



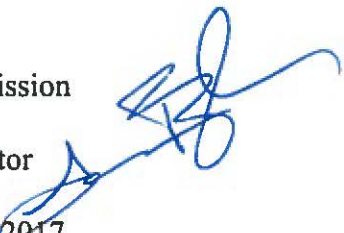
# Oregon

Kate Brown, Governor

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## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Thomas M. Byler, Director 

**SUBJECT:** Agenda Item J, May 12, 2017  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events:

##### A. New Staff & Staff Promotions

Since the January meeting, the Department has hired two new employees, had one transfer, and promoted two staff. Positions filled include: Water Right Services Program Analyst, Hydrologist, Receptionist, Watermaster and Hydrogeologist.

#### II. Commission Follow Up

##### A. Klamath Basin Update

On April 12, 2017, the Klamath Tribes made a call, with the concurrence of the U.S. Bureau of Indian Affairs, on senior determined Tribal water rights in the Klamath Basin. The call was validated on April 13<sup>th</sup>, and regulation began to time immemorial on the Williamson and Sprague River systems on April 17<sup>th</sup>. Staff also mailed an informational letter explaining the nature of this particular call, which involved protection for Riparian Habitat High Flows, and provided water users with information on how to access streamflow data and determined claim values online. The Riparian Habitat High Flows contain a lower and an upper threshold, and when streamflow values fall between these two thresholds, they are to be protected. This requires the Watermaster to regulate junior users on and off over short periods of time, and doing so timely requires water users to be aware of flow conditions and the current status of regulation within their respective basins. Staff spent significant time contacting water users to explain the regulation, how to access information, and answering questions. Given the relatively wet spring, only two areas were found to be diverting water as regulation began. Approximately 445 water rights, held by approximately 380 junior users, were involved in this regulation.

##### B. Willamette Basin Review (Reallocation Study)

In early March, the Department and US Army Corps of Engineers (Corps) held a stakeholder meeting in Salem. More than 50 people attended. The project team provided an overview of projected estimates for municipal, industrial, and irrigation demands. Staff also discussed a process to evaluate the instream flow targets established in the 2008 Willamette Biological

Opinions. The current use of storage for instream flow targets and irrigation, combined with projected demands out to the year 2070, exceed the maximum conservation storage available of 1.64 million acre-feet.

The project team is in the process of preparing its draft plan, environmental analysis, and associated reports, which make up a "Tentatively Selected Plan". This document is due to the Corps' Headquarters office in Washington DC in early July and marks the second major milestone for this study. As part of the report development, the project team is preparing a set of allocation and management alternatives that maximize the use of storage for different purposes, while also planning for operational measures and various scenarios for different water years. The Tentatively Selected Plan will include a preferred alternative for allocation and management of the reservoirs. Following the July discussions and presentations with Corps Headquarters, the draft plan and associated reports will be made available for public comment and review. It is anticipated that the Corps will make an agency decision on how to move forward in January 2018.

### **C. ODFW Transfer and Exchange Application Update**

#### Status

No appeals were filed before the December 2016 deadline on the Department's final orders for the Oregon Department of Fish and Wildlife (ODFW) Oxbow Springs Fish Hatchery point of diversion transfers. In mid-April, ODFW filed a Claim of Beneficial Use form for both transfers and are using the reimbursement authority to expedite the certification process.

#### Next Steps

ODFW's exchange application to trade water with the City of Cascade Locks is still to be processed. Since the original exchange comment period closed more than six years ago, the Department has decided to reopen the public comment period later this spring.

### **D. Water Resources Development Program Update**

#### Place Based Planning

All four planning groups are making steady progress in implementing the Draft Place-Based Planning Guidelines. They have convened planning groups with a balanced representation of interests, held numerous community planning meetings, and are progressing through the planning steps at differing paces. Three planning groups have completed their Planning Step 1 governance agreements, which the Department has signed onto as cooperating partners. The Upper Grande Ronde planning group is furthest along in the planning process and is projected to complete Planning Step 2 (characterize water resources) in June. As previously authorized by the Commission, some program reserve funds are being used for convener support provided by the Association of Oregon Counties and collaboration training through Portland State University's National Policy Consensus Center. Some reserve funds are also being used as the Department and Sustainable Northwest co-produce a water planning workshop on May 24 and 25 in Bend to build on and document lessons learned so far and assist the planning groups in completing additional planning steps.

