



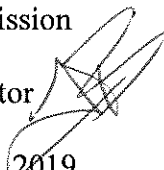
# Oregon

John A. Kitzhaber, MD, Governor

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Kate Brown, Governor

## MEMORANDUM

**TO:** Water Resources Commission  
**FROM:** Thomas M. Byler, Director   
**SUBJECT:** Agenda Item D, June 14, 2019  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events

##### Staffing Updates

Since the February meeting the Department has filled one position externally and promoted one staff member. Positions filled include a Well Inspector and a Groundwater Data Chief.

Mike Ladd, North Central Region Manager, recently retired and has been working on a temporary basis for the agency as we recruit his replacement. We appreciate his years of dedication to the Department and wish him the best in retirement. In addition, Brenda Bateman, Technical Services Division Administrator, has announced that she has accepted a position at Business Oregon as the Operations and Finance Assistant Director. We are grateful for her years of service to the Water Resources Department, and wish her the best in her new role.

#### II. Commission Follow Up

##### A. Umatilla Water Supply Project Update

The Department has an \$11 million grant agreement with the Port of Morrow to implement one or more infrastructure projects to deliver water primarily to lands that are currently not irrigated or are under-irrigated. These funds come from a direct appropriation from the Legislature in 2015 to assist with financing water supply projects in the Umatilla Basin. The Port of Morrow is working with two project partners on two separate projects.

The first project is the "East Project," which intends to use \$7 million of the grant funds to help construct a pump station on the Columbia River and a nine-mile pipeline that would travel south down into the Stage Gulch Critical Groundwater Area (CGWA). The maximum capacity of the new pipeline will be 200 cfs. The Port of Morrow and East Improvement District are working to secure various permits and private financing as the estimated total project cost is \$53.7

million. The second project (the "CID Project") proposes to use \$4 million in grant funds to construct a new irrigation pipeline parallel to Columbia Improvement District's (CID) existing pipeline, as well as perform other infrastructure upgrades to the system booster stations and canal. The total cost of the CID project is \$28.9 million. The Department recently received notice that CID had closed on the loan funding needed for the project.

Both projects have encountered unforeseen challenges and delays as they have progressed. Delays included the steel tariffs imposed in the spring of 2018 and long lead times required for local energy infrastructure upgrades. Both projects are expected to be completed by mid-2020. Prior to release of funds for both projects, OWRD must receive a number of additional items including, documentation that the grantee and its partners have sufficient funds for the total project cost.

The Department is also processing eight new Columbia River surface water rights and associated mitigation for the East Project and any other projects funded by this grant. Four of the eight permits have been issued. Another Final Order has been issued for a fifth water right application and is awaiting mitigation. The permits cannot be issued until mitigation is secured. The Department continues to process the three other applications and their mitigation proposals.

On a related note, interests in the Umatilla Basin are working to obtain additional funding from the Legislature to pilot a Basalt Stabilization project, as well as funding for a third irrigation water delivery project.

#### **B. Mosier Commingling Well Repair and Replacement Program Update**

Eleven commingling wells have been repaired or replaced by a drilling contractor retained by the Wasco County Soil and Water Conservation District (SWCD). The driller is contracted to permanently abandon 15 priority comingling wells and construct replacement wells in the Mosier area with \$1 million in cost-share funds made available by the Legislature in 2015. The funding agreement with the SWCD has been extended until June 30, 2019, and the SWCD anticipates that 13 to 14 wells will be repaired or replaced during the contract period based on the budget trend to date.

#### **C. Walla Walla Subbasin Update**

The Serious Water Management Problem Area (SWMPA) designation for the basalt aquifer of the Walla Walla Subbasin took effect January 1, 2019. This designation requires flowmeter installation and water use reporting at permitted basalt wells in the Walla Walla Subbasin.

In February 2019, groundwater and watermaster staff visited more than 100 permitted basalt wells affected by the SWMPA rules. Each team collected water level data, read flowmeters, documented which wells lacked flowmeters, and as necessary, posted wells with a Notice of Violation (NOV). Staff will revisit these sites in June 2019 to collect water level and use data, confirm meters are working appropriately, and confirm that wells without working meters are not being used for irrigation as per the requirements of the SWMPA rules.

Department staff continue collecting data to better define the basalt aquifer groundwater flow system. The Department has engaged DOGAMI to conduct a 1-year study that will culminate in detailed geologic mapping of two quadrangles in the Walla Walla Subbasin, with emphasis on identifying geologic structures (faults and folds) in the basalt aquifer system. The Department is scoping a small study with the USGS to analyze aqueous geochemistry results from basalt well samples collected in 2018 to estimate groundwater age and help to identify recharge sources to the subbasin.

