



Oregon

Kate Brown, Governor

Water Resources Department

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MEMORANDUM

TO: Oregon Water Resources Commission

FROM: Racquel Rancier, Senior Policy Coordinator *RR*
Lisa Snyder, Administrative Services Division Administrator *LS*

SUBJECT: Agenda Item E, March 15, 2018
Water Resources Commission Meeting

Legislative and Budget Update

I. Introduction

This report provides an overview of the 2018 Legislative Session and efforts underway to prepare for the 2019 Legislative Session, including budget and legislation proposals. Commissioners will be asked to provide input on 2019 proposals during this agenda item.

II. 2018 Legislative Session

Oregon's Legislative Assembly convened in Salem on February 5 for the 2018 Legislative Session, which adjourned on March 3.

Department's Budget Proposals:

The Department submitted two budget proposals for the 2018 Legislative Session, as discussed below. Neither proposal moved forward.

The Groundwater Package requested \$1,285,956 in General Fund dollars, including eight positions, to increase the Department's capacity to conduct basin studies to better characterize Oregon's groundwater resources, while also improving capacity to work with communities on water management solutions, and collect and process groundwater and surface water data (Recommended Actions 1A, 1B, and 1C of the Integrated Water Resources Strategy).

The Litigation Package sought \$1,288,102 in General Fund dollars for the 2017-2019 biennium to address increased litigation expenses. The Oregon Water Resources Department has a budget of \$835,628 to cover the costs of legal services provided by Oregon Department of Justice (DOJ) for the 2017-2019 biennium. For the months of July 2017 through January 2018, the Department's DOJ billings totaled \$599,884. Based on projections, the estimated total cost for DOJ billings this biennium will be \$2,123,730, which is \$1,288,102 over the Department's

current budget for legal expenses. Although this package was not funded, the Department has been in communication with the Legislative Fiscal Office, Department of Administrative Services, Governor's Office, and legislators to ensure that they are aware of the imminent shortfall. The Department will be developing quarterly reports to keep all parties apprised of the status and anticipates putting forward a request to the Emergency Board at a later date; however, it is likely the Department will also need to achieve some savings administratively by holding vacant positions open.

Other Proposals:

Two water-related bills were introduced relating to transfers; however, neither passed. House Bill 4016 related to the transfer of determined claims within the Klamath Project, whereas Senate Bill 1558 related to the transfer of the location of primary storage rights. Staff will provide an overview of the legislation that was proposed during the presentation.

The Department received funding by the Legislature to award an additional \$5.15 million to the City of Carlton to replace their water supply line and reduce water loss. This funding is in addition to the \$2 million that was provided by the Legislature in 2017 for the same project, and the \$2.5 million provided for the Panther Creek Reservoir project.

III. 2019 Budget and Legislation Development

Proposals for legislation are due to the Department of Administrative Services (DAS) on April 13 for the 2019 Legislative Session. If the Governor's Office approves moving forward, DAS will submit the requests to Legislative Counsel for drafting by June 1. Placeholders may be submitted to DAS through June 8, with DAS submitting approved requests to Legislative Counsel by July 9. DAS's official kickoff of development of the 2019-2021 Biennium Budget will not begin until late March; therefore, timelines for budget development have not yet been set.

The Department has begun brainstorming ideas for potential legislative concepts and budget proposals and will seek input from the Commission. The Department met with stakeholders on January 29, 2018, to begin discussions about proposals for the 2019 Legislative Session. Additional meetings will be held in March.

Attachment 1 provides an overview of potential 2019 budget proposals. These proposals will change over time and are intended only for discussion purposes.

The Department is also considering three legislative concepts for the 2019 Legislative Session:

1. Extending the Sunset on Place-Based Planning – The statutory authorization to provide grants for place-based integrated water resources planning sunsets in 2019. The Department anticipates that the four-pilots will need additional funding. This legislative concept proposes to extend the sunset date.

2. Transfers of the Purpose/Character of Stored Water – During the 2018 Session, the Department determined that, with some exceptions, it does not have authority to transfer primary storage rights. The Department has allowed for changes to rights to store water in the past, with changes in the purpose/character of the stored water being common. The Department understands that changes in the purpose of the primary storage right are important and necessary; therefore, this legislative concept proposes to provide the Department with authority to allow for changes in the purpose for which the water is stored under a primary storage right.
3. Dam Safety – A summary of the various policy issues under consideration is included in Attachment 2.

