



MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item C, August 25, 2021
Water Resources Commission Meeting

Director's Report

I. Current Events and Updates

A. Staffing Update

Since the June meeting, the Department has hired one summer intern Assistant Watermaster, a Payroll Specialist, a rotational Program Manager in the Surface Water Section, two Desktop Support Analysts, and a Well Inspector. The Department has promoted one Program Manager to Supervisory Manager in the Water Resources Development program, two Hydrogeologists, and reclassified one Watermaster up to a Natural Resource Specialist 4. There have been two retirements as well, a Hydroelectric Program Coordinator and a Water Measurement Analyst.

B. Walla Walla Basin Update

The Department continues to engage regularly with the Washington Department of Ecology (Ecology) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to coordinate individual and joint efforts as co-managers of the Walla Walla Subbasin.

WWW 2050 Strategic Plan Update: In 2019 Ecology initiated a strategic planning effort, as required by the Washington Legislature, to guide water resource decisions for the next 30 years in the basin. Led by Ecology's Office of Columbia River, staff from Ecology worked collaboratively with the CTUIR, the Department, local governments in both Washington and Oregon, environmental non-profits, irrigators, and basin stakeholders, a diverse representation of water users and the interested public. The Strategic Plan was finalized in June 2021 and will now transition into an implementation phase as the basin works to prioritize and implement the measures identified in the plan.

C. Klamath Basin Update

Water conditions in the Klamath Basin remain dire. Inflows to Upper Klamath Lake are at record lows. Groundwater pumping for irrigation, authorized by primary and supplemental water rights and emergency drought permits, are creating significant groundwater level declines across the Project Area in Oregon and California.

A combination of drought, less leakage into the shallow portion of the aquifer system from canals, and record levels of groundwater pumping have impacted over 100 domestic wells in and around the Klamath Irrigation Project in Oregon. Dry well complaints are being directed to the Watermaster office. Complaints are then added to a data base.

Staff are following up with phone calls and field visits to make an assessment of the problem. Staff are attempting to measure groundwater levels in the impacted wells. Klamath County requested assistance from Oregon Emergency Management (OEM) to address the dry well issue. OEM has called a group together to provide assistance to the county. OEM, Oregon Department of Human Services, Regional Solutions, Oregon Water Resources Department, Klamath County, City of Klamath Falls, and the Oregon Water/Wastewater Agency Response Network are meeting daily. Plastic 360 - 500 gallon tanks have been ordered. The first shipment was delivered on July 23. These tanks are available for owners of dry domestic wells to pick-up, or they can be delivered. The Department is working with Klamath County to identify those needing a tank and to coordinate pick-up and delivery of the tanks. As of August 13, there have been 93 requests for tanks, and 89 tanks have either been delivered or picked up. There are a number of tanks on order or reserve. The County and Watermaster are also working with others on a plan to deliver water to the tanks weekly. The work associated with the dry well issue has placed additional strain on the Watermaster office. Klamath Water Users Association staff have volunteered to help, Klamath County has provided administrative help, and OEM is searching for volunteers to help the Watermaster answer phones and log dry well complaint information. The Department continues to monitor inflows and releases from Upper Klamath Lake as part of the response to the order from Marion County Circuit Court in the Klamath Irrigation District litigation. The Department has filed a request with the Court for a stay in the Circuit Court ruling while the matter is pending before the Oregon Court of Appeals. If the stay is denied, the Department will request the same from the Court of Appeals.

D. Reopening State Offices and Reimagining the Workplace

Throughout the COVID-19 pandemic, state agencies have continued to operate with their offices closed to unplanned visits by the public. Earlier this summer, the state targeted September 1 as the date to “reopen” its doors to accommodate unplanned visitors. The Department has been preparing to have its offices open to the public by this date however, as of August 13 the reopening has been delayed. The Department of Administrative Services created a workgroup called the Reopening Advisory Team, made up of agency, human resources, and program area advisors throughout the enterprise. This group was asked to develop a report on reopening state government buildings to the public. The group’s main areas of focus include public access, workforce re-entry, discussions on hybrid telecommuting, in-office staff, information technology needs, workspace, facilities, parking, human resource policies, and much more. The report contains elements that provide high level guidance for reopening offices, as well as to assist state agencies as they develop their post-COVID work model. In addition to preparing for reopening offices, the Department is also focused on determining how the agency workplace will function moving forward. One of the many lessons learned during the Covid-19 pandemic is that much of the agency’s work can be done remotely while remaining productive and responsive to the public. Moreover, we have learned that many employees would like to continue to work remotely to some degree in the future.

