



# SECOND REVISED Staff Report

**TO:** Water Resources Commission  
**FROM:** Ivan Gall, Director  
**DATE:** June 13, 2025  
**SUBJECT:** Agenda Item E  
Water Resources Commission

## DIRECTOR'S REPORT

### I. Recent Actions and Updates

#### A. Staffing Update

Since the March meeting, the Department has filled twelve positions with start dates before May 19, 2025. Of the positions filled, there are six staff who are new to the agency, two limited duration staff members, two internal staff promotions, and two internal lateral transfers within the agency. Positions filled include the following:

- Assistant Watermaster (4)
- Customer Service Representative
- District Transfer Program Advisor
- Hydrogeologist
- Hydrologist
- Internal Operations Advisor
- Physical Scientist
- Public Information Officer
- Senior Water Advisor

As of May 19, 2025, the Department has twenty vacant positions that it intends to fill with eleven of those twenty recruitments in process. Two of the eleven recruitments in process are positions with accepted offers with start dates after May 19, 2025. These new hires will be detailed in the September 2025 Director's Report.

## **B. Tribal Update**

*Director's Visits:* The Department as well as Oregon Department of Fish and Wildlife, Oregon Watershed Enhancement Board and Oregon's nine federally recognized Tribes continue to coordinate scheduling meetings between the new Directors and Tribal leadership. These meetings foster collaborative relationships and share about Tribal priorities, goals, and vision around natural resource issues. Thus far, the three Directors have met with Klamath Tribes, Confederated Tribes of Warm Springs, and Confederated Tribes of the Umatilla Indian Reservation. Late March, the Director and staff met with Tribal leadership for the Confederated Tribes of Grand Ronde regarding the IWRS and other issues of interest to the Tribes. The Burns Paiute Tribe has extended an invitation to the Director and staff to meet with Tribal leadership regarding Harney Basin issues; that meeting is on hold while Harney County and the Tribe recover from the recent historic floods.

*Bi-weekly Tribal Leaders & Governor's Office Coordination Call:* The Director and Tribal Liaison are participating in bi-weekly calls with the Governor's office and Tribal Leadership, to keep abreast of current events throughout the state as well as at the federal level. Recent topics have focused on impacts to federal funding and services for Tribal membership.

*Task Force on Tribal Consultation and Department Policy on Tribal Engagement:* The Department has monitored the progress of the [Task Force](#), charged with identifying and clarifying the requirements of State agencies to engage in Tribal consultation ([House Bill 3173 \(2023\)](#); OR Laws 2023, ch 531, §§1,2). Although the term of the Task Force ended December 31, [House Bill 2069A \(2025\)](#) would extend the Task Force term through December 2026. Should HB 2069A become law, the Department will rely on Task Force recommendations to update the Department's 2007 policy on Tribal engagement.

*Ongoing Coordination Efforts:* The Department's Tribal Liaison and other staff continue to attend and provide policy updates during quarterly meetings held by the Oregon Legislative Commission on Indian Services (LCIS) Cultural Resources Cluster and the LCIS Natural Resources Working Group. Recent topics have included updates on rulemaking efforts, the IWRS, legislation, funding opportunities, technical projects (WARS, OpenET), and the Water Rights Settlement Agreement for the Confederated Tribes of the Warm Springs and Deschutes Basin transfers. 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, coordination, and consultation efforts between the Department and the Tribes concerning policy issues of potential interest or concern.

### **C. Water Availability Reporting System Update**

OWRD's Water Availability Reporting Tool, or WARS, is a decision support tool used to determine the amount of surface water available for appropriation across the state and evaluate applications for water use. The agency received funding in 2023 to update the system and calculate information that represents more recent streamflow conditions (1991-2020). For the updated version of this tool the Department is changing its name to Surface Water Information Modeling System (SWIMS). In January 2025, the project team began discussions with subject matter experts throughout the Department to better understand and anticipate risks, actions, issues, and decisions associated with updating the water availability modeling system. In July 2025, a Technical Advisory Group composed of water resource experts from state and federal agencies, academia, and the private sector, will convene to assist the Department in model development and establishing support for the model from the scientific community. The project team has also made progress towards several other deliverables:

- Streamflow records collected through 2024 for over 173 gages of interest to the project will be published by June 2028 by the Hydrographics program.
- Preliminary analysis to determine minimum gage data requirements and evaluation of streamflow trends over time is under review.
- Since November 2024, staff visited all six management regions to scout 20 locations for installation of 10 new stream gages.

### **D. Klamath Update**

A Klamath Basin Field Tour held in late April brought staff together to learn about the basin's unique water management issues and basin hydrology. The two-day experience included nine stops across 230 miles and facilitated knowledge exchange among 15 OWRD attendees and 7 external collaborating entities, including tribal, federal, university, and irrigation district staff. Participants learned about the basin's interconnected surface and groundwater systems, historical development, and water management challenges while visiting key locations such as Tule Lake National Wildlife Refuge, Keno Dam, and the A-Canal Headworks. A highlight was witnessing flow of the Williamson River over Kirk Reef for the first time in 5 years. A follow-up trip is being planned for September. Attachment 1 includes a photo from the trip.

The Acting Solicitor of the Department of the Interior has issued new legal guidance concerning Reclamation's duties to consult with NMFS and the Fish and Wildlife Service under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), as it applies to the operation of the Klamath Reclamation Project (see Attachment 2). Staff are working with legal counsel to review the guidance to determine how it may affect the operation of the Project. It appears the

Reclamation will now redo its recently adopted five-year operations plan, focusing on meeting contractual obligations to deliver water to the districts and other contractors within the Project. It also is likely that the litigation concerning many of the same issues will continue in the federal courts, which will ultimately decide these issues.

Water conditions in the Klamath Basin are very favorable for all uses this year. In addition, this is the first full year that the Bureau of Reclamation has operated both Link River Dam and Keno Dam, after taking over from PacifiCorp. The Bureau has operated this Spring under flood operations due to high inflows into Upper Klamath Lake and high flows in the Lost River system. The Bureau informed project water users that they will receive sufficient water to meet their irrigation needs this year. Due to flood operations, Tule Lake and Lower Klamath USFW refuges have received more water this year than in over 20 years, providing habitat for a very large number of birds. High stream flows in the Klamath River below Keno Dam have helped to flush silt and sediment from the areas of the former hydroelectric reservoir sites, which will improve habitat for fish. Restoration work by Klamath River Renewal Corporation of the former hydroelectric and reservoir sites is continuing.

KRRC also is working with Oregon and California agencies to prepare for recreational use of the Klamath River by constructing boating access sites and providing signage to warn river users of the hazards in the river (which, for the most part, has seen only limited boating use over the last 100 years). The restored river includes significant stretches for whitewater rafting and kayaking.

The Bureau of Reclamation has provided initial funding for the development of a detailed work plan by the Oregon Department of Fish and Wildlife for improvements to Keno Dam for improved fish passage, as well as for demonstration projects to install fish screening on water diversions above Keno Dam. Reclamation also recently completed some limited, short-term improvements to fish passage at both Keno and Link River dams in anticipation of possible salmon migration above Keno dam and Link River dam later this year.

#### **E. Groundwater Allocation Implementation Update**

The new rules adopted by the Commission to better protect existing water users and to more sustainably manage the State's water resources became effective on September 17, 2024. The Groundwater Section is finalizing updated internal guidance and application review form for assessing new groundwater right applications received on or after the effective date. The guidance documents update how staff from the Water Rights, Technical Services, and Field Services Divisions will work together to develop the information necessary to make an affirmative finding of water availability under the new rules. The Groundwater

Section recently completed processing the backlog of applications filed before the rule changes and is now beginning to provide technical reviews of applications under the new rules.

#### **F. Governor Tina Kotek Expectations**

In January 2023, Governor Kotek issued a set of expectations to all agencies with eleven categories of tasks to undertake to improve customer service and have efficient and effective public administration. The Department of Administrative Services (DAS) is providing oversight, guidance and direction on the effort, as well as developing progress reports. Information, guidance, and progress reports are on [DAS's Strategic Initiatives and Enterprise Accountability website](#).