IV. Conclusion

The Department has begun work on budget and legislation proposals for the 2019 legislative session. Over the next several months, the Department will seek feedback from stakeholders, modify proposals, and further refine its legislative and budget priorities for 2019.

Attachments:

1. 2019 Potential Budget Proposals for Discussion Purposes
2. 2019 Dam Safety Legislative Concept: Overview of Potential Updates to Dam Safety Statutes

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2019 Potential Budget Proposals for Discussion Purposes**Draft for Discussion: Proposals Subject to Change**

Note: This is an initial brainstorming of budget proposals. Some positions are included in more than one package. Packages will be modified and refined over time; this draft is for the purposes of discussion and feedback. The budgeting fiscal year is based on 2 years; positions are priced at 21 months (0.88 FTE). Funding sources are under discussion; all packages assume General Fund unless otherwise specified.

Topic	Goal	Rationale in Brief (1-2 sentences or bullets)	Examples of Potential Positions and Costs	Est. Total
Public Records	Process public records requests timely.	<ul style="list-style-type: none"> Public record requests have increased in recent years and are now taking a considerable amount of staff time 	1 OPA 3 or 4 (OPA3 \$225k, OPA4 \$240k) - Public Records Coordinator \$225k	\$225k-\$240k
Extreme Events	Prepare for, respond to, and mitigate for the impacts of drought and other extreme events <i>IWRS Action 5.5A & 5.5B</i>	<ul style="list-style-type: none"> Assess and assist those communities and ecosystems most vulnerable to drought and other extreme events Develop the indicators that signal differing stages of drought and document the economic, social, and environmental impacts of drought 	1 NRS 4 Extreme Events Data Specialist \$245k 1 NRS 4 Water Conservation Specialist \$245k \$50k for partnering on data	\$540k
Dam Safety	Protect public safety by assisting dam owners with repairs, and seismic assessments <i>IWRS Action 5.5C & 7C</i>	<ul style="list-style-type: none"> Evaluate and retrofit dams to meet new seismic standards Authorize resources to determine if dams have safety deficiencies; evaluate and retrofit dams to meet new standards 	\$1M Funding to contract for Assessments of Seismic Risk of Dams \$TBD Potential for funding program for Dam Safety Repairs and Rehab / Assessments <i>[For Discussion: Should the Dept have funding to contract for assessments of the seismic safety of dams? Should the Dept. work with other state agencies to establish a program for repairing dams?]</i>	\$1M+
Place-Based Planning	Support the existing place-based planning pilots and discuss next steps for the program. <i>IWRS Action 9A</i>	<ul style="list-style-type: none"> Continue to fund existing place-based planning pilots and evaluation of the program Provide funding for evaluation of communities readiness for collaboration and planning. 	\$1.2M for existing pilots and independent program evaluation \$XXX for step 0 to evaluate community readiness <i>[For Discussion: While the existing pilots are completed, should the Dept fund a step zero to evaluate communities readiness for planning?]</i> 1 NRS 4 – Planning Coordinator \$245k	\$1.5 M +

