



Oregon

Tina Kotek, Governor

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MEMORANDUM

TO: Water Resources Commission

FROM: Bryn Hudson, Legislative Coordinator
Lisa Snyder, Administrative Services Division Administrator

SUBJECT: Agenda Item C, March 21, 2024
Water Resources Commission

Budget And Legislative Update

I. Introduction

This report provides an overview of the 2024 Legislative Session and the efforts underway to prepare for the 2025 Legislative Session, including budget packages and legislative concept proposals. Commissioners will be asked to provide input on 2025 proposals during this agenda item.

II. Integrated Water Resources Strategy Recommended Action

- 13.B Fund water resources management activities at state agencies

III. 2024 Legislative Session

Oregon's Legislative Assembly convened in Salem on February 5 for the 2024 Legislative Session, with a Constitutional *Sine Die* date of March 10, 2024. Staff will provide the Commission with an overview of 2024 water-related legislation during this presentation. A list of select bills is included in Attachment 1.

IV. 2025 Legislative Session and Budget Development

Proposals for legislative concepts are due to the Department of Administrative Services (DAS) on April 30 for the 2025 Legislative Session. Placeholders may be submitted to DAS through July 31. DAS's official kickoff of development of the 2025-2027 Biennium Budget occurred on March 14. The final Agency Request Budget document is due to DAS by July 31. The Department met with stakeholders on March 13, 2024, to begin discussions about the 2025 Legislative Session. Additional meetings are scheduled for April 9 and May 7.

The Governor has established different expectations for the process we will use to develop Agency Request Budgets. Work with the Governor's Office is ongoing and will include prioritizing and likely narrowing the budget requests across agencies at an earlier stage in the

budget development process than has occurred in the past. Attachment 2 provides an overview of 2025 budget items submitted to the Governor's Office for consideration. There is no certainty that these budget items will advance forward into the Agency's Requested Budget document; however, input from the Commission will inform the discussions that we will be having with the Governor's office. Discussions with interested parties will occur at a later date in accordance with timelines set out by the Governor's office.

The Department was directed by the Governor's Office to divide budget proposals into three categories: 1) Critical to Agency Operations/Customer Service, 2) Supports/Enhances Execution of Existing Program Authority, and 3) Addressing Critical Need to Build Greater Landscape Resiliency. The Commission is invited to provide feedback on 2025 session legislative and budget proposals and how each of the budget proposals have been categorized.

The Department is also considering several legislative concepts for the 2025 Legislative Session as shown in Attachment 3. These proposals may change upon further discussions with the Governor's Office, the Commission, and interested parties.

V. Conclusion

The Department has begun work on budget development and legislative concepts for the 2025 Legislative Session. Over the next few months, proposals will be narrowed and refined in coordination with the Governor's Office.

Attachments:

1. 2024 Water Related Legislation
2. 2025 Budget Issues for Discussion Purposes
3. 2025 Potential Legislative Concepts for Discussion Purposes

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Bill Number	Relating To	Bill Summary
SB 1530 EN	Relating to state financial administration; declaring an emergency.	Appropriates moneys to and modifies expenditure limitations for the Housing and Community Services Department, Oregon Health Authority, Department of Human Services, State Department of Energy, Oregon Business Development Department, Department of Transportation, Water Resources Department and Oregon Department of Administrative Services for various programs.
SB 1567 EN	Relating to the Walla Walla River Basin.	Directs the Water Resources Department to take certain actions related to the Walla Walla Water 2050 Strategic Plan.
SB 5701 EN	Relating to state financial administration; declaring an emergency.	Appropriates moneys from the General Fund to specified state agencies for biennial expenses.
HB 4015 EN	Relating to battery energy storage systems; and prescribing an effective date.	Permits a developer of a facility or the governing body of a local government after consulting with the developer to elect to defer regulatory authority to the Energy Facility Siting Council for the siting of a battery energy storage system.
HB 4063 EN	Relating to housing; prescribing an effective date.	Requires Metro counties to plan for the housing needs of Metro urban unincorporated lands.
HB 4102 EN	Relating to natural climate solutions; and prescribing an effective date.	Specifies the sources of moneys in the Natural and Working Lands Fund.
HB 4117 EN	Relating to public meetings; and declaring an emergency.	Authorizes the Oregon Government Ethics Commission to issue advisory opinions on the application of the public meetings law to actual or hypothetical circumstances.
HB 4121 EN	Relating to cannabis; declaring an emergency.	Directs the Oregon Liquor and Cannabis Commission, in consultation with the State Department of Agriculture, to create a map of locations of premises licensed to produce marijuana or industrial hemp.
HB 4134 EN	Relating to housing; declaring an emergency.	Requires the Oregon Department of Administrative Services Oregon Business Development Department to provide grants to cities for specified infrastructure projects that will benefit housing developments that will make at least 30 percent of the dwelling units affordable to workforce income households.
SB 1517 EN	Relating to the urban flood safety and water quality district; prescribing an effective date.	Authorizes the urban flood safety and water quality district to annually assess benefited lands within the managed floodplain for the total amount of revenues required to pay the costs for the succeeding year of district works that directly benefit the lands.
SB 1537 EN	Relating to housing; prescribing an effective date.	Requires the Department of Land Conservation and Development and the Department of Consumer and Business Services to jointly establish and administer the Housing Accountability and Production Office.
SB 1561 EN	Relating to the administration of moneys received from the Monsanto settlement; declaring an emergency.	Establishes the Environmental Restoration Council.
SB 1564 EN	Relating to housing; declaring an emergency.	Requires the Land Conservation and Development Commission to adopt model ordinances for cities of different sizes to implement housing and urbanization requirements.

