



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer Street NE, Suite A

Salem, OR 97301-1266

503-986-0900

FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Technical Services Division Administrator ^{BB}
Ken Stahr, Surface Water Section Manager ^{KSA}

SUBJECT: Agenda Item J, June 15, 2018
Water Resources Commission Meeting

Scenic Waterway Briefing

I. Introduction

During this agenda item, the Oregon Parks and Recreation Department (OPRD) and Oregon Water Resources Department (OWRD) will provide an update on the State Scenic Waterway Program efforts that are underway and next steps on consideration of new scenic waterway designations. This is an informational item.

II. Background

The Oregon Parks and Recreation Department is responsible for administering the State Scenic Waterways Program, which is designed to protect the scenic, natural and recreation values of the 22 designated waterways throughout the state. As directed by the Oregon Legislature (ORS 390.855), OPRD is expected to study waterways for inclusion in the State Scenic Waterways Program and submit periodic reports to the governor. With statutorily required concurrence of the Oregon Parks and Recreation Commission (OPRC) and the Oregon Water Resources Commission, OPRD is required to recommend to the governor the designation of additional rivers, or segments of rivers, as State Scenic Waterways.

Studies of the Molalla, Chetco and Grande Ronde rivers were conducted by OPRD in 2014. The studies found that only the Molalla and Chetco rivers met the criteria necessary for designation as scenic waterways. Consequently, the two waterways were designated by Governor Brown in 2016.

III. Present Study

The Nehalem River Scenic Waterway Study, conducted by OPRD, serves as the statutorily required first step in the process to designate a new Oregon Scenic Waterway. That process, established by ORS 390.855, allows for the governor to designate new state scenic waterways

following study and recommendation of the Oregon Parks and Recreation Commission (OPRC) and concurrence of the Oregon Water Resources Commission. This study, covering approximately 17.5 miles of the Nehalem River, was done to accomplish three objectives:

- 1) Determine if the river segment meets the qualification criteria for designation as an Oregon Scenic Waterway (ORS 390.855);
- 2) If the qualification criteria are met, outline in general what type of management designation would be appropriate for the waterway; and,
- 3) Summarize the public comments received.

In May of 2017, OPRD evaluated 17.5 miles of the Nehalem River during a field visit using the qualification criteria established by ORS 390.855. Representatives from Oregon Department of Forestry and OWRD were in attendance. Based on the field visit and public input, the entire study area meets the qualification criteria for an Oregon Scenic Waterway.

IV. Public Input

The public was notified of the study and the opportunity to comment via individual letters sent to all landowners listed on tax lot data. Emails were sent to approximately 160 interested parties and a media release announcing the study and the upcoming public meeting was covered by several local newspapers. Approximately 40 people attended a public meeting on September 12, 2017 in Nehalem, Oregon. Comments received at the public meeting and through written response indicate there is strong support for designating the study area. A total of 1,409 written comments were received, of which 1,327 were form emails and 82 were unique letters. Ten were in opposition. There was general agreement that the study area did meet the criteria (i.e., free-flowing, scenic views from the river, and outstanding recreational and natural values). Most indicated that the study area could sustain substantial recreation use without undue impairment, though a few commenters stated the study area could not sustain more recreation use than currently exists. The Clatsop County Board of Commissioners support designation. The Tillamook County Board of Commissioners oppose the designation.

OPRD has formed an advisory committee from a broad base of stakeholders to begin working on the draft management plan. The first group meeting was May 24, 2018 in Nehalem, Oregon.

V. Next Steps

It is anticipated that OPRD staff will recommend acceptance of the Nehalem River Study Report findings at the June 12-13, 2018, OPRC meeting. If the OPRC accepts the report, OPRD staff will continue to work with the advisory committee to create and finalize the draft management plan.

Concurrently, OWRD staff will develop draft flow recommendations. A state scenic waterway flow is the flow amount that is subtracted from the department's water availability program.