2019 Potential Budget Proposals for Discussion Purposes
Draft for Discussion: Proposals Subject to Change

Topic	Goal	Rationale in Brief (1-2 sentences or bullets)	Examples of Potential Positions and Costs	Est. Total
Data Tools for Communities	Develop statewide data products and tools for communities to use in planning for their water future; increase data accessibility <i>IWRS Action 1C & 13C</i>	<ul style="list-style-type: none"> Develop tools in order to make data accessible to communities for use in understanding water supplies and future needs 	\$600K for statewide supply and demand studies and tool development 1 NRS 3 – Hydrologist \$230k 1 NRS 3 – Hydrogeologist \$235k 1 IS 4 – Information Specialist \$185k 1 NRS 3 – Publication/Outreach Specialist \$230k	\$1.4 million (+ or -)
Water Resources Development	Meet instream and out-of-stream needs <i>IWRS Action 13D & 13E</i>	<ul style="list-style-type: none"> Funding is needed to evaluate and implement projects that address instream and out-of-stream water supply needs Fund statewide assessment of water supply infrastructure needs to understand the scope of needed investment 	\$30M LB – Water Project Grants and Loans (SB 839) \$1M LB – Feasibility Study Grants (SB 1069) \$500k LB for infrastructure evaluation/study 1 FA 3 – Grant Fiscal Analyst \$235k	\$31.7 million (LB and GF)
Water Use Measurement and Reporting	Increase water use measurement and reporting. <i>IWRS Action 2B</i>	<ul style="list-style-type: none"> Continue to improve the software and tools used for water-use measurement and reporting Coordinate the Water-Use Reporting Program and water use measurement efforts Update strategy for improving and increasing water use measurement 	5 NRS 2 regional assistant measurement coordinators (1 per region) \$215k each 1 IS 6 database developer \$205k 1 NRS 2 Water Use Reporting program staff \$215k Additional cost-share measurement program dollars = \$150,000	\$1.6 M
Mitigation	Address Water Needs in Areas of Limited Supply <i>IWRS Action 10G</i>	<ul style="list-style-type: none"> Specialist to work on programmatic and project specific water mitigation 	1 NRS 4 - \$245k Mitigation specialist	\$245k
Field	Timely Water Distribution and Management <i>IWRS Action 10F</i>	<ul style="list-style-type: none"> Support Water Management and Distribution in the Field, Discourage Illegal Use, and Respond to Requests from the Public More Timely Address needs in the Klamath Basin 	3 NRS 2 Regional assistant watermasters – Lake County, Klamath, and Malheur \$215k each 2 NRS 3 Watermasters – Crooked River Basin; and Willamette \$230k each 1 PEM C region assistant manager for Klamath Basin \$240k 1 NRS 2 NW region hydrotech \$215k	\$1.6 M

2019 Potential Budget Proposals for Discussion Purposes
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Topic	Goal	Rationale in Brief (1-2 sentences or bullets)	Examples of Potential Positions and Costs	Est. Total
GW Study	Characterizing our Groundwater Resources: Basin Studies <i>IWRS Action 1A</i>	<ul style="list-style-type: none"> Facilitate groundwater management solutions, public involvement, and work with communities to address groundwater challenges Partner with state and federal agencies to conduct and cost-share additional groundwater recharge studies, geological studies, and groundwater basin investigations; install and maintain dedicated observation wells Address groundwater application review backlogs 	NRS 2 Project Hydrogeologist \$215k NRS 2 Hydrographer 2 \$215k NRS 3 Hydrographer 3 \$230k NRS 3 Project Hydrogeologist \$235k NRS 4 Hydrologist \$245k NRS 4 Senior Hydrogeologist \$255k 1 OPA 3 Public Engagement Coordinator \$225k 1 IS 6 database/application developer \$210k \$100k for DOGAMI \$400k for Obs Wells (includes Harney) \$300k for USGS	\$2.6 M
Complex Water	Resolving Complex Water Issues <i>IWRS Action 9C</i>	<ul style="list-style-type: none"> Address complex water issues in basins around the state, primarily focusing on the Willamette, NE Oregon, and Deschutes basins 	2 OPA 3 or OPA 4 - Regional Basin Coordinators (OPA3 \$225k, OPA4 \$240k)	TBD
Well Construction	Protect Groundwater Levels; Prevent Loss of Pressure and Contamination: Well Construction <i>IWRS Action 7A</i>	<ul style="list-style-type: none"> Provide timely inspection of well construction, review of well logs, and educate drillers and pump installers to ensure construction standards are met: Address start card fund shortfalls Ensure proper well construction, alteration, and abandonment of water wells within sensitive Columbia River Basalt aquifer systems Work with water users and local governments on identifying and fixing commingling wells 	Move one NRS 3 hydrogeologist from Start Card to General Fund \$235k Add 1 NRS 2 GF Well Inspector 1 NRS 2 Well Inspector for wells completed in the Columbia River Basalts \$215k 1 NRS 3 Columbia River Basalt well construction specialist \$230k \$1 M cost-share for commingling well repairs [For discussion: Follow up to Mosier well program]	\$1.9 M