Critical to Agency Operations/Customer Service	
Topic	Issue Statement
Budget Shortfall: Well Construction-Related Fees Shortfalls	The Department's well construction programs are almost entirely funded by fees. The ability for the agency to inspect wells to protect public health and safety and to prevent groundwater contamination and waste of groundwater resources requires (1) inspections of wells; (2) well log technical reviews; (3) licensing of well drillers. The Department is facing shortfalls to support staff funded by Start Card fund and for Well Driller Licensing and Landowner Permit fees. Has accompanying LC.
Budget Shortfall: Water Right Transactions and Dam Safety Fee Shortfalls	Staff in both the Dam Safety and Water Right Transactions Division are partially supported by fees. These programs are core to the Department's mission of responsibly managing Oregon's water resources and maintaining public safety. The Department is facing shortfalls to support staff funded by dam safety annual fees and water right transaction fees. Additional policy work with stakeholders and internal staff to streamline processes and policies will accompany this work.
Budget Shortfall: HB 3315 ODFW Reviews for Water Right Transactions	House Bill 3315 (2015) required the ODFW to recoup costs incurred for providing certain services beginning July 1, 2019. WRD is required to pay for funding for ODFW work on fee-based programs via HB 3315 (2015) but has not been provided additional funding in order to pay for ODFW expenses that began to be incurred in the last several biennia.
Package 070: Fee Shortfall Reduction Package	Several fee-supported programs at the Department, well construction, dam safety, water rights, are facing a revenue shortfall if left unaddressed. A reduction package will be needed to offset the costs related to the revenue deficiencies.
Budget Shortfall: State Scenic Waterways	OPRD currently provides funding to OWRD for scenic waterway work. Over the last several biennia, contract inflationary increases have not kept pace with state employee personal services costs for the Department's six positions that provide support for the State Scenic Waterways program, which is administered in conjunction with OPRD.
Budget Gap: Internal Audit Function	The Department met the criteria in 1(c) of Oregon Administrative Rule 125-700-0125 as of Fiscal Year 2016, requiring an internal auditing function (ORS 184.360). DAS has informed both OWEB and OWRD of the need to have an internal auditing function. Both agencies have continued to obtain waivers, while attempting to get resources to do this work.
Information Technology Package	The IT Strategic Plan identified key IT initiatives that will advance the agency's IT maturity from being a reactive Firefighter to a more proactive Trusted Operator. IT maturity will be key to the agency's ability to execute on many of its desired goals and strategic priorities. IT is a foundational piece of agency operations and at its current maturity level, many agency strategic objectives are at risk. Currently, well construction information systems are not meeting needs and creating productivity losses in staff workflows. Systems like the Field Operations Database need resources to continue modernization efforts. Lastly, the Department does not have a formal system for managing its 6 funding opportunities and direct appropriations; this is currently done through a series of Word forms and excel spreadsheets.
EJ/Equity work Communications and Access to Information for Diverse Oregon Communities	OWRD has been working to integrate best practices across programs to advance DEI and EJ work in the agency. In addition, the agency is seeking to better support its DEI team, provide resources to advance their work, and also to implement enterprise DEIJ objectives. There is also a need to engage with diverse communities using appropriate languages, formats (visual/audio, printed, gatherings /workshops), and accessibility (ADA, internet connectivity/access) that are appropriate, effective, and impactful.