In May 2025, the Governor provided agency directors with a progress report highlighting statewide achievements and detailing any areas where more focus is needed for their agencies. The OWRD Progress Report (Attachment 3) is attached for your reference. A few key items are highlighted below:

- Expectation 5 - Technology Planning – The 2025 revision of the [Agency IT Strategic Plan](#) and the [Agency's 2024 IT Strategic Plan Progress Report](#) were submitted to the Department of Administrative Services Strategic Initiatives and Enterprise Accountability Office on June 1, 2025.
- Expectation 9 - Recruitment – Highlighted by Governor Kotek as an area for OWRD to focus on, recent changes to the configuration of the calculation for the Workday report that tracks the time to fill statistic as well as an intentional focus on recruitment planning by Human Resources recruiters and agency managers should result in a reduction to the number of days our recruitments are taking to fill, better enabling OWRD to meet the targets established by the Governor. However, we note that several positions have been very challenging to fill, requiring multiple complex recruitments that create delays.
- Expectation 10 - Employee Engagement – Agencies are required to conduct an annual employee engagement survey, utilizing the Gallup 12 Employee Engagement Survey. The survey results helped us better understand where we are meeting employee needs and where we have opportunities to improve, so we can take action. The results have also helped us identify potential areas of focus as we continue our work to create a workplace that is welcoming and inclusive to all. The Department has conducted the survey for two years in a row. Participation in the 2024 survey was 82%, up from our 2023 participation rate. Overall engagement is up from last year as well.

## **G. IT Governance Update**

In January, the Department's Chief Information Officer began the process of establishing an Information Technology (IT) Governance framework for the Department. An IT Governance framework ensures that the organization's information technology infrastructure, or set-up, properly supports the agency's goals and strategies. The framework involves a set of policies, procedures, and structures to manage IT resources effectively, ensuring accountability, and mitigation of risks.

Key Objectives of IT Governance:

- Strategic alignment – Ensuring IT goals align with the agency's objectives.
- Resource management – Efficient use of IT resources (people, infrastructure, budgets).
- Value delivery – Optimizing IT investments and ensuring they deliver value.
- Risk management – Identifying and managing IT-related risks.
- Performance measurement – Monitoring and measuring IT performance.

In the absence of an IT governance framework there is no managed process of strategically aligning and prioritizing projects or initiatives to the agency's objectives. Resources can be wasted on low-priority projects or misaligned initiatives.

The first step for our process involved establishing an IT Governance Committee. The new committee consists of executive leaders from across the agency and meets monthly. The IT section concurrently began the process of creating resource documentation in a format which allows visibility to the work done by IT. Some examples of the documentation created are resource and capacity inventories, skills matrices, and an inventory of all current applications.

The IT Governance Committee has begun to use some of the tools created to gain insight into the current state of our IT operations, the IT workload at a high level and some of the gaps that have been identified in the infrastructure like resource needs, maintenance backlogs, technical debt, and missing processes or documentation that are crucial to moving our modernization efforts forward.

The goal for the Governance Committee over the next several months is to establish and implement a basic framework of IT governance tailored to the current needs and maturity level of OWRD, keeping in mind the need to introduce agency staff to the paradigm shift of IT's priorities being determined by this new IT Governance process.

## H. John Day and Willow Creek Measurement Update

To improve the efficiency and effectiveness of water management in the John Day and Willow Creek Basins, OWRD initiated a project to increase water measurement in these basins. In the fall of 2024, OWRD sent out 268 letters requesting the installation of approved measurement devices on points of diversion from streams in these basins. This initiative spans two regions, the North Central and East Regions and two Watermaster districts, Districts 4 and 21, providing an opportunity for collaboration across regions. A breakdown of the notices by basin and timeline for required installation is included in Table 1.

**Table 1. Breakdown of letters sent, and compliance timelines, for John Day River and Willow Creek**

Basin	Number of Letters Sent to Water Right Holders	Date of Initial Notice	Date Installation Required
John Day River	268	October 2024	March 1, 2026
Willow Creek	37	October 2024	March 1, 2026

As part of the request letter, OWRD included information about the Water Measurement Cost Share Program, which reimburses the user up to 75% of the cost of purchasing, installing, and/or repairing a water measurement device. As of May 20<sup>th</sup>, over \$126,000 has been spent on measurement devices and nearly \$95,000 has been reimbursed to water users in the John Day basin alone. Many water users have taken advantage of this program, and others are choosing to cover all costs themselves.

Since sending out letters, staff have been providing customer service to water right holders to assist them installing approved measurement devices, access the Water Measurement Cost Share Program, and conducting inspections to verify compliance. OWRD anticipates providing an update on the full implementation of the project in 2026, including numbers of those using the Water Measurement Cost Share Program, voluntary compliance, and any enforcement necessary.

## I. Executive Order 24-28

In September 2024, Governor Kotek signed Executive Order 24-28 which requires several state agencies to report on their efforts to implement the Columbia Basin Restoration Initiative (CBRI) and the Resilient Columbia Basin Agreement (RCBA). The first reporting deadline was February 1, 2025. Five of the natural resource agencies have had direct involvement with CBRI/RCBA during the first year of implementation: ODOE, ODFW, DEQ, OWEB, and ODOT. OWRD and ODA are actively coordinating with the above-listed state agencies and are monitoring the progress of the federal government's commitments. Additionally, each agency is requested to update their commission on progress

to implement the CBRI/RCBA.

Per the Executive Order, the five agencies have identified the CBRI objectives and RCBA commitments pertinent to each of the agencies, and have engaged with our six sovereign partners, the NWF coalition of NGOs, regional stakeholders, and federal agencies to ensure Oregon objectives and concerns are expressed and addressed. Progress has been made since the signing of the December 2023 RCBA, but with the recent change in federal administration there has been a significant slowdown in progress, and much of the federal funding for fish and wildlife programs previously committed to this work has been put on hold.



## II. Upcoming Board and Commission Meetings

### Commission/Board

Land Conservation and Development Commission

Parks and Recreation Commission

Fish and Wildlife Commission

Environmental Quality Commission

Watershed Enhancement Board

Board of Agriculture

### Date

June 26 – 27, 2025

September 25 – 26, 2025

June 17 – 18, 2025

September 16 – 17, 2025

June 12 – 13, 2025

July 11, 2025

August 15, 2025

September 11 – 12, 2025

July 10 – 11, 2025

September 11 – 12, 2025

July 22 – 23, 2025

June 11 – 13, 2025

September 3 – 5, 2025

### Attachments:

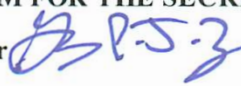
1. Klamath Field Trip Photo
2. Klamath Updated Analysis of Endangered Species Act Obligations
3. OWRD Progress Report
4. Litigation Update
5. Rulemaking Update

Cortney Cameron, Kim Fritz-Ogren, Garrett Steensland, USGS staff, Alison Burnop, and Byron Ebner at Agency-Barnes/Wood River Marsh during the Klamath Basin Field Trip for OWRD staff, USGS and OSU Extension.





**BRIEFING MEMORANDUM FOR THE SECRETARY**

**From:** Gregory Zerzan, Acting Solicitor   
**Date:** May 14, 2025  
**Subject:** Klamath Updated Analysis of Endangered Species Act Obligations

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**Background**

For generations the federal government has made various commitments to the people and wildlife of the Klamath River basin. For the Indian tribes in the area, it made treaties and reserved lands, to help protect ancestral hunting and fishing rights as well as the ability to celebrate traditional ceremonial practices. For farmers and irrigators, it constructed the Klamath Irrigation Project and entered water-supply contracts to provide water to nourish their crops. Later, through the Endangered Species Act, the United States made commitments to protect the various wildlife and aquatic species in the region from threatened extinction. These multiple and at times conflicting commitments have proven difficult to keep, leading to conflict and litigation that has spanned decades.

The Department of the Interior's efforts to balance these competing interests has in recent times borne some fruit. To fulfill ancestral fishing rights, the Department has launched a hatchery program to supplement declining wild populations. However, questions regarding water rights and the protection of species have continued to vex the federal government. Thankfully, in recent times the U.S. Congress has passed legislation that helps to clarify how these various claims are to be managed and thus informs the Department's approach.