While a scenic waterway flow is not a new water right, it can limit the amount of water available for new appropriations. OWRD staff will consider the potential impact to future water right applications along with the need for flows to support the purposes of the scenic waterway. See Attachment 2 for a summary of the state scenic waterways program as it pertains to water resources.

The public will have opportunities to comment on the draft plan and flow recommendations. Later in the year, OPRC will consider whether to recommend the designation to the Governor, and OWRD staff will bring recommendations to the Water Resources Commission on proposed scenic water way flow levels and concurrence with OPRC's recommendation. Both agencies will continue to coordinate with their respective Commissions prior to submission of recommendations to the Governor's Office.

Attachment:

1. Nehalem River Study Area Map
2. State Scenic Waterway: Flows and Water Rights Handout

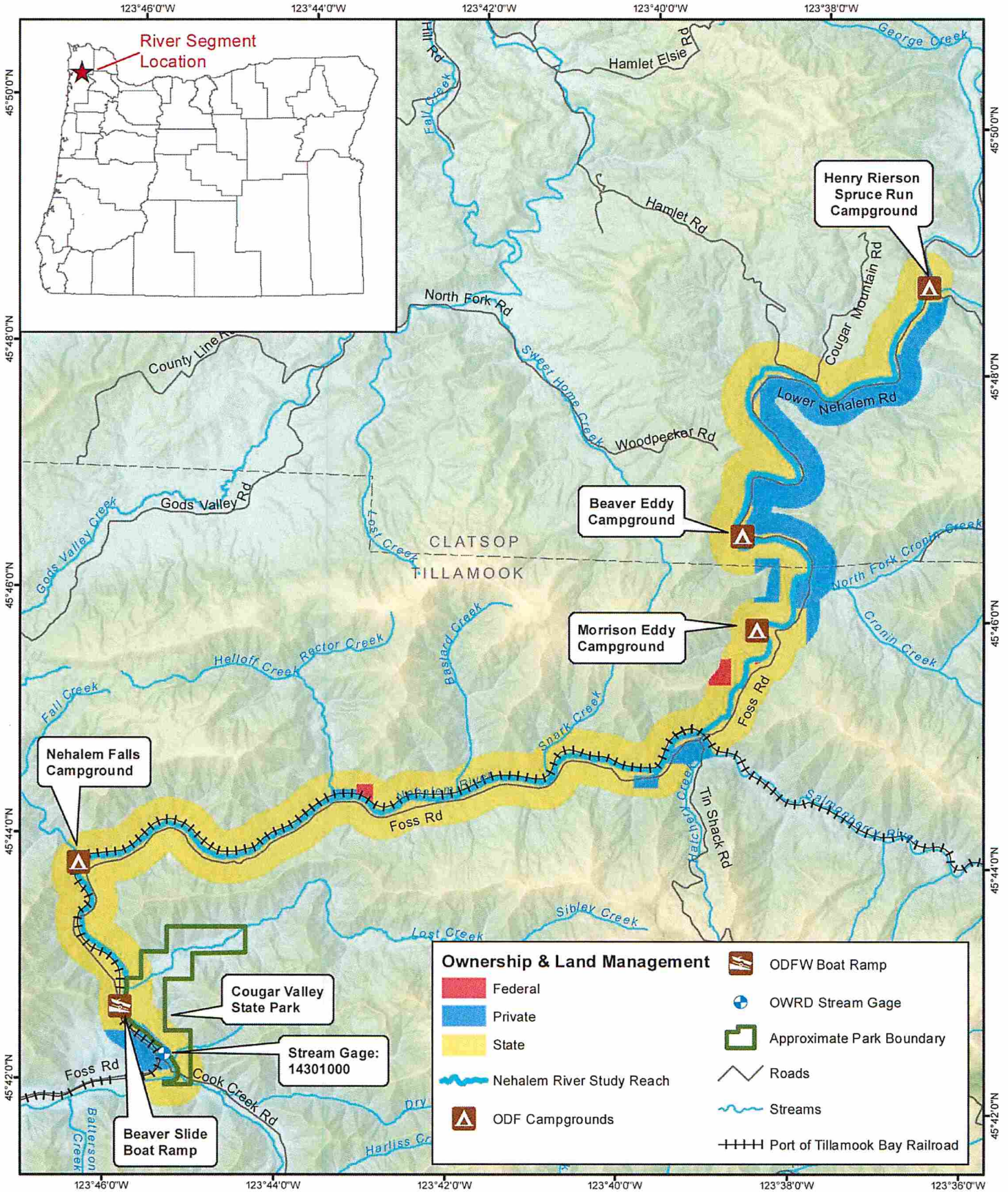
Brenda Bateman
(503) 986-0879

Ken Stahr
(503) 986-0838

Alexandra Phillips (OPRD)
(503) 986-0631

Nehalem Scenic Waterway Study Segment

Oregon Parks and Recreation Dept.
725 Summer St. NE, Suite C
Salem OR, 97301



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State Scenic Waterways Program: Flows and Water Rights

Oregon's Scenic Waterway Program

In 1970, the people of Oregon established the Scenic Waterways Program through a ballot initiative. The program is managed by the Oregon Parks and Recreation Department (OPRD). The goals of scenic waterways include protecting the free-flowing character of designated rivers and lakes; protecting and enhancing scenic and natural values, including recreation, fish and wildlife; protecting private property rights; and encouraging agencies to act consistently with the goals of scenic waterways management.

Role of Oregon Water Resources

The Oregon Water Resources Commission is required to set flows to maintain the free-flowing character of the waters in quantities necessary for recreation, fish, and wildlife uses before any new water rights can be issued within or above a designated scenic waterway. These flows are deducted from the amount of water available for new water allocations. In anticipation of potential designations, the Oregon Water Resources Department (OWRD) developed a flow framework in early 2015, defining the range of flow levels that could be protected for each type of river classification (see OAR 736-040-0040) based on a percent of the median, monthly natural streamflow. Under the flow framework, a higher percent of the median monthly flow would need to be protected from future allocation in more pristine areas, while areas with more development could allow for lower flows to be protected.