BUDGET ISSUES Note: This list contains an initial list of proposed policy option packages, informed by the Integrated Water Resources Strategy and the Department's Strategic Plan. OWRD is awaiting further direction from the Governor's Office.

Human Resources and Workplace Safety Needs	Workload and responsibilities in Human Resources have significantly increased over the last biennium, with the agency adding nearly 100 positions. Ensuring the agency is meeting the Governor’s expectations, administering the new Paid Leave Oregon program, in addition to future work associated with implementation of the agency’s Succession Plan has been taken on by the position assigned to ensuring workplace safety in the HR section. The agency now consists of nearly 250 employees, many of which work in field locations throughout the state, in all kinds of worksites and with various equipment. There is simply insufficient capacity to give the dedicated attention necessary for scaling the workplace safety program to an acceptable level to meet the new and growing demand within a reasonable time frame. Agencies are also experiencing increased safety concerns voiced by staff.
Web coordinator	The Department currently does not have a primary staff member in charge of maintaining the agency website. In addition, the Department has received feedback that the website is difficult to navigate and that information is not accessible.
Director's Office Structure	As sections within the Director’s office have grown with existing and new programs, the division's two sections now total 25 staff, with another five positions that include deputies, assistants, the director, as well as two limited duration retired special assistants to the director. This is the equivalent to an entire division, yet the deputy director of strategy and administration serves as both the deputy and the Director's office administrator. This can lead to less timely attention to matters needed by the section staff. If such a section were to be established, an administrative assistant would also be needed to support the workload of the division as well as the administrator. Managers continue to report that it would be helpful to have administrative staff available that would allow them to push some lower-level responsibilities down that higher level staff currently perform.
Position Reclassifications	Placeholder for potential reclass discussion if needed. OWRD is currently working to get a meeting with DAS.
Klamath Adjudication Costs	The court has remanded the Klamath Tribes water right claims for further work by the Department. The adjudication once complete will allow people in the basin to understand what they have in terms of water rights. This will allow people to be able to make decisions in the face of climate change.
Legal Coordinator and costs	Legal issues continue to increase in the face of climate change, requiring substantial amount of time from executive managers. Currently, senior level staff are spending significant time tracking and coordinating litigation cases and costs.
OWRD Water Data Needs and Potential Water Data Portal Package	OWRD has significant need to address data QA/QC issues and data entry in order to make data usable both for Department programs as well as for it to be utilized in work for the Water Data Portal and other data sharing efforts. In addition, the agency needs to continue to work through data sprawl issues and data architecture. Additional Data coordination needs are required for Oregon's Open Data and Water Data Portal work.

Supporting/Enhances Execution of Existing Program Authority	
Topic	Issue Statement
Harney Conservation Reserve Enhancement Fund	Allows for GF appropriations for CREP program to roll over into an “Other Funds” account to provide flexibility for the Department to meet the needs of the participants enrolling in the program. Has accompanying LC.
Restoration of Funds: Funding for groundwater studies (investigations and observation wells) and water budgets	In the 2023-25 budget development process a reduction of \$447,830 was taken from the Groundwater Investigations & Observation Wells budget. This funding supports cooperative groundwater basin studies, groundwater data, and the construction and maintenance of observation wells that assist the Department in developing a better understanding of groundwater levels statewide. The Department has contracted with the USGS to develop statewide estimates of groundwater recharge and water budgets; the first phase of this work will be complete in early-mid 2026; in order to effectively engage with communities about what these data and other data work mean an, the Department need resources to support effective outreach and community engagement.
Protest Backlog Reduction	General funds were appropriated during the 2021-23 biennium to reduce the water rights protest backlog. A record number of protests were resolved but more protests were filed. ARPA money was allocated to continue this work in the 23-25 biennium at a lower level of funding. The Department has one dedicated staff member who works with other agency subject area experts, DOJ and OAH to work on this issue. If the Department does not receive additional funds, backlog reduction work will stop.