2019 Potential Budget Proposals for Discussion Purposes**Draft for Discussion: Proposals Subject to Change**

Topic	Goal	Rationale in Brief (1-2 sentences or bullets)	Examples of Potential Positions and Costs	Est. Total
Litigation	Coordinating Legal Issues and Addressing Litigation Expenses	<ul style="list-style-type: none"> WRD litigation expenses have increased significantly in recent years Need for coordination on increased legal issues and disputes over complex permitting and regulation 	\$ for DOJ; NRS4 Permitting and Regulation Legal Coordinator \$245k	TBD
Marijuana	Addressing Cannabis impacts on workloads <i>IWRS Action 10F and 10G</i>	<ul style="list-style-type: none"> Address significant workload and complaint increases Coordinate with county government and departments on cannabis issues Address backlog of applications for new groundwater permits for cannabis recreation and medical grow operations 	4 NRS 2 Regional Assistant Watermasters (located in Medford, Grants Pass, Eugene and Salem offices) \$215k each 1 NRS 3 Hydrogeologist GW Reviewer \$235k 1 NRS 2 WR Caseworker \$215k	\$1.3M
Shared Services	Payroll Shared Services	<ul style="list-style-type: none"> Pilot program with 6 agencies being made permanent, creating efficiency in payroll functions 	Make permanent one full time payroll 1 AT 3 Payroll Specialist \$145k	\$145k OF
Internal Fiscal Auditor	Internal Auditing	<ul style="list-style-type: none"> The Department has met the criteria in 1(c) of 125-700-0125 as of FY 2016. Provide shared services capacity to assist WRD and other agencies to meet the Internal Auditing Requirement. 	1 IA 3 Internal Auditor \$255k (GF possible OF)	\$225k (GF & OF)
Outreach	Improve awareness across Oregon of water laws and water resource tools <i>IWRS Action 8C</i>	<ul style="list-style-type: none"> WRD does not have an individual that works on developing informational materials (one-pagers, reports, etc.) in an easy to understand format. This hampers the public and water users in understanding the laws, water conservation tools, and water management options, while pulling policy staff off projects. 	1 OPA 3 or 4 – Outreach Coordinator (OPA3 \$225k, OPA4 \$240k)	\$225k-\$240k

2019 Potential Budget Proposals for Discussion Purposes
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Topic	Goal	Rationale in Brief (1-2 sentences or bullets)	Examples of Potential Positions and Costs	Est. Total
IWRS 2022 Update	Conduct a comprehensive update to Oregon 2017 IWRS <i>IWRS Action 13A</i> .	<ul style="list-style-type: none"> Oregon's next IWRS will be due in 2022. The state anticipates taking a comprehensive approach to this update, incorporating new analysis and addressing issues not tackled in previous iterations. 	\$50K for facilitation, public involvement, and printing/distribution costs Potential 1-2 FTE to write and develop data for the update	TBD
Domestic Wells	Funding for domestic well deepenings	<ul style="list-style-type: none"> Some areas of the state have seen groundwater level declines and reduced well yields requiring domestic well owners to repair, deepen, or replace their wells. 	<i>[For discussion: Should the Dept. provide funding assistance?]</i>	TBD

Note: This is an initial brainstorming of needs. Some positions are included in more than one package. Packages will be modified and refined over time; this draft is for the purposes of discussion and feedback. The budgeting fiscal year is based on 2 years; positions are priced at 21 months, 0.88 FTE. Funding sources are under discussion; at this point all packages assume General Fund unless otherwise specified.

**2019 DAM SAFETY LEGISLATIVE CONCEPT:
OVERVIEW OF POTENTIAL UPDATES TO DAM SAFETY STATUTES
DRAFT
FOR DISCUSSION PURPOSES**

Oregon's Dam Safety Statutes have not been comprehensively updated since 1929. At the time, the statutes were more focused on ensuring the safety of new dams as they were being constructed, but there was less of an emphasis on maintenance and operations of dams. Since these statutes were written, there have been major advances in dam design, rehabilitation technology, and emergency planning standards to protect people living downstream from dams. A majority of Oregon's dams were constructed decades ago, with some more than 100 years old. As a result, the dam safety program now focuses on evaluating the condition of existing dams through regular inspections and providing feedback to owners regarding needed safety improvements. Proper maintenance helps protect the public and preserves water supplies.

There have been a number of recent examples of dam failures in other states that underscore the need for a strong dam safety program. The Federal Emergency Management Agency and Association of State Dam Safety Officials provide model dam safety authorities to establish best practices across the states and protect the public from dam failures. Federal funding for the dam safety program requires that states make progress on establishing statutes that provide sufficient authority and resources to prevent the loss of life, property and disruptions that can occur when a dam becomes unsafe. Consistent with the Model Dam Safety authorities, the Department has identified a number of areas where modifications to the dam safety statutes are necessary.

This document provides an overview of the problems that this legislative concept proposes to address. The Department is seeking feedback on this proposal and all items are subject to change.