On February 10, 2025, the Secretary of the Interior rescinded the April 2021, withdrawal of certain analyses of the discretionary authority possessed by the Bureau of Reclamation for Endangered Species Act ("ESA") purposes and permissible uses of stored water. The Secretary further directed the Solicitor to update the reinstated analyses in light of legal developments since January 2021. This memo explains how the Department is to proceed with fulfilling the federal government's commitments. While this analysis directs the Department to manage resources in the Klamath River basin in the most fair and equitable manner possible consistent with the law, it does not in any way diminish the United States' trust authorities and responsibilities to local Tribes nor the valid and longstanding legal rights of irrigators. While this memo addresses how the Department will approach these at-times conflicting commitments, consistent with recent law and judicial precedent, it does not resolve them. It will continue to be the duty of the United States to attempt to fulfill all of the commitments it has made to its citizens.

The issues of discretionary authority and availability of stored water for downstream purposes are distinct, though interrelated, and are addressed separately below.

**Discretionary Authority**

On October 31, 2020, the Solicitor's Office completed an analysis of Reclamation's obligations to consult under Section 7 of the Endangered Species Act, 16 U.S.C. 1536, on its operations of the Klamath Project. On November 20, 2020, the Secretary endorsed this analysis and stated that its conclusions mandated a reassessment of the environmental baseline for the Project and a

its conclusions mandated a reassessment of the environmental baseline for the Project and a determination of what portion of Project water is segregable and, thus, set aside solely for irrigation and unavailable for other uses. (“2020 Analysis”).

In response to the direction of the 2020 Analysis, on January 14, 2021, the Solicitor provided a memorandum to the Secretary titled “Analysis of Klamath Project contracts to determine discretionary authority in accordance with the November 12, 2020, Letter of the Secretary of the Interior (“Discretion Analysis”). As stated in the Discretion Analysis, “if a contract provides Reclamation with discretionary authority to take action that could benefit species listed under the ESA, Reclamation must consult under ESA Section 7 on the impacts of that action. However, if a contract does not provide discretionary authority, Reclamation must include the impacts of the action in the environmental baseline of the consultation.”

The Discretion Analysis was intended to implement direction from the Secretary to assess the degree of discretionary authority possessed by Reclamation and inform Reclamation as it implemented its January 2021 Reassessment of Klamath Project operations. The Discretion Analysis focuses on provisions in contracts between Reclamation and Klamath Project irrigators that affect the degree of discretionary authority possessed by Reclamation to take action that could benefit ESA listed species to determine whether specific provisions provide Reclamation with sufficient discretionary authority to engage in ESA Section 7 consultation.

Since 2021, there have been several major legal developments that impact the 2020 Analysis and Discretion Analysis, as discussed below.

Klamath Basin Water Agreement Support Act, Pub. L. No. 118-246

On January 4, 2025, the Klamath Basin Water Agreement Support Act (“Act”) was enacted into law. This statute contains general catch-all provisions which respectively provide that

“(1) Compliance. – In implementing the amendments made by this section, the Secretary of the Interior shall comply with ...

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and (C) all other applicable laws” and

“(2) Effect. – None of the amendments made by this section –

(A) modify any authority or obligation of the United States with respect to any Tribal trust or treaty obligation of the United States;

(B) create or determine any water right; or

(C) affect any water right or water right claim in existence on the date of enactment of this Act.”

The statute also includes the following specific mandate:

“(g) Keno and Link River Dams. – The Secretary of the Interior shall comply with the terms of the agreement entitled ‘2016 Klamath Power and Facilities Agreement’ (‘Agreement’), including Attachment A to the Agreement.”

Attachment A to the Agreement in turn provides in relevant part that “(Reclamation) shall comply with the following provisions related to Link River Dam on Upper Klamath Lake and Keno Dam and Keno development.” Section 1 of the Agreement then requires that “Reclamation shall operate Link River Dam to provide water for diversion for the Klamath Reclamation Project, and consistent with existing contracts between Klamath Reclamation Project contractors and Reclamation and for flood control and subject to Applicable Law.”

The statutory provisions and the Agreement incorporated by reference make clear that the Act does not affect the general applicability of the ESA or the rights of the tribes and other water rights holders. The Act also does not disturb the general applicability limitation on ESA Section 7, which makes clear that Section 7 only applies when an agency retains discretionary authority to act to benefit listed species. *See National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 669 (2007) (“*Home Builders*”) (“[ESA Section] 7(a)(2)’s no jeopardy duty covers only discretionary agency actions[.]”).

The Act shows a clear and specific mandate from Congress to Reclamation to (1) operate the Project for the purposes of providing water for irrigation and conducting flood control and (2) provide water for the Project in accordance with the contracts between Reclamation and the irrigators. The Act uses “shall” to require Reclamation to comply with the Agreement, specifically including reference to Attachment A. Attachment A to the Agreement then uses “shall” in two places: first to require Reclamation to comply with its provision regarding operation of Link River Dam, then again in the provision specific to Link River Dam to require Reclamation to “operate Link River Dam to provide water for diversion for the Klamath Reclamation Project, and consistent with existing contracts[.]”

These statutory mandates clearly direct Reclamation to operate Link River Dam, the critical facility for the Klamath Project, for water diversion to the Project consistent with existing contracts and flood control. The unequivocal language does not provide Reclamation the discretion to divert water for other uses if to the detriment of the Klamath Reclamation Project contractors. For example, Reclamation cannot operate the Project *both* to provide sufficient water to fully meet contractual requirements *and* to meet requirements imposed by the Biological Opinions prepared under ESA Section 7 if doing so would impair the mandated purposes of the Act.

Past examples of Reclamation trying to manage multiple demands for water are illustrative of the clarity provided by the Act. In 2021, Reclamation prohibited water diversions for irrigation because the Biological Opinions required that all but a de minimis amount of water be used for ESA purposes. In 2022, Reclamation was found to have violated the ESA by providing a small Project allocation.<sup>1</sup> The attempt to balance competing interests is now clearly resolved in favor of the Project contractors. Under *Home Builders*, if Reclamation cannot both comply with the specific mandates of the Act and take action – provide water to benefit ESA listed species – then ESA Section 7 does not apply. 551 U.S. at 669.

To the degree that ESA Section 7 has any application to the Klamath Project, it is constrained by the contracts themselves (see below re: *NRDC v. Haaland*) and the 2025 Act’s mandate that the contract terms control. Reclamation must provide water for diversion by the Project consistent

<sup>1</sup> *Klamath Tribes v. United States Bureau of Reclamation*, 2023 U.S. Dist. LEXIS 198398 (D. Ore. 2023).



with the contracts. If a particular contract is non-discretionary, Reclamation lacks the discretionary authority to alter its performance under that contract in order to benefit listed species. Having no discretionary authority, Reclamation lacks the duty to consult under ESA Section 7 on the effects of that contract and must include the effects of that contract in the environmental baseline.

Language in the preceding portions of the Act does not change this analysis. In subsection (d) “Restoration Activities”, the Act provides that “[t]he Secretary may” carry out projects which benefit fish and aquatic resources and restore habitats. Use of the word “may” makes clear that this statutory provision is permissive, rather than mandatory. In contrast, Congress’ direction that the Secretary “shall” operate Link River Dam according to the terms of the ‘2016 Klamath Power and Facilities Agreement’ establishes that water delivery for irrigation purposes and flood control are the primary purposes of the Project. Subsection (d) is therefore properly read as empowering the Secretary to use the Klamath Project for the designated other purposes *only if* those other purposes do not impose upon the rights of the Klamath contractors.

Subsection “(e) Goals” modifies subsection (d) described above, as well as Section (2)(b) in the underlying Klamath Basin Water Supply Enhancement Act, to enunciate the goals of the programs authorized by (b) and (d). Nothing in subsection (e) or in the subsections that it modifies establishes a mandatory duty to take action to benefit wildlife.

