgment. The motion to vacate was denied, and the case has been dismissed as moot. Waiting for final judgment.
<i>Braymen</i>	Appeal A170316	Silvies - Motion to show cause and for order of remedial contempt concerning alleged violation of settlement agreement and 2006 judgment of dismissal based on withdrawal of Motion to Enforce Decree in In re Silvies River Decree Case No. 1408	Appellate judgment issued on 4/25/22. This returns jurisdiction to Harney County Circuit Court. Have settled with Petitioner and working to settle with remaining water users.
<i>Waterwatch v. City of Lake Oswego</i>	A169652 S070206	Clackamas - Challenge to OWRD orders approving extension requests	The Supreme Court has denied review, we are waiting for the appellate judgment to issue.
<i>Waterwatch/East Valley v. OWRD</i>	A173292	Willamette - Challenge to OWRC order denying reservoir application	NOA filed 1/23/20. Oral argument held on 11/03/22. The court issued an opinion affirming the Commission's order.
<i>Bridge Creek Ranch v. OWRD</i>	A180610	John Day - Mandamus proceeding to require OWRD to process application to change POD for water-storage permit	Oral argument held 9/13/23.
<i>Fort Klamath</i>	A181385	Klamath - Appeal from PJR approving temporary transfer of Crooked Creek water, KA 67, T13673	Appeal filed 5/17/2023. Opening brief due 10/20/2023
FEDERAL COURT CASES (TRIAL LEVEL)			
Case	Court	River Drainage or Basin and Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>KID v. BOR</i>	USDC Or 21CV0504 Judge Aiken	Klamath - KID filed Motion for Preliminary Injunction in KBA and BOR removed it to federal court; seeks injunction against release of stored water.	Appellate Division is handling the mandamus petition. Mandamus was denied by the Ninth Circuit and a petition for certiorari is now pending in the US Supreme Court.
<i>US v. OWRD (fka BOR v. OWRD)</i>	USDC OR 21-cv-1442 Judge Clarke	Klamath - BOR asserts same claims as in Yurok case and also a PJR under the Oregon APA against the April 6 No Release Order	N/A [Stayed]

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<p><i>Yurok v BOR & NMFS</i> Intervenors: KWUA and Klamath Tribes</p>	<p>ND CA3:19-cv-04405 Judge Orrick</p>	<p>Tribes and others challenge the final BiOp (2019), BOR's environmental assessment and finding of no significant impact from BOR operations; primarily that set amount of irrigation water is unlawful and harmful to listed species</p>	<p>Limited judgment entered on US's First Claim for Relief; Appellate is handling appeal</p>
<p><i>Grant Knoll v. OWRD/WRC</i></p>	<p>USDC Oregon 1:23-cv-00928-CL Judge Mark D. Clarke</p>	<p>Klamath - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.</p>	<p>Amended petition filed; Answer filed; Pretrial scheduling conference on Oct. 23, 2023</p>
<p><i>Grant Knoll v. OWRD/WRC</i></p>	<p>USDC Oregon 1:23-cv-00929-CL Judge Mark D. Clarke</p>	<p>Klamath - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.</p>	<p>Amended petition filed; Answer filed; Pretrial scheduling conference on Oct. 23, 2023</p>
<p><i>Glenda Stilwell v. OWRD/WRC</i></p>	<p>USDC Oregon 1:23-cv-00930-CL Judge Mark D. Clarke</p>	<p>Klamath - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.</p>	<p>Amended petition filed; Answer filed; Pretrial scheduling conference on Oct. 23, 2023</p>
<p><i>Ryan Hartman, et al v. OWRD/WRC</i></p>	<p>USDC Oregon 1:23-cv-00927-CL Judge Mark D. Clarke</p>	<p>Klamath - A junior water-rights holder filed this petition challenging Oregon Water Resources Department's enforcement of the Klamath Tribes' call on claim No. KA 622.</p>	<p>Amended petition filed; Answer filed; Pretrial scheduling conference on Oct. 23, 2023</p>