Addressing Critical Need to Build Greater Landscape Resiliency	
Topic	Issue Statement
Levee Inventory and Assessments	Currently no inventory exists for levees not regulated under the federal government. These levees may jeopardize public safety, should they fail. The Department does not have the resources necessary to inventory, inspect, classify and assign a hazard rating to these levees. Identification and assessment of the levees would help communities throughout Oregon improve their resiliency to flooding and seismic events and help mitigate the effects of climate change.
Interagency LUBGWMA	Groundwater contamination issues are severely impacting communities in the LUBGWMA. There is an interagency effort to address the issues arising, but funding is needed for additional capacity to assist with project coordination and management and technical assistance for field work and data collection in the LUBGWMA.
Grant Programs: Recapitalize Funding for Existing Grant Programs (PBP, WPGL, FSG, WARRF)	OWRD's competitive grant programs provide direct investment in water supply solutions and frequently serve as match for federal programs: Place-based planning allows for collaborative identification of solutions, Feasibility Study Grants support investigations of project feasibility, and Water Project Grants and Loans invests in implementing solutions with public benefits. The Water Well Abandonment, Repair, and Replacement Fund (WARRF) provides financial resources for OWRD and others to restore access to water in homes and protect groundwater from contamination and co-mingling.
CTUIR Facilitation	The Department received funding to facilitate the CTUIR settlement and other water issues in the 2023 biennium as one-time funding. It is expected that this work will take longer to complete.
AR/ASR Capacity	Storage can be a critical component to adapting to water scarcity. Aquifer Recharge and Aquifer Storage and Recovery projects are tools that can help improve groundwater levels and provide for water storage, which can benefit water users, and in some cases springs and streamflows. Oregon can and should do more to facilitate use of this tool and ensure timely processing of these applications.

LC/POP	Summary
LC	<p>Klamath Leases and Temporary Transfers Sunset Date: Sections 1 and 2, chapter 445, Oregon Laws 2015 grant the Department authority to approve temporary transfers and leases for determined claims in the Upper Klamath Basin, which is undergoing an active adjudication. This authority sunsets in January 2026. If this authority sunsets, the Department will not be able to approve leases or temporary transfers until the adjudication is completed, which limits water users ability to use their water rights.</p>
LC/POP	<p>Harney CREP Program Other Fund Transfer: The Harney Valley CREP (Conservation Reserve Enhancement Program) is a voluntary program operated through the USDA Farm Service Agency (FSA) in partnership with OWRD that seeks to improve groundwater conditions in the Harney basin by incentivizing landowners to voluntarily cancel groundwater rights within the Greater Harney Valley Groundwater Area of Concern. The program is funded primarily by federal dollars, but requires a state contribution. The program provides funding for up to 15 years of payments to landowners who volunteer to cancel groundwater rights. The Department’s base budget was allocated \$500k for the program in general funds (GF) each biennium; unspent funds will go back to the state general fund at the end of each biennium. The GF allocation limits the number of participants that can be enrolled as it requires landowners to take a lump sum payment from OWRD to ensure full utilization of available funding prior to the end of the biennium; this limits flexibility of CREP for the community of Harney County. Allowing the unspent GF allocation to roll into an “other funds” account each biennium would provide flexibility for the Department to commit to longer term or lump sum contracts to meet the needs of the participants enrolling in the program. Longer term contracts (up to 15 years) would allow OWRD to enroll more participants and provide more flexibility between individual contracts.</p>
LC/POP	<p>Well Construction Program Fee Shortfalls: The Department’s well construction programs are almost entirely funded by fees. The ability for the agency to inspect wells to protect public health and safety and to prevent groundwater contamination and waste of groundwater resources requires (1) inspections of wells; (2) well log technical reviews; (3) licensing of well drillers. The Department is facing shortfalls to support staff funded by Start Card fund and for Well Driller Licensing and Landowner Permit fees.</p>
LC/POP	<p>Placeholder - Water Right Transaction Process Efficiency: The Department is experiencing backlogs in several of its water right programs, including water rights, transfers and protests. While some of these backlogs are related to inconsistent funding, the Department is currently exploring opportunities to streamline processes and policies related to water right transaction processes, including changes to statutory language. Some on these concepts may also have budget impacts.</p>
LC/POP	<p>Water Right Transaction and Dam Safety Fee Shortfalls: Staff in both the Dam Safety and Water Right Transactions Division are partially supported by fees. These programs are core to the Department's mission of responsibly managing Oregon's water resources and maintaining public safety. The Department is facing shortfalls to support staff funded by dam safety annual fees and water right transaction fees. Additional policy work with stakeholders and internal staff to streamline processes and policies will accompany this work.</p>

Klamath Leases and Temporary Transfers Sunset Date: Proposed Legislative Language

ORS 539.170 as amended by section 2, Chapter 445, Oregon Laws 2015 is amended to read:

Sec. 1. Leasing or temporary transfer of determined claim. (1) As used in this section, “determined claim” means a water right in the Upper Klamath Basin determined and established in an order of determination certified by the Water Resources Director under ORS 539.130.

