



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 D, June 13, 2024
Water Resources Commission

Director's Report

I. Recent Actions and Updates

A. Director Recruitment Update

After a lengthy recruitment and interview process, Governor Tina Kotek nominated the Department's acting deputy director and Field Services Division administrator, Ivan Gall, as the next director of the Water Resources Department. The Senate confirmed Mr. Gall on May 31. During the recruitment process, conversations with water interests highlighted a strong need to build trust around the state. Legislators and water interests indicated that modernization of Department policy and process are necessary to address legacy concerns. Mr. Gall was selected for his ability to lead the next phase of the modernization of the Department. His tenure starts July 1, 2024.

B. Staffing Update

Since the March meeting, the Department has filled nine positions as of May 15, 2024. Of the positions filled, there are four staff who are new to the agency, one staff member moving from a limited-duration position to a permanent position, two lateral transfers in from another agency, and two internal promotions. Positions filled include the following:

- Accounting Technician
- Application Development Manager
- Assistant Watermaster Klamath Falls (2)
- HR Business Partner
- Software Engineer
- Surface Water Section Asst. Manager
- Transfer and Conservation Section Support
- Well and Measurement Grant Analyst

There is one additional position with an accepted offer that had a start date after May 15, 2024. This will be detailed in the September 2024 Director's Report.

As of May 15, 2024, the Department has twenty-six vacant positions to fill with twelve of those twenty-six recruitments in process.

C. Lower Umatilla Basin Groundwater Management Area (LUBGWMA) Overview

Department staff have been working closely with the Governor's Office, the Department of Environmental Quality, and the Department of Agriculture on many different initiatives to address nitrate contamination of groundwater within the LUBGWMA. Governor Kotek has committed that the state agencies are going to increase time and resources devoted to ensuring residents in the lower Umatilla Basin have safe drinking water supplied to them in the short term, and that medium- and longer-term strategies are developed and implemented to improve groundwater quality within the LUBGWMA. This work is multifaceted and includes the continuation of technical work and data collection led by the Department and DEQ as well as updating the state's action plan and participating in other initiatives lead by local governments.

D. Tribal Update

Ongoing Coordination Efforts: The Department's Tribal Liaison and other staff continue to attend and provide policy updates during quarterly meetings held by the Legislative Commission on Indian Services' Cultural Resources Cluster and Natural Resource Working Group. Recent topics have included rulemaking efforts, legislative highlights, the IWRS update, funding opportunities, and House Bill 3293 (2021). During each update, tribal staff are invited to offer input and encouraged to request either coordination or formal consultation on any issue of interest or concern. The Tribal Liaison continues to work with sister agencies and tribal staff to update and standardize communications, consultation, and engagement efforts between the Department and the Tribes concerning policy issues of potential interest or concern.

Upcoming Summit: July 24, the Cow Creek Band of Umpqua Tribe of Indians is hosting the annual Tribal-State Government-to-Government Summit in Canyonville. Department staff will attend.

- Integrated Water Resources Strategy Recommended Action: 9.C – Partner with federal agencies, tribes, and neighboring states in long-term water resources management

E. Klamath Update

The removal of the hydroelectric dams on the Klamath River continues to proceed on schedule and under budget. Virtually all of the power facilities at the dams have been removed, and removal of the dam structures themselves is actively underway following final review and approvals from the Federal Energy Regulatory Commission (FERC). Kiewit Infrastructure West, the general contractor for the removal work, is working on deconstruction of the concrete dam (COPCO 1) and has begun removal of the earthen structures at Iron Gate and J.C. Boyle dams. RES, the general contractor for restoration work at the dam and reservoir sites, has completed seeding and some plantings, as well as active sediment evacuation from the reservoirs. The Klamath River Renewal Corporation and its contractors expect the final stage of the removal

work to be done in September of this year, restoring volitional fish passage to the upper basin for the first time in over 100 years. Additional restoration work will continue later this year and in 2025. This is the largest dam removal project in the world, to date, and many parties have been instrumental in its progress, including active and constructive oversight by FERC, as well as the participation of basin tribes.

With dam deconstruction and restoration work underway, the Bureau of Reclamation has restricted downstream releases of water to avoid interfering with restoration and dam removal, in line with the biological opinion for dam removal from the federal fisheries agencies. The limitation on downstream releases, combined with above average snow and rain in the upper basin, has benefited both the Klamath Tribes (by keeping water elevations in Upper Klamath Lake high) and irrigators, by resulting in additional water for deliveries and for the planned flooding of the Agency/Barnes project later this year. It also has benefited both irrigators and waterfowl by allowing the filling of Tulelake Wildlife Refuge, and the partial filling of the Lower Klamath Refuge (which will help eradicate the grasshopper infestation that damaged crops in the Klamath Project area last year).