“If the statutory language is clear, that is the end of our inquiry.” *A-1 Ambulance Service, Inc. v. California*, 202 F.3d 1238, 1244 (9<sup>th</sup> Cir. 2000). The Act states unequivocally that the Secretary of the Interior “shall comply with the terms of” the Agreement and Attachment A of the ‘2016 Klamath Power and Facilities Agreement’. Attachment A requires Reclamation to operate Link River Dam to deliver water for irrigation purposes and to adhere to its contracts with Project irrigators. Under *Home Builders*, those statutory provisions deprive Reclamation of the discretion needed to trigger ESA Section 7.

*Natural Resources Defense Council v. Haaland*

If Reclamation must engage in ESA Section 7 consultation on portions of Klamath Project operations, consultation must adhere to the Ninth Circuit decision in *NRDC v. Haaland*, 102 F.4<sup>th</sup> 1045 (9<sup>th</sup> Cir. 2024). This case is the latest relevant development in a long line of litigation challenging Reclamation’s Section 7 consultations on the implementation of the executed water delivery contracts with a group of irrigators (the Sacramento River Settlement Contractors) in California’s Sacramento Valley on ESA-listed fish species. *Id.* at 1056 – 1063. Plaintiffs contended that the contracts between Reclamation and these irrigators provided Reclamation with sufficient discretionary authority to take actions that could benefit Chinook salmon, and that consultation was therefore required. *Id.* at 1062. This contention was rejected in *NRDC v. Norton*, 236 F. Supp. 3d 1198 (E.D. Cal. 2017), in which the District Court conducted a detailed examination of the contract terms and found that they did not provide Reclamation with sufficient discretion to implement the contracts in a manner that would benefit Chinook salmon. *NRDC v. Haaland*, 102 F.4<sup>th</sup> at 1063. Notably, the 2020 Analysis and Discretion Analysis rely heavily on *NRDC v. Norton* and its interpretation of contractual provisions similar to those found in Klamath Project contracts. 2020 Analysis, 3, 9; Discretion Analysis, 3 – 5.

In *NRDC v. Haaland*, the Ninth Circuit rejected Plaintiffs' assertions and upheld *NRDC v. Norton*. It first cited *Environmental Protection Information Center v. Simpson Timber Co.* for the holding that "once the agency has entered into a legally binding agreement, it has such discretion [to benefit ESA-listed species] only to the extent permitted by the agreement's terms." 255 F.3d 1073, 1082 (9<sup>th</sup> Cir. 2001) (*EPIC*). It then cited *Sierra Club v. Babbitt* for the holding that "Reclamation retained discretion under the Settlement Contracts only to the extent the contracts themselves give it the power to 'implement measures that inure to the benefit of the protected species.'" 65 F.3d 1502, 1509 (9<sup>th</sup> Cir. 1995). These are two of the main cases relied upon by the 2020 Analysis for the same holdings.

*NRDC v. Haaland* then examined several provisions in the Settlement Contracts at issue to determine whether they provided Reclamation with sufficient discretionary authority to require consultation. Three of those provisions are especially relevant to the Klamath Project contracts considered in the Discretion Analysis.

The first two relevant provisions of the Settlement Contracts are Articles 3(i) and 3(h), which waive liability for the United States for shortages of water because of legal obligations and "errors in operation, drought, or unavoidable causes," respectively. *NRDC v. Haaland*, 102 F.4<sup>th</sup> at 1075 – 1076. Plaintiffs had argued that "Article 3(i) allows Reclamation to reduce the water it provides to the Settlement Contractors if necessary to meet legal obligations." *Id.* at 1075. The Ninth Circuit disagreed, stating "this provision does not give Reclamation discretion to alter the Settlement Contract to benefit a listed species. Rather, this is a force majeure clause that limits Reclamation's liability for damages in the event legal obligations are imposed on Reclamation that require it to breach the Settlement Contracts by reducing the diversion of water." *Id.* The Court reached a similar conclusion after examining Article 3(h), finding that it was simply a limitation of Reclamation's liability, not a license for Reclamation to "alter the amount of water diverted at its discretion." *Id.* at 1076. The Court then drove home the point, citing *Home Builders* for the holding that "[t]he duty to comply with mandatory legal obligations is not a source of discretion." 551 U.S. at 669. *NRDC v. Haaland*, 102 F.4<sup>th</sup> at 1076. The analyses of liability waivers in Klamath Project contracts in the 2020 Analysis and Discretion Analysis comport with the analysis in *NRDC v. Haaland*: the Klamath Project liability waivers have similar terms and must, therefore, be read as force majeure clauses which do not impart sufficient discretion to allow Reclamation to take action to benefit ESA-listed species. 2020 Analysis, 7; Discretion Analysis, 2 – 3.

The third relevant contractual provision analyzed in *NRDC v. Haaland* is Article 9(a), which provided that the contract constituted the full agreement between the parties as to quantities of water that could be diverted for beneficial use. 102 F.4<sup>th</sup> at 1076 – 1077. Plaintiffs argued that the reference to beneficial use imparted discretionary authority to Reclamation to determine what amount of water was reasonable for beneficial use. *Id.* The Court disagreed, finding that the provision simply confirmed the quantity and allocation of water without giving Reclamation the discretion to make adjustments. This is consistent with the conclusions in the 2020 Analysis and Discretion Analysis that portions of the Klamath contracts tying the quantity and timing of water delivered to beneficial use do not provide Reclamation with discretionary authority to take actions that could benefit listed species and therefore do not trigger a requirement to consult.

Other cases and legal positions are subject to the Klamath Basin Water Agreement Support Act and *NRDC v. Haaland*.

Since 2021, several cases have addressed application of the ESA to the Klamath Project.<sup>2</sup> However, all but one of these cases pre-date enactment of the Klamath Basin Water Agreement Support Act and *NRDC v. Haaland*. Their applicability to questions regarding the extent of Reclamation's discretionary authority for ESA Section 7 purposes is limited, at best, in light of these two developments.<sup>3</sup> Furthermore, all but one of these cases omit the searching inquiry into contractual terms necessitated by the Klamath Basin Water Agreement Support Act and *NRDC v. Haaland*.<sup>4</sup>

Of special importance is the excessive reliance that all of the Klamath cases decided after 2021 place upon *Klamath Water Users Protective Association v. Patterson*, 204 F.3d 1206 (9<sup>th</sup> Cir. 1999) (*Patterson*), or its progeny or, directly or indirectly, on a 1995 vintage opinion from the Regional Solicitor, Pacific Southwest Region. *Patterson* found that Reclamation had discretionary authority to operate Link River Dam for ESA purposes and that the ESA overrides the water rights of the irrigators. 204 F.3d at 1213. The limitations of *Patterson* were noted in the 2020 Analysis, which explained that *Patterson* pre-dates the Supreme Court's decision in *Home Builders* and thus "does not perform the necessary searching inquiry into the extent of Reclamation's discretion at the Klamath Project, nor does it conduct a detailed analysis of the contracts between Reclamation and the irrigators." 2020 Analysis, 8. These limitations in *Patterson* changed to fundamental flaws with enactment of the 2025 Act and its specific mandates that Reclamation operate the Project for irrigation purposes and adhere to the contracts. *Patterson*, therefore, does not define the parameters of ESA Section 7's applicability, nor does it determine whether certain aspects of Project operations are non-discretionary and whose effects must, therefore, be included in the environmental baseline. As the 2020 Analysis notes, *Patterson* stands for the simple proposition that Reclamation must meet the requirements of the ESA.<sup>5</sup> The mandates of the 2025 Act and the carefully reasoned decision in *NRDC v. Haaland* drive home the point that this simple proposition is all that can be read into *Patterson*.