(2) Except as provided in subsections (3) and (4) of this section, during the period that judicial review of the order of determination is pending, a determined claim is:

- (a) An existing water right that may be leased for a term as provided under ORS 537.348; and
- (b) A primary water right that is subject to temporary transfer for purposes of ORS 540.523.

(3) Subsection (2) of this section:

(a) Does not apply to a water right determined and established in an order of determination that has been stayed by the filing of a bond or irrevocable letter of credit under ORS 539.180;

(b) Does not apply to a water right transfer that includes changing the point of diversion upstream; and

(c) Does not allow a person to purchase, lease or accept a gift of a determined claim for conversion to an in-stream water right as described in ORS 537.348 (1).

(4) For purposes of determining under ORS 537.348 (5) or 540.523 (2) whether the Water Resources Department may approve a lease or temporary transfer of a determined claim, an injury to another determined claim is an injury to an existing water right. Notwithstanding ORS 537.348 (6) or 540.523 (5), the department shall deny, modify or revoke the lease or temporary transfer of a determined claim if the department determines that the lease or temporary transfer has resulted in, or is likely to result in:

- (a) Injury to another determined claim or other existing water right; or
- (b) Enlargement of the determined claim.

(5) The department shall revoke the lease or temporary transfer of a determined claim if a court judgment stays the determined claim.

(6) If a determined claim is removed from land by lease or temporary transfer, the land from which the determined claim is removed may not receive water during the term of the lease or temporary transfer.

Sec. 2. (1) Section 1 of this 2015 Act is repealed ~~January 2, 2026~~ **upon the final determination by decree of the rights to the waters in the Upper Klamath Basin.**

(2) Notwithstanding the repeal of section 1 of this 2015 Act by subsection (1) of this section, subject to modification or revocation under section 1 of this 2015 Act, a lease or temporary transfer of a determined claim under section 1 of this 2015 Act for a term beginning prior to January 2, 2026, may continue in effect for the term of the lease or temporary transfer. If a court judgment results in a modification of the determined claim, the parties may continue the lease or temporary transfer of all or part of the water right as modified for all or part of the original term of the lease or temporary transfer.

SECTION 2. Sections 1 and 2, Chapter 445, Oregon Laws 2015, are repealed upon the final determination by decree of the rights to the waters in the Upper Klamath Basin.

Harney CREP Program Other Fund Transfer: Proposed Language

Section 1. Notwithstanding any other provision of law, the General Fund appropriation made to the Water Resources Department by _____ (OWRD budget bill, 2025) for the biennium beginning July 1, 2025, for technical services, is decreased by \$500,000.

Section 2. There is established in the State Treasury, separate and distinct from the General Fund, the Conservation Reserve Enhancement Program Match Fund. Interest earned by the Conservation Reserve Enhancement Program Match Fund shall be credited to the fund. All moneys in the Conservation Reserve Enhancement Program Match Fund are continuously appropriated to the Water Resources Department to carry out the purposes described in section 3 of this 2025 Act. (2) The Conservation Reserve Enhancement Program Match Fund shall consist of all moneys credited to the fund, including moneys appropriated or transferred to the fund by the Legislative Assembly.

Section 3. In addition to and not in lieu of any other appropriation, there is continuously appropriated to the Water Resources Department, for the biennium beginning July 1, 2025, out of the General Fund, the amount of \$500,000, for deposit in the Conservation Reserve Enhancement Program Match Fund.

Section 4. Notwithstanding any other law limiting expenditures, the limitation on expenditures established for Water Resources Department for the biennium starting July 1, 2025, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and including federal funds received under cooperative agreements with or contracts from the Bureau of Reclamation of the United States Department of the Interior, the United States Army Corps of Engineers, the United States Geological Survey, the Bonneville Power Administration and the National Fish and Wildlife Foundation, but excluding lottery funds and federal funds, collected or received by the Water Resources Department, for technical services, is increased by \$500,000, for authorized expenditures of moneys deposited in the Conservation Reserve Enhancement Program Match Fund.