1. The Department's focus is on the regulation of dams that are not already regulated by a Federal dam safety program. The focus of this legislation maintains that separation of oversight, in order to prevent duplication of effort.
2. Current statutes do not allow the Department to require modifications or removal of dams to be under the supervision and approval of an engineer. Similarly, there is no authority for the Department to require an individual to obtain permission to start any activity to modify or abandon a dam. This means that modifications or removals of dams may be done without the expertise of a licensed engineer, potentially putting public safety at risk. In the past, some dams have been designed and sometimes built without addressing critical first steps, only to require expensive rehabilitation or removal at a later date. For dams that do not otherwise require a water right (lagoons, etc.), there is no requirement to submit final drawings before the individual begins impounding water. This would address the issue by requiring authorization for all statutory dams, normally a water right permit, but if that is not required, a specific dam safety authorization.
3. Although the Department has authority to inspect dams, the agency does not have clear authority to enter property to conduct inspections. This means that dam owners can avoid inspections by not responding to the agency's requests to enter the property to inspect the safety of the dam. In these instances, the agency has to delay inspection or

obtain a warrant to enter the property. This puts public safety at risk. The Department, with reasonable efforts to contact the owner, should be able to enter the property either in an emergency or for a regular inspection.

4. In order to require repairs, the current statute requires the Department to issue a notice to the owner and automatically set a hearing. This automatically requires a time consuming and unnecessary process that can take months, which could also jeopardize the safety of people and infrastructure downstream, and adds the costs of a hearing when one might not even be needed. The Department is considering proposals to allow the issuance of notice, allowing the Department to work with dam owners to address deficiencies and needed repairs. The agency could require an owner to obtain an engineering analysis of the integrity of the dam and work with the owner on appropriate timeframes. In instances where more immediate actions are necessary to keep the dam safe, or where the owner has failed to take necessary actions, the Department would issue an order. This allows the Department to work with dam owners instead of automatically issuing an order, and allows for a hearing thereafter, only if the owner disagrees with the order. Given the need to protect public safety, the legislation proposes to allow for an expedited hearing at the request of the agency. Currently, the Oregon Office of Administrative Hearings has no authority to expedite the hearing.
5. The State currently has no authority to take action to try to alleviate an emergency posed by unsafe conditions at a dam. If caught in time, lowering reservoir levels can reduce stress on the dam and reduce its likelihood of catastrophic failure. Other actions include bringing in pumps or siphons, using emergency rock fill, opening valves, or removing unsafe dams. The Department is evaluating proposals that would allow the agency to direct owners of high or significant hazard dams to take actions if that dam is found to be imminently unsafe, and allows the agency to open valves gates and other release structures if the owner fails to take immediate action on that dam.
6. Currently, there are no penalties for failing to repair a dam. This allows dam owners to pose a risk to the public.
7. There is no clear waiver of liability for inspections performed by the State. There is a waiver for all State reviews and approvals associated with dam construction. This authority needs to be extended to all actions undertaken by the Department including inspections, hazard ratings and implementing emergency actions.
8. During an emergency, the agency does not have authority to require a dam owner to implement their emergency action plan. The agency should have authority to direct owners to implement their emergency actions plans, and to assist in coordinating with emergency managers.
9. The Department also does not have authority to require the installation of monitoring equipment on dams that are potentially unsafe unless part of an enforcement action. Monitoring equipment can provide advance notice of an impending dam safety failure or hazard, helping to protect the public downstream. The most important information includes the current water level in the reservoir and any change in seepage flow through the dam.

10. The Department reviews designs and specifications for new dams. Currently, there is no fee associated with this review. Reviews take approximately 2 days for a low hazard dam, to up to 1-2 months for a more in-depth review of a high hazard dam, on average.
11. Statutory cleanup:
 - a. ORS 540.400 refers to splash dams. ORS 541.455 prohibits construction of splash dams, making this provision unnecessary.
 - b. Makes clear that OWRD may enter into agreements with other state agencies to perform inspections on the agencies behalf (CAFO inspections, for example, etc.)
12. The majority of dams in the United States are privately owned, which means that unlike other types of infrastructure, the private owners are responsible for keeping it in safe operating condition. The state does not currently have a grant program to assist owners with repairing or removing this infrastructure, if it poses a risk to public safety. The Department is seeking input on whether there is a need for a grant program to help with repairs. [NOT INCLUDED IN BILL: Requires further conversation, including who the appropriate entity would be to administer.]