The Department recently met with the Confederated Tribe of the Umatilla Indian Reservation and Washington Department of Ecology. The three parties have come together recognizing the important and urgent need to address both current and long-term water resource issues facing the bi-state Walla Walla River Basin, including ecological purposes and consumptive use needs of Oregon and Washington communities. All three parties are committed to working together with Walla Walla River Basin interests to achieve and strengthen water management goals by building and enhancing working relationships with the Walla Walla Watershed Management Partnership, Walla Walla Basin Watershed Council, basin irrigators, fishery co-managers and other interested parties.

#### **D Water Resources Development Program**

The Water Resources Development Program seeks to help individuals and communities address their instream and out-of-stream water needs through integrated water resources place-based planning, feasibility studies, and project implementation funds.

In February 2019, the Department launched an assessment of Feasibility Study Grants and Water Project Grants and Loans in order to identify and pursue improvements to the funding opportunities. The third component of the Program, Place-Based Planning, will be assessed separately. The internal portion of the assessment is underway. This summer, the Department will engage applicants, grantees, the Commission, tribes, and stakeholders in an external assessment of the two funding opportunities. Through this assessment, the Department will identify recommended actions and SMART goals to pursue in the months and years ahead. The assessment is scheduled to be completed and goals identified in 2020.

The application deadline for the 2019 Water Project Grants and Loans funding opportunity was April 26, 2019. After applications are received, the Department conducts an eligibility and completeness review for each application as required in statute and rule (ORS 541.669(1) and OAR 690-093-0060). After completing the review, all applicants are notified of the results. Incomplete applications are returned to the applicant and complete applications proceed to evaluation, scoring and ranking by the multi-agency Technical Review Team. For the 2019 Water Project Grants and Loans funding cycle, the Department received 17 applications. Three applications were deemed incomplete. The 14 complete applications requested a total of \$12,341,262 in grant funding. See Attachment 2 for a list of complete applications received.

When last discussed with the Commission, the account for Water Project Grants and Loans had approximately \$7.5 million available for the 2019 and 2020 funding cycles. Since then, Trout Unlimited notified the Department that its project, the “North Fork Sprague Conservation Piping and Instream Flow Restoration Project,” could not proceed as approved by the Commission in 2017. The grantee requested the grant agreement be terminated. The Department terminated the grant agreement in May 2019 and the funds (roughly \$2.7 million) previously obligated to the project are now available for future funding cycles. This means approximately \$10.2 million is available for award in 2019 and 2020.

### III. Litigation Update

#### 2018 Circuit Court Filings

**Topham Family Trust v. Oregon Water Resources Department, Marion County Circuit Court Case No. 18CV18092**

A petition for judicial review of final orders in other than contested case was filed on May 3, 2018, for the regulation of groundwater use for senior surface water rights in the Klamath Basin.

**Kalkhoven v. Oregon Water Resources Department, Marion Circuit Court Case, No. 18CV34480**

A petition for judicial review of final order in other than contested case was filed on August 7, 2018, for the regulation of water from surface water for irrigation. Order amending Pine Creek Decree signed March 19, 2019.

#### Court of Appeals Filings

**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.

On May 11, 2018, the Court ordered that this case be reactivated. On June 22, 2018, the Court of Appeals granted a motion to hold the appeal in abeyance through July 23, 2018.

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

**Sees, Duncan, and Stonier v. Oregon Water Resources Department and Water Resources Commission, Oregon Court of Appeals Case No. A165952**

These cases involve petitions for judicial review of final orders issued to regulate junior groundwater users in response to a call by a senior user in the Klamath Basin in 2015 and 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 Marion County Circuit Court trial, which began on March 13, 2017. The Court heard this matter over a six-day period. The Court issued an Opinion Letter on July 10, 2017. The Court found that the State followed the process required by the rules and relied on the best information available at the time. The Court also found that the State's findings of hydraulic connection and its stream relief calculations were supported by substantial evidence. Accordingly, the Court affirmed the Department's orders.

Counsel for the Sees filed objections to the Court's findings. A hearing was scheduled for August 22, 2017, to hear the objections. Marion County Circuit Court affirmed the State's decision and a General Judgment was entered on August 24, 2017.

Sees filed an appeal on September 19, 2017. An extension of oral argument to a later date has been requested. Oral argument scheduled for August 21, 2019.

**WaterWatch v. Oregon Water Resources Department, Oregon Court of Appeals Case No. A165160**

This case involves an order in an other-than contested case issued by the Department, specifically the renewal of an instream lease of a water right held by Warm Springs Hydro, LLC. WaterWatch asked 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 Court issued an order dismissing the case on May 18, 2017.

WaterWatch filed a notice of appeal with the Oregon Court of Appeals on June 14, 2017. Oral arguments were held August 30, 2018. A decision is pending.

**TPC, LLC., and Hyde v. Oregon Water Resources Department, Oregon Court of Appeals Case No. A167380**

On March 21, 2018, the State of Oregon filed a motion for stay of judgment pending appeal on TPC and Hyde Case No. 16CV27427 and 17CV26962. The petitioners requested attorney fees and a request for findings and conclusions. The State opposed the request. The petitioners opposed the State's response on May 7, 2018.

