



# Oregon

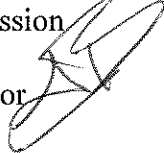
John A. Kitzhaber, MD, Governor

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Kate Brown, Governor

## MEMORANDUM

**TO:** Water Resources Commission

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

**SUBJECT:** Agenda Item H, September 6, 2019  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events

##### Staffing Updates

Since the June meeting, the Department has filled five permanent positions and one limited duration position. The six positions include two promotions – Watermaster and Restoration Program Technician – as well as a Transfer Specialist, a Groundwater Data Technician, a NorthCentral Region Manager, and a limited duration Dam Safety Civil Engineering Specialist.

#### 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 long 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. Both projects have encountered unforeseen challenges and delays as they have progressed, but both have made significant

progress in securing matching funds and permits, putting project components out for bid, and preparing for construction in the fall. Both projects are expected to be completed by mid-2020.

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.

Separate but related to the Umatilla Water Supply Project, interests in the Umatilla Basin obtained additional funding from the Legislature to pilot a Basalt Stabilization project as recommended by a Basalt Stabilization Work Group formed this past fall by the Governor. The Department of Administrative Services will manage those funds.

## **B 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. This section provides brief updates on: 1) the assessment of Feasibility Study Grants and Water Project Grants and Loans, 2) the 2019 cycle of Water Project Grants and Loans, and 3) the allocation of place-based planning funds authorized by the Legislature for the 2019-2021 biennium.

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 complete. The Department is now engaging applicants, grantees, tribes, and stakeholders in an external assessment of the two funding opportunities. This engagement consists of surveys and small focus group discussions. The surveys have been sent out and soon invitations to the focus groups will be distributed. 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 early 2020.

The application deadline for the 2019 Water Project Grants and Loans funding opportunity was April 26, 2019. The Department received 14 complete applications, which requested a total of \$12,341,262 in grant funding. The Department hosted a 60-day public comment period and the multi-agency Technical Review Team (TRT) scored applications in accordance with statute, rule, and scoring guidelines. The TRT funding recommendation is posted online for a 30-day public comment period between August 26 through September 25, 2019. In November, the Department will present the funding recommendation and public comments received for the Commission's consideration as it makes final funding decisions.

The 2019 Legislature authorized \$550,000 from the General Fund to support the four current places and state’s efforts in the pilot of place-based planning. The Department previously shared how it intended to allocate the \$750,000 requested, if that amount was authorized by the Legislature. Since a reduced amount was authorized, the Department requested each planning group submit a request for how much of the \$550,000 it needed for the 2019-2021 biennium. As displayed in Table 1 below, the total amount requested exceeded \$550,000. After internal discussions, the Department decided to award each group 75% of the original request made to the Legislature. The Department will retain 66% of what we originally requested for support of all four planning groups and for programmatic work. Table 1 provides a breakdown of the awards.

**Table 1. Breakdown of 2019-2021 Dollars**

	<b>Original Breakdown of Request of Legislature</b>	<b>Requested by Groups</b>	<b>Decision</b>
<b>Upper Grande Ronde</b>	\$100,000 – <i>implementation*</i>	\$10,000 - <i>plan development</i> \$115,000 - <i>implementation</i>	\$10,000 - <i>plan development</i> \$65,000 - <i>implementation</i>
<b>Lower John Day</b>	\$100,000 - <i>implementation</i>	\$15,000 - <i>plan development</i> \$85,000 - <i>implementation</i>	\$15,000 - <i>plan development</i> \$60,000 - <i>implementation</i>
<b>Mid-Coast</b>	\$200,000 - <i>plan development</i>	\$175,000 - <i>plan development</i>	\$150,000 - <i>plan development</i>
<b>Harney</b>	\$200,000 - <i>plan development</i>	\$200,000 - <i>plan development</i>	\$150,000 - <i>plan development</i>
<b>OWRD</b>	\$150,000 - <i>support/assessment</i>	\$125,000 - <i>support/assessment</i>	\$100,000 - <i>support/assessment</i>
<b>TOTAL</b>	<b>\$750,000</b>	<b>\$725,000</b>	<b>\$550,000</b>

\*As shared previously these dollars are for coordination of plan implementation. The Department and other funders have funding available to investigate the feasibility of different solutions and implement water supply projects.