### Feasibility Study Grants

The Department will present funding recommendations to the Commission for Feasibility Study Grants in Agenda Item C.

### Water Project Grants and Loans

The 2017 solicitation cycle of Water Project Grants and Loans closed at 5:00 pm on April 5, 2017. The Department received 34 applications by the deadline. Grant requests totaled \$33,471,809 and loan requests totaled \$3,415,892 for a total request of \$36,887,701. The Department received applications from 21 out of 36 counties in Oregon.

All 34 applications requested grant funding. The Department received three requests for loans. These loan requests were paired with grant requests, so that the loan request would cover the 25% cost-match requirement for grants. Grant requests ranged from \$3,000 to \$5,400,000. Loan requests ranged from \$142,700 to \$1,800,000. A list of complete applications is included in Attachment 1. There is approximately \$5.1 million currently available to award and the Governor's Request Budget requests an additional \$30 million in lottery bond proceeds for 2017-2019.

As required in statute, upon receipt of an application the Department reviews the application for eligibility and completeness. After that review, complete applications are posted online for public comment and forwarded to a Technical Review Team for scoring and ranking. The Department anticipates discussing loan interest rates (which are set by the Commission) and a spending plan for the 2017-2019 biennium in August 2017. The Department anticipates presenting funding recommendations for the current cycle to the Commission at the November 2017 meeting.

### **E. Umatilla Water Supply Project**

In 2015, the Legislature authorized \$11 million in Lottery Bond proceeds to assist with financing water supply projects in the Umatilla Basin. The Department has entered into an \$11 million grant agreement with the Port of Morrow for Umatilla Water Supply Project. The Port of Morrow is working with project partners in the basin in order to enter into sub-agreements for two projects by the summer of 2017. These infrastructure projects will deliver water primarily to lands that are currently not irrigated or are under-irrigated. Project construction is currently scheduled to occur in late 2017 and early 2018. The Department is also processing eight new Columbia River surface water rights and the associated mitigation for these projects. The Department anticipates issuing the first fully mitigated water right in the late spring.

### **F. New Instream Water Right Processing Update**

During December 2016, the Oregon Department of Fish and Wildlife (ODFW) filed 15 new instream water right applications. This is the first large group of instream water right applications received by the Department since the mid 1990's. Of the 15 applications, 14 were to protect flows in the Hood Basin and one application was filed in the Sandy Basin. Instream water right applications can be filed by ODFW, the Department of Environmental Quality or the Oregon Parks and Recreation Department.

All 15 applications have received an initial review and the comment period has closed. Proposed final orders will be issued within the next couple of months.

### **G. Scenic Waterway Update**

The Oregon Parks and Recreation Department (OPRD) is considering three Scenic Waterway candidates for more study and possible recommendation.

- \* Nehalem River (Spruce Run Campground to Nehalem Falls, approximately 15 miles)
- \* North Santiam River (Wilderness boundary to Bruno Mountain Road, approximately 20 miles)
- \* South Umpqua River (Castle Rock Fork to Tiller, approximately 27 miles)

Email communications were sent to Clatsop, Tillamook, Marion, Linn and Douglas County Commissions, notifying them of the river segments under consideration. In addition, two emails have been sent to key legislators notifying them that the study process was beginning, focused on these three river segments. OPRD is planning an on-site survey of the Nehalem river segment in May.

OPRD has held two public meetings to reach this point in the selection process. OPRD plans to work further in the three communities in summer of 2017, and bring a request for designation of up to three of these stream reaches to the Parks Commission in fall of 2018. As in the previous selection process, WRD staff are involved in describing / developing the hydrologic characteristics of each stream reach and will meet with communities to communicate the recommended flow requirements that accompany any scenic waterway designation. The Water Resources Commission will be asked to concur with the Parks Commission when it designates the next scenic waterways. Recommended flow requirements for these stream reaches will be specified at the same time.

### **III. Litigation Update**

#### **Blue Mountain Angus, LLC. v. Oregon Water Resources Department, Oregon Court of Appeals Case No. A156669**

This case is a petition to the Oregon Court of Appeals for review of a final order denying a transfer (T-10898). Blue Mountain Angus filed a water right transfer application to change the point of diversion and place of use under Water Right Certificate 25844. The Department denied the transfer because the Department was unable to make findings of no injury or enlargement.