The 1995 Regional Solicitor opinion<sup>6</sup> was cited extensively in *KID v. Reclamation*, for a description of various aspects of Klamath Project operations and Reclamation's asserted ESA and other obligations in the Basin. 48 F.4<sup>th</sup> 934, 939 - 941 (9<sup>th</sup> Cir. 2022). This opinion does not

<sup>2</sup> *Yurok Tribe v. Bureau of Reclamation*, 19-cv-04405-WHO (N.D. Cal. 2023), appeal Nos. 23-15499 and 23-15521 pending; *United States v. Klamath Drainage District*, 2023 U.S. Dist. LEXIS 16171 (D. Ore. 2023), *affirmed* 2025 U.S. App. LEXIS 1347 (9<sup>th</sup> Cir. 2025), petition for en banc review pending (*U.S. v. KDD*); *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 48 F.4<sup>th</sup> 934 (9<sup>th</sup> Cir. 2022) (*KID v. Reclamation*); *KID v. U.S. District Court*, 69 F.4<sup>th</sup> 934 (9<sup>th</sup> Cir. 2023); *Klamath Tribes v. Bureau of Reclamation*, 2023 U.S. Dist. LEXIS 198400 (D. Ore. 2023); and *Klamath Tribes v. Bureau of Reclamation*, 2023 U.S. Dist. LEXIS 198398 (D. Ore. 2023). The Ninth Circuit decision in *U.S. v. KDD* is the sole case decided after enactment of the 2025 Act and, since it does not address the Act, does not affect the analysis of this memorandum.

<sup>3</sup> It should be noted that the regulatory definitions of "effects of the action" and "environmental baseline" were subject to minor clarifying changes in 2024, however these changes do not impact this analysis.

<sup>4</sup> The exception is *U.S. v. KDD*, 2023 U.S. Dist. LEXIS 16171.

<sup>5</sup> To the degree that the 2020 Analysis stated that *Patterson* could be read to require a duty to consult on Project operations as a whole, that statement must be reassessed in light the 2025 Act and this memorandum.

<sup>6</sup> Certain Legal Rights and Obligations Related to the U.S. Bureau of Reclamation, Klamath Project for Use in Preparation of the Klamath Project Operations Plan (KPOP); Regional Solicitor, Pacific Southwest Region; July 25, 1995.



analyze the issue of discretionary authority. Its lack of relevant analysis is not surprising given that this opinion is dated July 25, 1995, and thus pre-dates *Sierra Club* and subsequent caselaw establishing the need to determine whether contractual provisions restrain Reclamation's discretionary authority. Its conclusions regarding Reclamation's ESA Section 7 obligations are inaccurate, as noted in the 2020 Analysis and driven home by the 2025 Act and *NRDC v. Haaland*. For these reasons, the 1995 Regional Solicitor opinion is hereby withdrawn.

### **Stored Water**

Use of stored water to satisfy downstream tribal needs was the subject of a memorandum titled "Use of Water Previously Stored in Priority for Satisfaction of Downstream Rights" and issued on January 14, 2021 ("Stored Water Analysis").<sup>7</sup> It concluded that:

Reclamation must determine how best to satisfy its trust obligation to the Yurok and Hoopa Tribes, who hold senior, but unquantified, rights on the Klamath River. Reclamation satisfies that trust obligation by providing water that would be available in the tribal fishery, absent the project. Project storage, then, would be delivered pursuant to Reclamation's other obligations, and most importantly, the [2014 Amended and Corrected Findings of Fact of the Final Order of Determination in the Klamath Basin Adjudication ("ACFFOD")]. Therefore, water previously stored in priority would not be available to draw upon to supplement the natural flow of the river.

Stored Water Analysis, 5. Since issuance of this memorandum, there have been only a limited number of legal developments which affect its conclusion and underlying analyses.

### **Klamath Basin Water Agreement Support Act, Pub. L. No. 118-246.**

As discussed above, the Klamath Basin Water Agreement Support Act included a general provision specifying that none of its provisions modify the tribal trust or treaty obligations of the United States or affect any water right, as well as a specific mandate that Reclamation operate the Project to provide water for the Project irrigators pursuant to their contracts. These provisions provide several key inputs to the Stored Water Analysis. First, Congress clearly conveyed its intent for the Project to be operated to provide water for irrigation consistent with the contracts by using the word "shall" to create a specific mandate to comply with the 2016 Klamath Power and Facilities Agreement and Attachment A to the Agreement. In the general provision, Congress highlighted the importance of tribal and other water rights, which necessarily include the right of Reclamation to store water in Upper Klamath Lake and the right of the irrigators to use that stored water as affirmed in the ACFFOD.<sup>8</sup> However, Congress did not specifically create an obligation to use stored water to satisfy downstream tribal rights. As discussed below, the lack of a specific Congressional mandate to use stored water to satisfy downstream tribal rights is critical.

Enactment itself of this statute is relevant to the stored water issue. The 2025 Act is the latest in a line of statutory provisions which specifically authorize and appropriate funds for different

<sup>7</sup> While the 2020 Analysis briefly addressed the ACFFOD and stored water issue, it did not analyze Reclamation's authority to use stored water for downstream purpose and is therefore of limited utility on this issue.

<sup>8</sup> ACFFOD Claim KA 294 provides that the United States has a right to store 486,828 acre/feet of water on behalf of Klamath Project irrigators and that the irrigators have a right to use that amount.

facets of Klamath Project facilities and operations. *See, e.g.*, Pub. L. 106-498, 114 Stat. 2221; Pub. L. 115-270, Sec. 4308; Pub. L. 116-191, Sec. 1, 134 Stat. 976. The Klamath Project was created to allow irrigation using water stored behind Link River Dam. As the Supreme Court explained in *Nebraska v. Wyoming*, “if storage water is not segregated, those who have not contracted for the storage supply will receive at the expense of those who have contracted for it a substantial increment to the natural flow supply...” 325 U.S. 589, 639-640 (1945). Enactment of these statutes, including as recently as 2025, show clear Congressional intent for the Project to continue to operate for irrigation purposes using stored water.

Read together, these statutory provisions and enactment of the Act itself support the conclusion of the Stored Water Analysis: the United States has a general trust obligation to the downstream tribes, but a specific duty to operate the Project to provide water to the Project irrigators in accordance with their water rights and contracts. The United States meets these trust obligations by providing natural flow to the downstream tribes, while stored water is reserved for use by the Project irrigators.

#### Additional Judicial Decisions

The most instructive judicial decision is that of the Supreme Court in *Arizona v. Navajo Nation*, 599 U.S. 555, 561 (2023). This case involved the nature and extent of the United States’ obligations to take affirmative measures to provide water to the Navajo Nation. In an especially salient holding, the court stated that “[t]he Federal Government owes judicially enforceable duties to a tribe ‘only to the extent it expressly accepts those responsibilities.’” *Arizona v. Navajo Nation*, 599 U.S. at 564 *citing* *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011). While Congress has expressed its intent to protect the rights of downstream tribes in the 2025 Act, it did not define those rights, nor did it expressly accept a duty to provide stored water to satisfy those rights. Without such an express acceptance, there is no duty to use water stored in Upper Klamath Lake to satisfy downstream tribal rights.

None of the Klamath specific court decisions explicitly state that the United States has an obligation to use stored water for the benefit of downstream tribes.<sup>9</sup> Relevant here is the Supreme Court’s admonition that “[w]hether the Government has expressly accepted such obligations ‘must train on specific rights-creating or duty-imposing’ language in a treaty, statute, or regulation. *Navajo Nation*, 537 U.S., at 506. That requirement follows from the separation of powers principles. As this Court recognized in *Jicarilla*, Congress and the President exercise the ‘sovereign function’ of organizing and managing the ‘Indian trust relationship.’ 564 U.S., at 175.” *Arizona v. Navajo Nation*, 599 U.S. at 564. Given the Supreme Court’s words and the lack of a statutory mandate to use stored water to satisfy tribal rights, it would be unwarranted to read into any of the existing judicial decisions an enforceable duty to use stored water in a manner contrary to that addressed in the Stored Water Analysis.

#### Previous Office of the Solicitor Analysis

On March 21, 2024, a Regional Solicitor provided a memorandum to the Bureau of Reclamation Regional Director titled “Bureau of Reclamation Authority to Release Water from Klamath

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<sup>9</sup> See Footnote 1 *supra* for a list of cases decided since 2021 and *KID v. U.S. District Court*, 69 F.4<sup>th</sup> 934 (9<sup>th</sup> Cir. 2023).