TPC and Hyde filed an appeal on June 5, 2018. On August 17, 2018, the Appellate Commissioner issued an order granting a motion to stay the trial court's judgment for the duration of the appeal. Oral arguments have not been scheduled.

**IV. Upcoming Commission/Board Schedules**

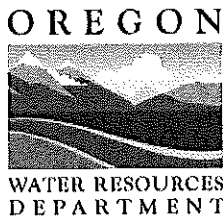
<i>Commission/Board</i>	<i>Location</i>	<i>Date</i>
Board of Forestry	Salem	July 24
Land Conservation and Development Commission	Condon	July 25 & 26
Parks and Recreation Commission	South Coast	September 17-18
Fish and Wildlife Commission	Salem	August 2
State Land Board	TBD	August 13
Environmental Quality Commission	Enterprise	July 18-19
Watershed Enhancement Board	Klamath Falls	July 16-17
Board of Agriculture	Madras	September 25-27

Attachments:

1. Rulemaking calendar
2. Water Projects Grants and Loans – List of Complete Applications Received

## Oregon Water Resources Department Current/Anticipated Rulemaking

Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
<b>Division 54 (New Rule Division)</b>	Hydro conversion to instream	Mary Graine	No	TBD	Underway
<b>Division 77 Instream Water Rights</b>	Consistency with SB 199 (2013) – allowing lease applications to be processed more efficiently	Dwight French, Lisa Jaramillo, Sarah Henderson	No	TBD	Planning
<b>Division 25 – Klamath Groundwater</b>	Regulation of wells in the Klamath Basin	Ivan Gall	Yes	2021	Planning
<b>Division 87 (New Rule Division)</b>	Municipal Reclaimed Water Registrations	Dwight French, Kerri Cope	No	2019	Underway
<b>Division 77</b>	Instream Leases and Transfers of Stored Water	TBD	No	TBD	Planning
<b>*Division 300 Definition</b>	Definition updates				
<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	No	TBD	Planning
<b>*Division 500 Basin Program Preamble</b>	Minor updates				



# Applications Received

## Water Project Grants and Loans

### 2019 Funding Cycle



Project Name / Applicant	Project Type	County	Grant Funds Requested	Total Project Cost
<b>Calapooya Creek Conservation Project / Green Valley Farm and Logistics, LLC</b>	Conservation	Douglas	\$155,106	\$206,808
<b>Canal Avenue Water Project / Rogue Community College</b>	Infrastructure	Josephine	\$1,500,000	\$2,000,000
<b>City of Chiloquin New Well and Meter Replacement Project / City of Chiloquin</b>	Conservation, Water Infrastructure	Klamath	\$661,000	\$4,025,500
<b>Highland Ditch Piping Project / Badger Improvement District</b>	Conservation, Water Infrastructure	Wasco	\$2,250,000	\$3,000,000
<b>Ladera Piping Project / Arnold Irrigation District</b>	Conservation, Water Infrastructure	Deschutes	\$207,408	\$314,548
<b>Madras Downtown Distribution Main Replacement Project / City of Madras</b>	Water Infrastructure	Jefferson	\$900,000	\$1,200,000
<b>Mosier Deep Water Supply Well #2 / Wasco County SWCD and Wade Root</b>	Water Infrastructure, Other (water supply development)	Wasco	\$671,724	\$906,910
<b>North Plains - Water Reservoir No. 2 and Pump Station / City of North Plains</b>	Water Infrastructure	Washington	\$1,250,000	\$7,600,000
<b>Old Owyhee Ditch Improvement District Automation Spill Ways / Old Owyhee Ditch Improvement District and Malheur SWCD</b>	Water Infrastructure	Malheur	\$200,851	\$323,251
<b>Prineville Airport Area Aquifer - ASR Project ASR Well #1 / City of Prineville</b>	Below-Ground Storage, Water Infrastructure	Crook	\$1,800,000	\$12,235,572
<b>Quail Ridge Irrigation Renovation and Conservation Project / City of Baker City</b>	Conservation	Baker	\$884,981	\$1,179,974
<b>Smith Ditch Water Delivery Improvement / Bake Valley Soil and Water Conservation District</b>	Water infrastructure	Baker	\$590,902	\$799,152
<b>Stanfield Irrigation District Efficiency Project / Stanfield Irrigation District</b>	Conservation, Water Infrastructure	Umatilla	\$286,000	\$423,500
<b>Upper Philips Fish Passage and Irrigation Efficiency Project / Applegate Partnership, Inc.</b>	Conservation, Flow Restoration and Protection, Water Infrastructure, Other (fish passage)	Jackson	\$983,290	\$1,357,267
		<b>TOTAL</b>	<b>\$12,341,262</b>	<b>\$35,572,482</b>