Staff continue to work with Blue Mountain Angus's Counsel exploring possible solutions to their stock water needs.

The Court of Appeals has not scheduled a date for oral arguments.

**Willamette Water Co., an Oregon Corporation, v. Oregon Water Resources Commission and WaterWatch of Oregon Inc., Oregon Court of Appeals Case No. A157428**

This case is a petition for judicial review of a Final Order in a Contested Case, denying water right application S-87330 filed by Willamette Water Co. (Company) for 34 cubic feet per second of water from the McKenzie River for quasi-municipal use. The Department issued a proposed final order on January 26, 2010, proposing to issue the permit with conditions. The Company and WaterWatch of Oregon filed protests on March 12, 2010.

A contested case hearing was held November 14-16, 2011. The Administrative Law Judge issued a proposed order recommending denial of the application on several grounds. The Company and WaterWatch both filed exceptions with the Department. On March 7, 2014, after consideration of the exceptions and the record, the Director issued a final order recommending denial of application S-87330. The Company and WaterWatch both filed exceptions on March 31, 2014. The Commission considered the exceptions and on May 29, 2014, affirmed the Department's final order.

The Willamette Water Company subsequently petitioned for review of the Commission's final order in the Court of Appeals. Reply briefs have been filed. The Court of Appeals held oral argument on November 22, 2016. The Court has not issued its ruling at this time.

**Larry J. Sees and Joan A. Sees, Garret J. Duncan and Cameron M. Duncan, and Stanley S. Stonier and Dolores E. Stonier v. Oregon Water Resources Department and Water Resources Commission, Marion County Circuit Court Consolidated Case Nos. 15CV18272, 15CV19347, 15CV23126, 16CV24087 and 16CV24120, Judge Channing J. Bennett, – Petitions for Judicial Review of Final Orders**

These cases involves petitions for judicial review of a final orders issued to regulate junior groundwater uses in response to a call by a senior user in the Klamath Basin in 2015 and 2016. The Sees and Stonier's originally filed petitions for judicial review of multiple regulation notices spanning a two year period. Each petition resulted in different court case numbers. All of these cases are similar and have been consolidated into case No. 15CV18272.

The Department, working with the Attorney General's Office, presented testimony on the consolidated case during the trial which began on March 13, 2017. The Court heard this matter over a six day period. The ruling has not been issued at this time.

**TPC, LLC v. Oregon Water Resources Department: Marion County Circuit Court case No. 15CV 20875 – Judge Thomas M. Hart, Petition for Judicial Review of a Final Order**

TPC is another petition for judicial review of a final order in other than a contested case in the Klamath Basin. This involves a 2015 Department regulation notice ordering that surface water use for irrigation stop in favor of a senior water right.

The petitioner filed a request to withdraw this case. The Court subsequently dismissed the case on March 23, 2017.

**TPC, LLC and Dayton o. Hyde and Gerda V. Hyde v. Oregon Water Resources Department and Tyler Martin: Marion County Circuit Court Case No.16CV27427, Thomas M. Hart – Petition for Judicial Review of a Final Order**

In 2016, the watermaster received a call for distribution of water from the Klamath Tribes. The call involved the Tribes time immemorial instream rights in the upper Williamson River basin along with the marsh elevation right on the Upper Klamath Marsh. After validating the call for water, the watermaster sent regulation notices to water users junior to the time immemorial rights. The Department is working with the Attorney General's Office on this case.

Various motions have been filed. In one filing the Klamath Tribes argued that the case should be dismissed since they are a necessary and indispensable party to this court case. The Court subsequently denied the Tribes' motion to dismiss.

Klamath Tribes have filed a Mandamus Proceeding with the Oregon Supreme Court asking that the Court compel the Marion County Circuit Court to dismiss the TPC and Hyde Family's petition for judicial review (Case No. 16CV27427). The Tribes are arguing that they are a necessary and indispensable party who are not named in the case.

The Oregon Supreme Court has not scheduled a time for argument.

No trial date has been set in Marion County Circuit Court on case No. 16CV27427.