In line with prior agreements, the Bureau of Reclamation will take over ownership and operation of Keno dam from PacifiCorp later this month, as well as operation of Link River dam. Oregon agencies are working with multiple parties on longer-term issues associated with Keno dam to ensure that it continues to work for irrigation, flood control, and fish passage.

F. Drought Status Update

As of May 14th, Oregon is completely free of drought according to the US Drought Monitor, marking the first time the state has been drought-free since 2019. This is due to wetter than average conditions across much of the state this past winter and spring. However, there are indicators of potential developing drought in north-central, northeastern, and western Oregon. So far in 2024, the Department has received one drought declaration request under ORS 536 from Jefferson County. This request was not recommended for approval by the Drought Readiness Council due to the absence of drought conditions but will be reevaluated at the next Drought Readiness Council meeting on June 12th. For a more comprehensive overview of drought, sign up for the [bi-weekly Water Conditions Report](#) or view the Water Conditions Report [online](#).

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

June 27 – 28, 2024

September 26 – 27, 2024

September 17-18, 2024

June 13 – 14, 2024

August 9, 2024

September 12 – 13, 2024

August 13, 2024

July 30 – 31, 2024

July 23 – 24, 2024

September 10 – 12, 2024

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Attachments:

1. Rulemaking Calendar
2. Litigation Update

Last Revision: 05/31/2024

Attachment 1

Oregon Water Resources Department Current 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	Sept. 2024	Public Comment Period Closes June 14, 2024 at 5 p.m.
Division 512 – Malheur Lake Basin Program	Update to Basin Rules Following Publication of Groundwater Study	Jason Spriet, Tim Seymour, Kelly Meinz	Yes	2025	RAC Meetings 8-12 Ongoing
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	June 2025	Rules Under Early Draft
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	Yes	2024/2025	Initial Draft Statewide Language and Discussions Underway under Div. 512 Rulemaking

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STATE COURT CASES (TRIAL LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
Fort Klamath	Marion Co. 21CV37688 Judge Broyles	Klamath - PJR of Order approving temp transfer of Crooked Creek water, KA 67, T13673	Appeal filed. Briefing done; waiting for COA to set hearing date. See Appellate notes below for more details.
Golden Rule	Harney Co. 19CV53051 Judge Raschlo	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.
Gould	Marion Co 21CV48665 Judge Wren	Deschutes - PJR of order granting temporary change in place of use and points of diversion. Pinnacle Utilities has moved to intervene.	Trial finished on May 2; Written closing filed on May 15; Oral ruling expected June 17
Pinnacle II	Marion Co 21CV48665 Judge Wren	Deschutes - PJR of order denying request to lift automatic stay	Consolidated with <i>Gould</i> ; stayed pending result in <i>Gould</i>
KBA	Klamath Case 00001 Judge Bushong	Adjudication of water rights in the Klamath Basin	On 05.07.2024, the court issued a case management order outlining the plan for the upcoming phase of the adjudication. Opening briefs for parties who filed exceptions to Walton/Klamath termination act claims are due by 08.07.2024.
KID 3	Marion 21CV39570 Judge Partridge	Klamath - PJR of April 6, 2021 Order to BOR; challenges OWRD's method of calculating whether stored water is being released	Court granted petitioner's motion to continue 4.15.2022 stay on 4.18.24.
Pinnacle Utils v. OWRD	Deschutes Co 22CV08683 Judge Sykora	Deschutes - Challenge to OWRD order denying limited license application	Document production finished; depositions expected; summary judgment motions likely; Trial reset to Nov 5, 2024; OWRD discussing potential settlement offer w/ contested cases; Waterwatch intervened
Sprague River Cattle	Marion County 22CV27077	Klamath - Takings and declaratory judgment claim.	Markowitz firm has taken lead on discovery efforts. Nex status hearing set for August 30, 2024, at 10:00 a.m.
Rogue River v. OWRD	Marion County 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. Settlement options under consideration. Deadline for petitioner to file amended petition extended pending settlement negotiations. Status hearings set for April 12, 2024, postponed until May 31, 2024. Drafting stipulated abatement of case pending Petitioners' completion of infrastructure construction needed to release water from their reservoir for the Klamath Tribes' use in UKL.
MID v. OWRD	Marion County 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. Settlement options under consideration. Deadline for petitioner to file amended petition extended pending settlement negotiations. Status hearings set for April 12, 2024, postponed until May 31, 2024. Drafting stipulated abatement of case pending Petitioners' completion of infrastructure construction needed to release water from their reservoir for the Klamath Tribes' use in UKL.