Project for Yurok Boat Dance Ceremony.” (“Boat Dance Memorandum”). This memorandum was issued as part of a settlement of litigation regarding the authority of Reclamation to provide water for the biennial Boat Dance conducted by the Yurok Tribe. The Department acknowledges its general trust obligations to the Yurok and other tribes, including the general obligation to support important tribal religious and cultural practices such as the Boat Dance. However, the Boat Dance Memorandum did not identify a statute or similar mandate which specifically establishes a right to use stored water, as required under *Arizona v. Navajo Nation*. The Boat Dance Memorandum must be read to conform to the analysis in this memorandum and the Stored Water Analysis. During each year that the Department is required to provide Boat Dance flows to the Yurok Tribe, the Department will need to engage in a specific analysis to determine how to provide Boat Dance flows while remaining consistent with this memorandum and the Stored Water Analysis.

### **Conclusions and follow-on actions**

Secretary Burgum directed the Office of the Solicitor to review legal developments during the last four years and issue updated versions of the 2020 Analysis, Discretion Analysis, Stored Water Analysis, and other specified documents. As discussed above, the major legal developments since 2021 are consistent with those analyses. Those analyses remain valid, as updated and modified by this memorandum.

The Klamath Basin Water Agreement Support Act created specific mandates for Reclamation to operate the Project to deliver water for irrigation and flood control and act consistently with existing contracts. If Reclamation cannot simultaneously obey these mandates and comply with ESA Section 7, Reclamation does not have a duty to comply with Section 7. *Home Builders*, 551 U.S. at 669. These mandates thus change the fundamental legal and operational paradigm in the Klamath Basin, which was predicated on the understanding of ESA application embodied in *Patterson* and the 1995 Regional Solicitor’s opinion. This shift requires Reclamation, in coordination with the Office of the Solicitor, to reassess its approach to Project operations and align those operations with the requirements of the 2025 Act.

Given the fundamental changes in the legal landscape created by enactment of the 2025 Act and the decision in *NRDC v. Haaland*, the Office of the Solicitor will work with the United States Department of Justice to encourage its approach be consistent with this memorandum.



TINA KOTEK  
GOVERNOR

May 19, 2025

Oregon Water Resources Department

Dear Director Gall,

It has been over two years since I established eleven expectations for state agency operations, with the overall goals of improving customer service and optimizing performance for the people of Oregon. I want to thank you for the considerable attention and effort you have given to these expectations. I recognize that the collective work to meet these expectations has required upfront investments that do not always have benefits that are immediately perceptible. Just as any discipline may at first seem burdensome only to yield great benefits later, the work that employees are contributing to meet these expectations is building mutually reinforcing practices that will have a lasting impact on state operations.

Our work is already having a tangible, statewide impact:

- Hiring on average is over two weeks faster.
- Vacancy rates have fallen by a third.
- Agency planning of all forms is more complete and consistent.
- Employees more regularly complete key trainings and receive feedback from managers.
- Measures of employee engagement have increased.

These meaningful successes have only been possible through partnership with you and other agency leaders. I thank you for that continued partnership.

Enclosed with this letter you will find a report that summarizes the performance of your agency in meeting my stated expectations. I commend the hard work represented. I also want to bring to your attention a few areas where my expectations are not being met:

- Recruitment
- Manager Review Training

I urge you to evaluate agency operations and identify ways to improve in these specific areas, and I expect you to send your policy advisor a plan of action by June 30, 2025.

Thank you for cultivating a culture of improvement in service to all Oregonians.

Sincerely,

Governor Tina Kotek

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-8970

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**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 1. Strategic Planning**

Agencies will develop and follow a strategic plan that also aligns with priorities set forth by the Governor's Office. This practice is important because strategic planning defines the planned actions of an agency. It helps organizations to define priorities, identify opportunities, mitigate risks and align resources and activities efficiently.

06/01/23:

- Strategic plan not completed in last 36 months



09/30/24:

- Updated plan submitted

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 2. Audit Response**

Agencies will implement recommendations from internal audits and from Secretary of State audits, reporting to DAS on status by May 31 and Nov. 30 of each year. This practice is important because agencies implement audit recommendations to manage identified risks. Recommendations not implemented represent risks not yet managed. Tracking the implementation of audit recommendations ensures that identified risks are managed while increasing the efficiency and effectiveness of operations.

No reported internal or Secretary of State audits

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 3. Continuity of Operations Planning**

Agencies will maintain and annually update a Continuity of Operations Plan (COOP). This practice is important because COOPs help agencies prepare for disruptions such as disasters, accidents and technological threats.

06/01/23:

- COOP plan not updated in last 12 mos.



12/31/23:

- COOP plan updated in last 12 mos.
- Plan Submitted On Time



12/31/24:

- COOP plan updated in last 12 mos.
- Plan Submitted On Time
- Complete plan submitted on time
- Plan complete

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 4. DEI Planning**

Agencies will maintain a biennial Diversity, Equity and Inclusion plan (DEI plan) and will report Affirmative Action progress every even-numbered year. This practice is important because diversity, equity and inclusion plans help organizations by creating cultures that allow all employees to feel a sense of belonging. A culture of belonging fosters innovation, health, wellness and has many benefits that contribute to sustaining an inclusive workforce.

06/01/23:

- No Plan



09/30/23:

- Plan for Plan



09/30/24:

- Plan



**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 5. Technology Planning**

Agencies will maintain a business-driven and enterprise-aligned information technology (IT) strategic plan that supports the organization's strategic priorities. This practice is important because IT strategic plans help Enterprise Information Services ensure accessible, reliable and secure state technology systems that equitably serve Oregonians.

12/31/23:

- Ongoing



03/31/24:

- **Complete**

**Agency 69000 – Oregon Water Resources Department (OWRD)**

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**Expectation 6. Succession Planning**

All agencies will develop and submit an annual succession plan. This practice is important because succession planning helps identify and develop future leaders, ensuring that an organization has a plan for leadership transitions, business continuity and talent retention.

03/31/24:

- Assessment component included ✓
- Development component included ✓
- Evaluation component included ✓
- Identification component included ✓



03/31/25:

- Assessment component included ✓
- Development component included ✓
- Evaluation component included ✓
- Identification component included ✓
- Review component included ✓

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 7. Leadership**

Each agency director will receive a 360 review every two years. This practice is important because 360 reviews allows agency leaders to identify and develop strengths as well as improve upon gaps in their talents and skillsets.

06/01/23:

- Agency directors not reviewed in the last 24 months



03/31/24:

- Agency directors not reviewed in the last 24 months



06/30/24:

- Agency directors not reviewed in the last 24 months



09/30/24:

- Agency directors not reviewed in the last 24 months



12/31/24:

- Agency directors not reviewed in the last 24 months



03/31/25:

- Agency directors not reviewed in the last 24 months

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 8. Employee Feedback**

Each agency will complete 90+% of its required manager and employee performance feedback check-ins each quarter. This practice is important because employees feel more supported and encouraged when they receive feedback from their managers. These meetings promote professional development and can help employees identify opportunities for growth and align their career paths with the organization's needs, increase employee engagement and strengthen relationships.

<i>Report Date</i>	<i>Rate</i>	<i>Employee Check-Ins Complete</i>	<i>Applicable Total</i>
06/01/23	100%	175	175
09/30/23	100%	181	181
12/31/23	100%	182	182
03/31/24	100%	186	186
06/30/24	100%	184	184
09/30/24	94%	133	141
12/31/24	96%	135	141
<b>03/31/25</b>	<b>86%</b>	<b>146</b>	<b>170</b>

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 9. Recruitment**

Each agency will maintain an average of 50 or fewer days to complete open competitive recruitments and will actively manage vacancies, reporting quarterly the reasons for each. This practice is important because a quick hiring process demonstrates professionalism and respect for candidates, increasing their interest in the organization and likelihood of accepting an offer. It can also enable Oregon state government to compete with other employers hiring top talent faster. Reducing vacancy rates supports workforce planning by providing insights into the availability and use of positions.