As we look to open our doors to the public, the Department has a unique opportunity to reimagine how and where the work of the agency is conducted and to create a new service delivery model for the future. With this in mind, the Department is beginning to engage a manager subgroup whose purpose is to work with agency leadership and staff to reimagine and implement a new hybrid (in-office and remote) work model for the Department that is responsive to agency business and employee needs, and consistent with appropriate state enterprise guidance and collective bargaining agreements.

E. Rulemaking Update

The Department has identified the following rulemakings as priorities for 2021:

- Division 10 – Critical Groundwater Areas (CGWAs): The proposed amendments to the rules will conform Division 10 with the current statutory process and provide a framework for implementing future critical groundwater areas. The Department is currently working to identify Rule Advisory Committee (RAC) members and preparing draft documents for RAC review.
- Division 54 – Conversions of Hydroelectric Water Rights to Instream Water Rights: The proposed amendments establish a new rule division to govern conversions of hydroelectric water rights to instream water rights in accordance with statute. The Department is currently refining the draft rules based upon RAC feedback and preparing a Notice of Proposed Rulemaking.
- Division 77 – Instream Water Right Leases and Transfers: The proposed amendments clarify application requirements and review processes for leases and transfers of existing water rights instream, improve the efficiency of Department review of applications, and implement necessary statutory changes. Based upon comments received from RAC members, the Department is considering the proposed timeline for this rulemaking.
- Division 215 – Measuring Tube Requirements for Water Supply Wells: The proposed amendment reproduces the exact language of a previously repealed section to clarify existing references and provide guidance to well owners. The Department plans to combine this rulemaking with the rulemaking effort under the recently passed House Bill 2145 (2021).

The Department anticipates bringing forward the Division 54 rules for consideration by the Commission during the November Water Resources Commission meeting.

II. Litigation Update

Circuit Court Filings

Klamath Irrigation District v. Oregon Water Resources Department; Marion County Circuit Court, Case No. 20CV17922

Klamath Irrigation District is seeking an injunction compelling the Department to order the Bureau of Reclamation not to divert stored water through the Link River Dam for instream purposes. The Court granted a motion for summary judgement for the Department and identified KID as the prevailing party. The Department appealed to the Oregon Court of Appeals.

Fern Valley Estates Improvement District v. Oregon Water Resources Department, et al; Jackson County Circuit Court, Case No. 20CV19061

This case involves water well construction deficiencies for two wells that supply a public water system in Jackson County. Settlement discussions are ongoing.

Duane Martin Ranches, L.P. v. Oregon Water Resources Department; Marion County Circuit Court, Case No. 20CV42241

This case involves a Final Order that was issued to a landowner in Klamath County requiring the installation of both a headgate and a water-use measuring device on each of two points of diversion from the Sprague River. Settlement is finalized.

Annunziata Gould v. Oregon Water Resources Department; Marion County Circuit Court, Case No. 21CV02770

A Petition for Judicial Review was filed with Marion County Circuit Court challenging a Department Order that approves a Water Management and Conservation Plan for a proposed destination resort in Deschutes County.

Klamath Basin Adjudication; Klamath County Circuit Court

The Klamath Basin Adjudication is the means for determining claims to the use of surface water in the Klamath River Basin. The Adjudication is now in the second phase, the judicial review of the Final Order of Determination by the Klamath County Circuit Court.

Adjudication claimants or contestants who dispute the Final Order of Determination of their claims or contests had an opportunity to file exceptions with the Klamath County Circuit Court. The Court will ultimately issue a water rights decree affirming or modifying the Final Order of Determination. The Department will issue water right certificates in accordance with the final decree.