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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 Petitioners were irrigating land outside of their permitted place of use.	Settlement conference held April 11 in Pendleton before Circuit Court Judge Joanna Marikos. OWRD agreed to modify challenged notice of violation to add explanatory sentence. Petitioners agreed to dismiss suit with prejudice. Modified order has been issued. Case dismissed.
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.	Answer to amended PJR filed; to be consolidated with <i>New Foothills</i>
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.	Oral argument held on Mar 12; Awaiting court's ruling

NBCC, LLC, et al v. OWRD, et al	Marion County 23CV32928	Klamath - PJR Case Regarding Water Rights.	Amended motion to dismiss filed on 2/12/23. Petitioners filed surreply to MTD on 5/13/24. OWRD sur-sur-reply due on 5/28/24. Hearing on MTD set for 6/17/24 at 1:30 p.m. in Salem.
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.	On motion to dismiss, all claims dismissed, but court provided leave to replead one of the claims, which alleges that OWRD's denial of the amendment is inconsistent with prior practice. Parties negotiated entry of short term stay in light of settlement negotiations in other litigation. Stay has been officially entered. Case stayed until July 22.
Upper Crooked River Conservationists v. OWRD	Crook County, 23CV46779	Deschutes - Petitioners (nonprofit org and a ranch) challenge permit issued to Bureau of Reclamation for fish life	Oral argument on the standing arguments from our motion to dismiss is scheduled for 06.25.2024.

STATE COURT CASES (APPELLATE LEVEL)

Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
Braymen	Harney Appeal A170316	Harney - 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 Brayman; working to settle with remaining water users.
Waterwatch/East Valley v. OWRD	A173292	Willamette - Challenge to OWRC order denying reservoir application	NOA filed 1/23/20. Oral argument held on 11/03/22. Decided in WRD's favor 11/1/23; Petition for review filed on 12/20/23 and still pending.
Bridge Creek Ranch v. OWRD	A180610	John Day - Mandamus proceeding to require OWRD to process application to change POD for water-storage permit	NOA filed 2/7/23. Opening brief filed 4/3/23. WaterWatch amicus filed 4/10/23. Respondent's brief due 5/17/23; reply filed 6/16/23. Oral argument scheduled for 9/13/23. Decided on 12/20/23: the storage rights are water uses subject to transfer. Appellate judgment issued 2/28/24.
Fort Klamath	A181385	Klamath - Appeal from PJR approving temporary transfer of Crooked Creek water, KA 67, T13673	Case is scheduled for submission on July 3, 2024
Bridgeview Vineyards, Inc. v. OWRD, et al.	Josephine County 23CV28757	Rogue/Illinois--Petition challenging OWRD's cancellation of water-rights permit # T-9175.	Petitioner's opening brief due July 12, 2024

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Baker Valley ID v. Woodcock	A182525		Powder - Mandamus proceeding under ORS 183.490, challenging WRD's failure to act on IS72191	Order holding case in abeyance pending the outcome of the agency proceedings on IS-72191
Baker Valley ID v. ODFW and WRD	TBA		Powder - Petition for judicial review of order granting ODFW's application for instream water right	Agency record due 6/13/2024
FEDERAL COURT CASES (TRIAL LEVEL)				
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps	
KID v. BOR	USDC Or 21CV0504 Aiken	Judge	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. KID's petition for certiorari to the US Supreme Court was recently denied. District court case has not yet been reactivated.
US v. OWRD (aka BOR v. OWRD)	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]
Yurok v BOR & NMFS Intervenor: KWUA and Klamath Tribes	ND CA3:19-cv-04405 Orrick	Judge	Klamath - 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	Limited judgment entered on US's First Claim for Relief; Appellate is handling appeal; opening and response briefs filed in 9th Circuit
Grant Knoll v. OWRD/WRC	USDC Oregon 1:23-cv-00928-CL Judge Mark D. Clarke		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.	Case is stayed pending Ninth Circuit's ruling in Yurok Tribe.
Grant Knoll v. OWRD/WRC	USDC Oregon 1:23-cv-00929-CL Judge Mark D. Clarke		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.	Case is stayed pending Ninth Circuit's ruling in Yurok Tribe.
Glenda Stilwell v. OWRD/WRC	USDC Oregon 1:23-cv-00930-CL Judge Mark D. Clarke		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.	Case is stayed pending Ninth Circuit's ruling in Yurok Tribe.
Ryan Hartman, et al v. OWRD/WRC	USDC Oregon 1:23-cv-00927-CL Judge Mark D. Clarke		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.	Case is stayed pending Ninth Circuit's ruling in Yurok Tribe.