As previously shared with the Commission in June, the Department intends the funds will be used for the following:

1. Program Evaluation – To evaluate the process and outcomes of the pilot phase of the place-based water planning and make recommendations for the future of water planning. This is expected to occur once two places finish plans. The cost estimate for this is \$40,000 - \$80,000.
2. Statewide Needs Assessment – To assess the planning needs of other places in Oregon and the barriers that prevent them from planning. The cost estimate for this is \$40,000 - \$80,000.
3. Support for the Learning Partnership – To financially support at least one annual gathering of members of each of the four planning groups. The cost per gathering is \$20,000 to \$30,000.

### III. Litigation Update

#### Circuit Court Filings

**Brayman, et al. v. Oregon Water Resources Department and Oregon Water Resources Commission, Harney County Circuit Court, Consolidated Case No. 02-06-134-CV and 02-10-298-CV**

This longstanding issue, dating back to 2002 in Harney County, concerns management and enforcement of water rights consistent with the Silvies River Decree and the Department's alleged violation of a settlement agreement.

#### 2018 Circuit Court Filings

The twenty 2018 Circuit Court filings have been resolved.

#### 2019 Circuit Court Filings

**Brooks v. Byler, Watson, and Water Resources Department, Marion County Circuit Court Case No. 19CV27798**

This involves a petition for judicial review, filed August 24, 2019, of a regulation order issued by the Department in Klamath County that regulated groundwater in favor of the Tribes' senior surface water rights.

#### 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. The State committed to file an Order on Reconsideration September 11, 2019.

**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. 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. Oral arguments were held with the Oregon Court of Appeals on August 21, 2019. A decision is pending.

**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>
Land Conservation and Development Commission	Tigard	September 26-27
Parks and Recreation Commission	Brookings	September 17-18
Fish and Wildlife Commission	Frenchglen	October 14-15
State Land Board	TBD	October 22
Environmental Quality Commission	Madras	September 26-27
Watershed Enhancement Board	Condon	October 15-16
Board of Agriculture	Madras	September 25-27

Attachments:

1. Rulemaking calendar

## Oregon Water Resources Department Current/Anticipated Rulemaking

Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 54 (New Rule Division)	Hydro conversion to instream	Mary Graineey	No	TBD	Underway
Division 77 Instream Water Rights	Consistency with SB 199 (2013) – allowing lease applications to be processed more efficiently	Dwight French, Lisa Jaramillo, Sarah Henderson	No	TBD	Planning
Division 25 – Klamath Groundwater	Regulation of wells in the Klamath Basin	Ivan Gall	Yes	2021	Planning
Division 87 (New Rule Division)	Municipal Reclaimed Water Registrations	Dwight French, Kerri Cope	No	2019	Underway
Division 77	Instream Leases and Transfers of Stored Water	TBD	No	TBD	Planning
*Division 300 Definition	Definition updates				
*Division 310 Water Right Application Process	Conversion of memos to rules and clarify opportunity for settlement discussion after a protest has been filed	Dwight French	No	TBD	Planning
*Division 500 Basin Program Preamble	Minor updates				

<p><b>Division 522 Deschutes Basin Water Management</b></p>	<p>Allowing a previously approved mitigation project that is no longer obligated to be used for mitigation credits</p>	<p>Dwight French</p>	<p>Yes</p>	<p>2019 / 2020</p>	<p>Underway</p>
<p><b>Dam Safety 20</b></p>	<p>HB 2085 Implementation</p>	<p>Keith Mills</p>	<p>No</p>	<p>2020</p>	<p>Underway</p>
<p><b>Well Construction Licensing Division 205 &amp; 240</b></p>	<p>HB3030 and SB 688 Implementation</p>	<p>Kris Byrd</p>	<p>Yes</p>	<p>2020</p>	<p>Underway</p>