**Thomas W. Mallams and Beverly Mallams v. Oregon Water Resources Department and Commission, Marion County Circuit Court Case No. 16CV23679, Judge Audrey J. Broyles – Petition for Judicial Review of a Final Order**

Regulation notices were sent to water users in the Sprague River system in July 2016, in response to a call for the Klamath Tribes' time immemorial instream water right. Mallams' filed a Petition for Judicial Review of the regulation order in Marion County Circuit Court. There has been little activity relating to this case pending a ruling on the Sees, Stonier case which is also in Marion County Circuit Court. A status check hearing is scheduled for May 16, 2017.

**WaterWatch v Oregon Water Resources Department, Marion County Circuit Court Case No.16CV11938, Judge Audrey J. Broyles – Petition for Judicial Review and Petition to Compel Agency Action**

This case involves a petition for judicial review of an Order approving the instream lease of a hydroelectric right. WaterWatch is also asking the Court to require that the right be converted to an instream water right. A hearing on motions was held on April 11, 2017. The ruling has not been issued.

**Harrington v Oregon Water Resources Department and others, US Federal District Court, Case 1:16-CV-00200-CL, Judge Michael J. McShane**

This issue began several years ago. It involves the illegal storage of water and the subsequent notching of the dams by the State. This is the second filing in US Federal District Court.

The court adopted the findings and recommendations of Magistrate Judge Clark. The recommendations included the following: Motions to dismiss presented by state and federal defendants should be granted; and, Mr. Harrington should be given an opportunity to amend and refile his Complaint as it pertains to those Oregon state defendants entitled to qualified immunity. The court allowed until January 1, 2017 for Mr. Harrington to file an amended complaint. Harrington filed a motion for an extension of time until February 1, 2017. The State filed a motion requesting dismissal. Harrington filed a motion to deny the State's motion to dismiss; State replied in support of motion to dismiss. The court has not issued a ruling.

**MidOregon Federal Credit Union v Central Oregon Irrigation District, Oregon Water Resources Department and others, Deschutes County Circuit Court, Case 16CV2022, Judge Walter R. Miller**

This case involves a water right transfer filed by the Central Oregon Irrigation District, which proposes to change the place of use of water. The court entered a Judgment of General Dismissal on January 31, 2017. No further action has taken place.

**ELH, LLC v Oregon Water Resources Department, Umatilla County Circuit Court, Case 16CV20883, Judge Michael J. Gillespie**

This case involves the management and delivery of water within Westland Irrigation District. The complaint is requesting a preliminary and permanent injunction requiring the Department to regulate the distribution of water in the district.

A pre-hearing conference is scheduled on May 19, 2017. A Jury trial has been set for September 18 -22, 2017.

**Tumalo Irrigation District v. Oregon Water Resources Department, Deschutes County Circuit Court, Judge Walter R. Miller, Case No.15CV28751**

The Tumalo Irrigation District filed a petition for judicial review regarding a Department denial of a permanent in-district transfer of 125 AF of water from Upper Tumalo Reservoir to two interconnected ponds constructed and filled for recreation. The transfer denial centered on the lack of land-use approval from Deschutes County and a determination that the in-district transfer statute does not authorize a change in place of use of stored water (that is, storing the water at a new location). The Department issued an enforcement order to address the in-district filling of the ponds without authorization and a limited license to pursue another source of water for the ponds. The petition was filed in Deschutes County Circuit Court.

The petitioners filed a motion to withdraw case 15CV28751 with the Court. A general order of dismissal was signed on December 20, 2016.

**Tumalo Irrigation District v. Oregon Water Resources Department, Deschutes County Circuit Court, Case No.16CV01703**

In a second petition for judicial review, Tumalo Irrigation District challenged the Department's order on reconsideration, which affirmed the violation of unauthorized storage of water in two ponds within the District and cancelled a limited license. The petition was filed in Deschutes County Circuit Court.

The parties have been meeting in search of settlement. Agreement has not been reached to date.

The case has not been scheduled for hearing.

**Dan and Nina Micke v Oregon Water Resources Department and Commission, Marion County Circuit Court Case, Judge Tracy A. Prall, Case No. 16CV17876**

Dan and Nina Micke were issued a regulation notice to release waters stored in two reservoirs in the course of water distribution to satisfy the call of a senior water right holder. The Micke's filed a petition for judicial review. Various motions were filed by both the Petitioner and the State. The court entered a Judgment of General Dismissal on 03/17/2017.

