



# Oregon

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Kate Brown, Governor

## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Thomas M. Byler, Director *TR on behalf of*

**SUBJECT:** Agenda Item C, November 21, 2019  
Water Resources Commission Meeting

### Director's Report

#### I. Current Events

##### Staffing Updates

Since the September meeting, the Department has filled seven positions. The actions include one promotion, two transfers in from another agency and the hiring of four employees that are new to State service. Positions filled include an Executive Assistant, a Data Technician, a Region Manager, a System Administrator, an Application Developer, a Well Inspector, and a Transfers and Conservation Support position.

#### 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 "East Project," will 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") will 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 beginning the construction phase of the projects. 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 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 manages those funds. The Department participates as an ex-officio member of the workgroup, which met in early November to discuss the use of the funds, how best to leverage the funds for additional resources, and the role of the workgroup moving forward.

#### **B. Walla Walla Basin Update**

The Department has been meeting with the Confederated Tribe of the Umatilla Indian Reservation and Washington Department of Ecology to discuss areas of shared interest related to water management in the shared Walla Walla Basin. 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.

As part of that effort, the Department recently attended the kick-off meeting for the State of Washington's Walla Walla Water 2050 effort in early October. Earlier this year the Washington Legislature charged the Washington Department of Ecology to work with the basin to develop a 30 year integrated water resources plan as well as evaluate the effectiveness of the special programs offered on the Washington side of the basin for the past 10 years. Washington is interested in engaging the whole basin, including the Oregon side of the basin, in the integrated planning effort. The Department is supportive of that approach and actively participating in the effort.

The Department is in the initial planning stages of a cooperative groundwater basin study with the US Geological Survey for the Walla Walla Basin. Preliminary discussions have begun with the US Geological Survey as well as with the State of Washington and the Confederated Tribes of the Umatilla Indian Reservation about scoping the study and the possibility of including

portions of the Washington side of the basin in the study. Those discussions will continue in late November. The Department is also committed to a public engagement process related to this study, and intend to meet with the local community and stakeholders to gather input before finalizing the scope of the study.

### **C. Nehalem State Scenic Waterway**

On June 30, 2019, after receiving the recommendation of the Oregon Parks and Recreation Commission and with concurrence in that recommendation of the Oregon Water Resources Commission, the Governor designated the Nehalem River State Scenic Waterway. ORS 390.845(2) requires the Oregon Parks and Recreation Department to adopt rules governing the management of land adjacent to the newly designated waterway. The statute requires the Water Resources Commission's concurrence on the rules. The public comment period on the proposed rules ended on November 4. The Department anticipates that the Commission may be asked to concur at the next Commission meeting.

### **III. Litigation Update**

#### **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. A hearing on motion for summary judgement is scheduled for February 10, 2020.

#### **Court of Appeals 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. On November 4, 2019, the Court of Appeals granted the State a motion for stay of the Harney County Circuit Court decision for the duration of the appeal.

**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' Counsel to receive materials necessary to continue processing the Blue Mountain Angus transfer application.

**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. On September 25, 2019 the court issued an opinion dismissing the case as moot.

**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 were heard on November 6, 2019.

**IV. Upcoming Commission/Board Schedules**

<b><i>Commission/Board</i></b>	<b><i>Location</i></b>	<b><i>Date</i></b>
Land Conservation and Development Commission	Reedsport	November 21-22
Parks and Recreation Commission	Medford/Ashland	November 19-20
Fish and Wildlife Commission	Salem	December 6
State Land Board	TBD	December 10
Environmental Quality Commission	Portland	November 14-15
Watershed Enhancement Board	Jacksonville	January 22-23
Board of Agriculture	Astoria	December 3-5