Days to fill vacant positions

<i>Report Date</i>	<i>Days to fill vacant positions</i>
09/30/23	92
12/31/23	102
03/31/24	59
06/30/24	58
09/30/24	58
12/31/24	65
<b>03/31/25</b>	<b>72</b>

Total Vacancies

<i>Report Date</i>	<i>Rate</i>	<i>Total Vacancies</i>	<i>Total Positions</i>
09/30/23	15%	34	233
12/31/23	10%	23	228
03/31/24	9%	22	258
06/30/24	14%	34	244
09/30/24	14%	33	243
12/31/24	11%	29	258
<b>03/31/25</b>	<b>9%</b>	<b>23</b>	<b>257</b>

**Agency 69000 – Oregon Water Resources Department (OWRD)**

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Policy Advisor: Geoffrey Huntington

**Expectation 10. Employee Engagement**

All agencies with more than four full-time equivalent employees will annually administer the Gallup Q12 survey to measure employee engagement and satisfaction. This practice is important because engaged employees tend to perform with higher productivity and report greater well-being, which can shape the quality of customer service. Increased engagement results in reduced turnover; according to Gallup, low engagement teams have turnover rates that are 18% to 43% higher than highly engaged teams.

<i>Report Date</i>	<i>Gallup Q12 Mean</i>
03/31/24	3.83
<b>03/31/25</b>	<b>4.00</b>

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

**Expectation 11. Workforce Development**

All agencies will have all new employees complete an agency orientation and DAS Customer Service Fundamentals training within 60 days of hire and attend an Uplift Your Benefits session within two weeks of hire. All agencies will have all new managers complete the DAS Foundational Training Program within four months of hire and all modules of the DAS employee review training within 30 days of assignment. This practice is important because training helps employees understand their responsibilities, agency culture, policies and procedures, which gives employees information to be confident and prepared for their jobs. It also shows employees that they are valued, which can lead to higher job satisfaction and morale. Training can make employees more effective, improve customer service and increase productivity and retention.

All training expectations

<i>Report Date</i>	<i>Rate</i>	<i>Met expectation and timeframe</i>	<i>Total required</i>
09/30/23	75%	3	4
12/31/23	100%	8	8
03/31/24	100%	12	12
06/30/24	100%	6	6
09/30/24	93%	13	14
12/31/24	100%	17	17
<b>03/31/25</b>	<b>100%</b>	<b>10</b>	<b>10</b>

Customer Service Training

<i>Report Date</i>	<i>Rate</i>	<i>Completed - Within 60 Days of Assignment</i>	<i>Total # required not incomplete still within period</i>
12/31/23	100%	4	4
03/31/24	100%	6	6
06/30/24	100%	2	2
09/30/24	100%	6	6
12/31/24	100%	7	7
<b>03/31/25</b>	<b>100%</b>	<b>4</b>	<b>4</b>

**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

Foundational Training Completion

<i>Report Date</i>	<i>Rate</i>	<i>Completed within 4 months</i>	<i>Total # of new managers not incomplete still within period</i>
12/31/24	100%	1	1
<b>03/31/25</b>	<b>100%</b>	<b>2</b>	<b>2</b>

Foundational Training Enrollment

<i>Report Date</i>	<i>Rate</i>	<i>Enrolled - Within 5 Days of Assignment</i>	<i>Total # of new managers not incomplete still within period</i>
06/30/24	100%	1	1
09/30/24	100%	1	1
<b>12/31/24</b>	<b>100%</b>	<b>1</b>	<b>1</b>

Orientation

<i>Report Date</i>	<i>Rate</i>	<i>Completed - Within 60 Days of Assignment</i>	<i>Total # of New Workers not incomplete still within period</i>
06/30/24	100%	3	3
09/30/24	100%	6	6
12/31/24	100%	8	8
<b>03/31/25</b>	<b>100%</b>	<b>5</b>	<b>5</b>

Performance Accountability & Feedback Training

<i>Report Date</i>	<i>Rate</i>	<i>Completed - Within 30 Days of Assignment</i>	<i>Total # of new managers not</i>
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**Agency 69000 – Oregon Water Resources Department (OWRD)**

Agency Director: Ivan Gall

Policy Advisor: Geoffrey Huntington

				<i>incomplete still within period</i>
06/30/24	100%	1	1	
09/30/24	0%	0	1	
12/31/24	100%	1	1	

**Uplift Your Benefits Training**

<i>Report Date</i>	<i>Rate</i>	<i>Completed - Within 30 Days of Assignment</i>	<i>Total # of New Workers not incomplete still within period</i>
09/30/23	75%	3	4
12/31/23	100%	4	4
03/31/24	100%	6	6
06/30/24	100%	2	2
09/30/24	100%	6	6
12/31/24	100%	7	7
03/31/25	100%	4	4

OWRD ACTIVE LITIGATION CHART

STATE COURT CASES (TRIAL LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>Golden Rule</i>	Harney Co. 19CV53051	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. Court dismissed without prejudice on 2/5/25.
<i>KBA</i>	Klamath Case 00001	Adjudication of water rights in the Klamath Basin	On 02/25/2025, the court issued its opinion letter on the motions to resolve the remaining exceptions to Walton/KTA claims. Working on incorporating approved changes to PFODs in the coming weeks.
<i>KID 3</i>	Marion 21CV39570	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. On May 13, 2025, the court clerk requested an update on case status. Petitioner is now preparing a motion to continue the stay.
<i>Pinnacle Utils v. OWRD</i>	Deschutes Co 22CV08683	Challenge to OWRD order denying limited license application	4-day trial completed Nov 9, 2024; Opinion affirming OWRD order issued March 31; statement of costs filed
<i>Sprague River Cattle</i>	Marion County 22CV27077	Takings and declaratory judgment claim.	Markowitz firm has taken lead on discovery efforts. Electronic document collection and privilege review are occurring now. Plaintiff filed a motion to compel. The opposition is currently due on May 23, 2025, with a hearing scheduled for June 30, 2025, at 9:00 a.m.
<i>Rogue River v. OWRD</i>	Marion County 23CV19220	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. On October 16, 2024, the court entered an order granting parties' stipulated motion to abate case pending completion of infrastructure project necessary to release water reservoir for downstream senior users. Status updates to be filed every six months. Next status hearing set for October 2025.
<i>MID v. OWRD</i>	Marion County 23CV19218	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. On October 16, 2024, the court entered an order granting parties' stipulated motion to abate case pending completion of infrastructure project necessary to release water reservoir for downstream senior users. Status updates to be filed every six months. Next status hearing set for October 2025.
<i>Lloyd Piercy v. OWRD, et al.</i>	Umatilla County 23CV27740	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Management Plan for the Umatilla Basement Project.	Reviewing docs provided by petitioners; collecting, reviewing, and producing docs for discovery; petitioners filed motion for summary judgment
<i>New Foothills Properties LLC, et al. v. OWRD, et al (New Foothills I)</i>	Umatilla County 23CV27892	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Management Plan for the Umatilla Basement Project.	Reviewing docs provided by petitioners; collecting, reviewing, and producing docs for discovery; petitioners filed motion for summary judgment
<i>Lloyd Piercy, et al. v. OWRD, et al (New Foothills II)</i>	Umatilla County 24CV32021	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Management Plan for the Umatilla Basement Project. This is the 2024 version of New Foothills I.	Reviewing docs provided by petitioners; collecting, reviewing, and producing docs for discovery; petitioners filed motion for summary judgment
<i>NBCC, LLC, et al v. OWRD, et al</i>	Marion County 23CV32928	PJR Case Regarding Water Rights.	Partial motion to dismiss granted during October 2024 hearing. Awaiting entry of order and petitioner's amended petition. Discovery ongoing. Status hearing set for June 10, 2025, at 8:30 a.m.