The petitioners have filed a notice of appeal with the Oregon Court of Appeals.

**IV. Commission/Board Schedules for 2017**

<i>Commission/Board</i>	<i>Location</i>	<i>Date</i>
Board of Forestry	Salem	June 7
Land Conservation and Development Commission	Salem	May 18-19
Parks and Recreation Commission	Salem	June 13-14
Fish and Wildlife Commission	Portland	May 19
State Land Board	Salem	June 12
Environmental Quality Commission	TBD	June 19-20
Watershed Enhancement Board	Boardman	July 25-26
Board of Agriculture	Klamath Falls	September 19-21

**Attachments:**

1. WPGL Applications Received for 2017 Funding Cycle
2. Rulemaking Calendar





# Water Project Grants and Loans

## Applications Received for 2017 Funding Cycle



Water Project Grants and Loans (SB 839 – 2013) allows the state to invest in projects that meet instream and out-of-stream needs, and provide economic, environmental, and social/cultural benefits. The following is a list of the 34 applications received by the April 5, 2017 deadline for the 2017 funding cycle. Next steps for the funding opportunity include a Departmental review of applications for eligibility and completeness, a 60-day public comment period on applications, and application evaluation by a multi-agency Technical Review Team.

Project Title	Applicant Name	County	Grant Funds Requested	Loan Funds Requested	Total Cost of Project
Alder Creek Reservoir	Bert Siddoway	Baker	\$4,861,398	\$1,473,192	\$6,481,865
Falcon Cove Beach Water District North Spring Well Study	Falcon Cove Beach Water District	Clatsop	\$25,000	--	\$32,000
Bandon Off-Channel Reservoir Project	City of Bandon	Coos	\$5,400,000	\$1,800,000	\$7,200,000
Queen's Avenue Transmission Line	Lakeside Water District	Coos	\$120,562	--	\$160,750
Cold Springs Ranch Instream Restoration Project Phase 1	Crooked River Watershed Council	Crook	\$258,600	--	\$473,045
East Reservoir Water Supply & Irrigation Project	Young's Farm Blue Mountain Holdings, LLC	Crook	\$651,300	--	\$868,400
Marks Creek Meadow Restoration Project	Crooked River Watershed Council	Crook	\$105,490	--	\$387,316
South Deschutes County Water Conservation & Frog Habitat	Deschutes Soil and Water Conservation District	Deschutes	\$65,750	--	\$94,595
Desolation Creek Natural Water Storage Project	North Fork John Day Watershed Council	Grant	\$194,040	--	\$258,839
Flat Creek Watershed Enhancement	Cascade Pacific Resource Conservation and Development & South Fork John Day Watershed Council	Grant	\$224,430	--	\$414,859
Coe Branch Pipeline & On-Farm Irrigation Efficiency Project	Middle Fork Irrigation District	Hood River	\$924,000	--	\$1,680,105
Dog River Pipeline Replacement Project	City of the Dalles	Hood River	\$1,000,000	--	\$8,097,700
Bradshaw Drop Irrigation Canal Piping Project	Rogue River Valley Irrigation District	Jackson	\$1,894,994	--	\$5,925,813
Kubli Ditch Group Restoration	Kubli Ditch Group	Jackson	\$5,700	--	\$7,600