Golden Rule v. Oregon Water Resources Department; Harney County Circuit Court, Case No. (new matter)

This case was filed by a water right holder in Harney County against a Department Final Order denying an extension of time to complete construction and apply water to beneficial use under a groundwater right permit for lack of diligence. The case was voluntarily dismissed by petitioner and then reinstated by the Court on June 14, 2021.

Middle Fork Irrigation District v. Oregon Water Resources Commission, et al; Hood River County Circuit Court, Case No. 21CV06933

Petitioner seeks an Order from the Court directing the Water Resources Commission to begin proceedings to forfeit a hydroelectric water right in Hood River County. The water right is held by Pacific Power for the Powerdale Hydroelectric Project and is the subject of OWRD rulemaking process for converting hydroelectric water rights to instream water rights.

Court of Appeals Filings

Brayman, et al. v. Oregon Water Resources Department and Oregon Water Resources Commission, Court of Appeals, Case No. A70316; Hearing Consolidated Cases from Harney County Circuit Court, Case No. 02-06-134-CV and 02-10-298-CV

This case concerns management and enforcement of water rights consistent with the Silvies River Decree.

Golden Rule v. Oregon Water Resources Department; Court of Appeals, Case No. A172879 and A172880

This case was filed by a water right holder in Harney County against a Department Final Order denying an extension of time to complete construction and apply water to beneficial use under a groundwater right permit for lack of diligence.

Schneider v. Oregon Water Resources Department; Court of Appeals, Case No. A173927

The petitioner challenged the denial of his application for a license to construct water monitoring wells.

WaterWatch v. Oregon Water Resources Department, et al; Oregon Court of Appeals, Case No. A169652, S32410 and S37839 (Lower Clackamas River)

WaterWatch appealed a Department Order supplementing and clarifying previous Orders on municipal water rights, pursuant to a remand from the Court of Appeals.

East Valley Water District v. Oregon Water Resources Commission, et al; Oregon Court of Appeals Case No. A173292

This appeal challenges an Order of the Oregon Water Resources Commission that denies a reservoir application filed by the water district.

Klamath Irrigation District v. Oregon Water Resources Department; Oregon Court of Appeals Case No. A176270

Klamath Irrigation District is seeking an injunction compelling the Department to order the Bureau of Reclamation not to divert stored water through the Link River Dam for instream purposes.

III. Upcoming Commission/Board Schedules

<u>Commission/Board</u>	<u>Date</u>
Land Conservation and Development Commission	September 23-24
Parks and Recreation Commission	TBD
Fish and Wildlife Commission	September 17
State Land Board	October 12
Environmental Quality Commission	September 30-October 1
Watershed Enhancement Board	October 26-27
Board of Agriculture	September 14-15

Attachments:

1. Rulemaking Calendar

Oregon Water Resources Department Current/Anticipated Rulemaking

Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 10 Critical Groundwater Areas	Updates to rules / Consistency with ORS 537.730–742	Ivan Gall, Justin Iverson	Yes	TBD	Preparing for RAC
Division 54 (New Rule Division)	Hydro conversion to instream	Dwight French, Mary Graine	No	2021	Public Comment Period Open
Division 77 Instream Water Rights	Updates to rules / Consistency with SB 199 (2013) / Instream Leases and Transfers of Stored Water	Dwight French, Lisa Jaramillo, Sarah Henderson	No	TBD	On hold
TBD – Klamath Groundwater	Regulation of wells in the Klamath Basin	Ivan Gall	Yes	TBD	On hold
Division 340 (formerly New Rule Division 87)	Municipal Reclaimed Water Registrations	Dwight French, Kerri Cope	No	TBD	On hold
Divisions 200 205 & 240 - Well Construction Licensing	HB 3030 and SB 688 Implementation	Kris Byrd	Yes	TBD	On hold
Division 215	Replace erroneously repealed section (690-215-0200 Dedicated Measuring Tube)	Kris Byrd	No	TBD	On hold