Does designation of a scenic waterway affect existing water rights or pending applications?

No. A new scenic waterway designation does not affect water right permits or certificates issued before designation, or applications filed before the date of designation.

Does designation of a scenic waterway affect water uses that are exempt from water right permitting?

No. New and existing water uses that are exempt from water right permitting requirements are unaffected by designation of a scenic waterway.

Are new dams or reservoirs allowed within a scenic waterway?

New impoundment structures, such as reservoirs, are not allowed on the designated reach or within a quarter-mile of the designated reach. Off-channel reservoirs may still be allowed outside of the quarter-mile of the reach.

How does designation of a scenic waterway affect water rights applied for after designation?

Designation of a scenic waterway *does not* affect new water rights *below* the scenic waterway, but can affect new uses *within or above* the scenic waterway. Scenic waterway flows are subtracted from the total amount of water available for allocation to new surface water rights that would withdraw water within or above the scenic waterway. New surface water applications can be denied if the OWRD finds there is no water available for further allocation.¹ New water permits issued within or above a scenic waterway contain conditions that allow the right to be regulated if the scenic waterway flows are not being met.

OWRD may issue new groundwater rights within or above a scenic waterway unless it determines that: a) the proposed diversion measurably reduces surface water flows in the scenic waterway, b) there is no surface water available for additional allocation, and c) all new groundwater appropriations will cumulatively reduce scenic waterway flows by 1.0 cfs or 1 percent of the average daily flow by month, whichever is less.² In these instances, OWRD may deny the permit unless mitigation is provided.

¹ However, if no water is available after setting the scenic waterway flows and there are no other reasonable alternatives for water supply, applications for surface water right permits for human consumption or livestock use can be approved. The statute limits the issuance of these permits to a cumulative total of 1.0 cubic foot per second (cfs) or 1 percent of the average daily streamflow of the river, whichever is less.

² The 1.0 cfs or 1 percent in this instance is separate from the 1.0 cfs or 1 percent allocated to human consumption permits discussed above.