Water Project Grants and Loans - Applications Received for 2017 Funding Cycle

Project Title	Applicant Name	County	Grant Funds Requested	Loan Funds Requested	Total Cost of Project
Madras Agricultural Water Efficiency and Reuse Project	Jefferson Soil and Water Conservation District	Jefferson	\$43,568	--	\$59,268
Opal Springs Fish Passage and Pool Raise	Deschutes Valley Water District	Jefferson	\$1,550,486	--	\$10,720,486
McMullin Creek Dam and Spillway Upgrades	Josephine County	Josephine	\$2,623,500	--	\$3,498,000
Restormel Family Farm Water Conservation and storage project	Angela Lathrop	Josephine	\$273,750	--	\$365,000
Big Springs and Lost River Infrastructure Improvements	Big Springs Park and Recreation District	Klamath	\$17,000	--	\$22,700
North Fork Sprague Conservation Piping and Instream Flow Restoration	Trout Unlimited	Klamath	\$2,731,746	--	\$3,875,000
Newport Citywide Advanced Metering Infrastructure	City of Newport	Lincoln	\$1,730,000	--	\$2,653,050
Fargo Frontage Road Hazelnut Drip Irrigation	Paul Leavy	Marion	\$45,621	--	\$74,327
Silverton Water Treatment Plant Improvement Project	City of Silverton	Marion	\$5,250,000	--	\$7,000,000
Burlington Control System Updates	Burlington Water District	Multnomah	\$3,000	--	\$4,000
Water Storage for Irrigation at La Creole Orchards in Polk County	La Creole Orchards & Polk County	Polk	\$59,041	--	\$78,836
Stanfield Irrigation District Efficiency Project	Stanfield Irrigation District & Umatilla Soil and Water Conservation District	Umatilla	\$201,000	--	\$269,000
Walla Walla Basin Alluvial Managed Aquifer Recharge	Walla Walla Basin Watershed Foundation	Umatilla	\$212,509	--	\$615,250
Powder Valley Connector	Powder Valley Water Control District	Union	\$1,076,000	--	\$1,440,000
Ruby Peak Diversion	Wallowa Soil and Water Conservation District	Wallowa	\$25,000	--	\$503,698
Highland Ditch Piping	Badger Improvement District	Wasco	\$507,300	\$142,700	\$676,400
Threemile Joint Fish Screen Project	Wasco County Soil and Water Conservation District & Rock Creek District Improvement Company	Wasco	\$317,495	--	\$1,694,203
Painted Hills Reservoir Expansion	Bridge Creek Ranch, LLC	Wheeler	\$542,429	--	\$881,793
Hwy 240 to Chehalem Drive and North to Columbia Drive Waterline Extension	City of Newberg	Yamhill	\$250,000	--	\$765,000
Wallace Pump Station, Under-Road Crossing and Piping Upgrade	Palmer Creek Water District	Yamhill	\$281,100	--	\$377,900
		<b>Total</b>	<b>\$33,471,809</b>	<b>\$3,415,892</b>	<b>\$67,656,798</b>

**Oregon Water Resources Department  
Current/Anticipated Rulemaking**

<b>Rule Division</b>	<b>Topic</b>	<b>Lead Staff</b>	<b>RAC Planned or Convened?</b>	<b>GWAC Input Expected?</b>	<b>Target WRC Date</b>	<b>Status</b>
<b>Division 215</b>	Back-siphon prevention device requirements in well construction standards	Kris Byrd	Yes	Yes	August 2017	Hearing May 24, 2017
<b>Division 517</b>	South Coast Basin Program—Smith River classification	Racquel Rancier	Yes	No	2017	Comment Period Closed
<b>Division 77 Instream Water Rights</b>	Consistency with SB 199 (2013) – allowing lease applications to be processed more efficiently	Dwight French, Laura Wilke	Yes	No	2017 or 2018	Underway
<b>Division 54 (New Rule Division)</b>	Hydro conversion to instream	Mary Graine	Yes	No	2017 or 2018	Planning
<b>Division 87 (New Rule Division)</b>	Municipal Reclaimed Water	Dwight French, Kerri Cope	Yes	No	2017 or 2018	Planning

Rule Division	Topic	Lead Staff	RAC Planned or Convened?	GWAC Input Expected?	Target WRC Date	Status
<b>Division 87 Water Management and Conservation Plans</b>	Option for smaller municipal water suppliers	Dwight French, Chris Kowitz	Yes	No	2017 or 2018	Planning
<b>*Division 300 Definition</b>	Definition updates	Dwight French, Machel Bamberger	Yes	No	2017 or 2018	Planning
<b>*Division 310 Water Right Application Process</b>	Conversion of Memos to rules and clarify opportunity for settlement discussion after a protest has been filed	Dwight French, Machel Bamberger	Yes	No	2017 or 2018	Planning
<b>*Division 500 Basin Program Preamble</b>	Minor updates	Dwight French, Machel Bamberger	Yes	No	2017 or 2018	Planning

- Division 300, 310 and 500 are planned to be done together.