## OWRD ACTIVE LITIGATION CHART

<b>Winchester Water Control Dist. v. OWRD, et al</b>	Marion County 23CV33445	Petitioner district contends OWRD wrongfully denied amendment to their water right registration statement that claims less water than is actually held in reservoir.	After filing an amended petition for review with leave of court, respondents filed a motion to dismiss and strike and a motion for partial summary judgment. The court issued a letter opinion on 3.6.25. The court granted the motion to strike the previously-dismissed claims, and struck some of the petition's specific allegations, but denied the motion for partial summary judgment and denied the motion to dismiss. Petitioner filed a new amended petition on 4.9.25, and we filed an answer on 5.2.25. Status hearing set for 6.11.25 at 8:30am.
<b>Upper Crooked River Conservationists v. OWRD</b>	Crook County, 23CV46779	Petitioners (nonprofit org and a ranch) challenge permit issued to Bureau of Reclamation for fish life	The court issued its opinion letter on the cross motions for summary judgment on 02.10.2025. The court granted our motion on claim 1 (whether the agency unlawfully granted the Bureau an instream water right) and denied our motion on claim 2 (whether the agency exceeded its authority in finding that no public interest issues were raised in the expedited review process). Petitioners have filed a motion for affirmative relief on claim 2, we filed our opposition, and Petitioners filed their reply.
<b>Roaring Springs Ranch, Inc. v. Water Resources Department, et al.</b>	Harney County, 24CV20196	Petition for Judicial Review challenging the decision by the Water Resources Department denying an application for groundwater use for irrigation.	The Court denied OWRD's motion to dismiss during the hearing on March 18, 2025 at 9:00. Opposing counsel filed a proposed order, and the Court signed that order. We objected to the proposed order, and the Court signed our proposed order that contained no additional details about the case. Opposing counsel responded to our objections, and we are filing a reply on 5/19/25. We'll file an answer once the order is finalized.
<b>Allen Ditch Co. v. OWRD</b>	Umatilla County, 24CV43601	Petition for Judicial Review challenging OWRD's decision to require petitioners to install a measuring device at their point of diversion from a canal.	Held Initial Client Meeting 10.23.2024; Filed motion to consolidate on 10.30.2024; Motion to Dismiss filed 11.22.2024; Response filed 1.21.2025; Our Reply filed 2.7.2025. Our hearing was on February 19, 2025, and the court took the decision under advisement. We are awaiting the court's decision.
<b>Dillon Irrigation Co. v. OWRD</b>	Umatilla County, 24CV43600	Petition for Judicial Review challenging OWRD's decision to require petitioners to install a measuring device at their point of diversion from a canal.	Held Initial Client Meeting 10.23.2024; Filed motion to consolidate on 10.30.2024; Motion to Dismiss filed 11.22.2024; Response filed 1.21.2025; Our Reply filed 2.7.2025. Our hearing was on February 19, 2025, and the court took the decision under advisement. We are awaiting the court's decision.
<b>Pioneer Irrigation v. OWRD</b>	Umatilla County, 24CV43598	Petition for Judicial Review challenging OWRD's decision to require petitioners to install a measuring device at their point of diversion from a canal.	Held Initial Client Meeting 10.23.2024; Filed motion to consolidate on 10.30.2024; Motion to Dismiss filed 11.22.2024; Response filed 1.21.2025; Our Reply filed 2.7.2025. Our hearing was on February 19, 2025, and the court took the decision under advisement. We are awaiting the court's decision.
<b>Courtney Irrigation Co. v. OWRD</b>	Umatilla County, 24CV43596	Petition for Judicial Review challenging OWRD's decision to require petitioners to install a measuring device at their point of diversion from a canal.	Held Initial Client Meeting 10.23.2024; Filed motion to consolidate on 10.30.2024; Motion to Dismiss filed 11.22.2024; Response filed 1.21.2025; Our Reply filed 2.7.2025. Our hearing was on February 19, 2025, and the court took the decision under advisement. We are awaiting the court's decision.
<b>Pinnacle Utils v. OWRD (mandamus)</b>	Marion County, 25CV07127	Mandamus petition seeking to compel OWRD to process Transfer Application T-14165	Answer filed May 12; Tribes filing limited motion to intervene and a motion to dismiss
<b>Western State Steelhead vs. OWRD</b>	Marion County, 24CV59824	Petition for Judicial Review challenging OWRD's final order approving a water right permit amendment as it relates to certain wells on the property and their permissible use.	Petitioner recently requested a settlement meeting on May 14, 2025. We have not yet provided a substantive response.

OWRD ACTIVE LITIGATION CHART

STATE COURT CASES (APPELLATE LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>Waterwatch/East Valley v. OWRD</i>	A173292	Challenge to OWRC order denying reservoir application	Oral argument held 11/7/24. Under advisement.
<i>Fort Klamath</i>	A181385	Appeal from PJR approving temporary transfer of Crooked Creek water, KA 67, T13673	Appellate judgment issued 4/17/25, this file can be closed.
<i>Bridgeview Vineyards vs. OWRD</i>	A183504	Bridgeview sought review of an order cancelling their water rights, 17 months after the cancellation order. Petitioner appeals from circuit court order dismissing petition as untimely.	The case has been scheduled for submission without argument on May 20.
<i>Gould vs. OWRD</i>	A185116	PJR of order granting temporary change in place of use and points of diversion. Pinnacle Utilities has moved to intervene.	Our answering brief is due 6/11/25
FEDERAL COURT CASES (TRIAL LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>KID v. BOR</i>	USDC Or 21CV0504	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.
<i>US v. OWRD</i> (fka BOR v. OWRD)	USDC OR 21-cv-1442	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] Status update filed on 4/28/25.
<i>Yurok v BOR &amp; NMFS</i> <i>KWUA and Klamath Tribes</i> Intervenors:	ND CA3:19-cv-04405	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; oral argument complete and waiting on a decision; filed repsonse to KID motion to certify state law questions on 11/18/24. Court granted United States' motion to stay proceedings pending case review by new administration. Status update filed 5/14/25 with motion to dismiss appeal. Response due on 6/4/25.
<i>Grant Knoll v. OWRD/WRC</i>	USDC Oregon 1:23-cv-00928-CL	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. Status update filed on 4/25/25. Next status update is due on 6/30/25.
<i>Grant Knoll v. OWRD/WRC</i>	USDC Oregon 1:23-cv-00929-CL	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. Status update filed on 4/25/25. Next status update is due on 6/30/25.
<i>Glenda Stilwell v. OWRD/WRC</i>	USDC Oregon 1:23-cv-00930-CL	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. Status update filed on 4/25/25. Next status update is due on 6/30/25.
<i>Ryan Hartman, et al v. OWRD/WRC</i>	USDC Oregon 1:23-cv-00927-CL	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. Status update filed on 4/25/25. Next status update is due on 6/30/25.



## Rulemaking Update June 2025

### Current Rulemaking

Rule Name	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 512-Malheur Lake Basin Program	Update to Basin Rules Following the Publication of Groundwater Study	Jason Spriet, Tim Seymour, Kelly Mainz	Yes	December 2025	RAC #14 May 13-14 Public Comment Period June 2-August 7
HB 3293 (2021) Water Project Community Engagement Plans- Division 601	Notice Requirements for Best Practices for Equitable Community Engagement Plan for Funding Programs	Charlotte Regula-Whitefield Margo Mashkovskaya	No	June 2025	Ready for Adoption
HB 2020 (2023) Voluntary Agreements	Establish Statewide Criteria for Voluntary Water Agreements Under ORS 537.525 Within a Shared Reservoir	Jason Spriet, Tim Seymour, Laura Hartt	Yes	2025	Draft Guidance Available for Comment- Future Rulemaking Under Consideration

### Upcoming Rulemaking

Rule Name	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 77- Instream Water Right	Make consistent with SB 199 (2013)	Laura Hartt Sarah Henderson	Yes	Unknown	In Planning and Scoping Stage
Repeal Package	<b>Division 25 [Repeal]</b> Groundwater in Klamath Basin <b>Division 76 [Repeal]</b> Establishment of Minimum Perennial Streamflows <b>Division 22 [Possible Repeal]</b> Klamath Drought Rules	Margo Mashkovskaya	No	Unknown	In Planning and Scoping Stage

	<b>Division 95 [Repeal]</b> Columbia Basin Water Development Loan Program				
Division 250/ 260 Rulemaking	Establish Civil and Criminal Enforcement Penalties from HB 4061 (2022)	Unassigned	Yes	Unknown	In Early Planning and Scoping Stage