



MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item C, March 17, 2022
Water Resources Commission Meeting

Director's Report

I. Current Events and Updates

A. Staffing Update

Since the December 2021 Commission meeting the Department has filled 25 positions. There were 13 promotions, nine new-to-state employees, one transfer-in from another agency, one limited duration made permanent, and one lateral transfer. Positions filled include four Assistant Watermasters, three Watermasters, a Grant Management Analyst, a Regional Planning Coordinator, a Basin Coordinator, a Public Information and Resiliency Coordinator, a Well Inspector/Well Log Reviewer, a Deputy Administrator for field services, two Engineers, a Hydrogeologist, an Assistant Groundwater Manager, a Senior Hydrographer, a Well Construction Program Coordinator, a Fiscal Manager, a Help Desk Support position, a Supply and Conservation Specialist, a Senior Application Developer, a Senior Systems Analyst, and a Well Construction Compliance Coordinator.

B. Willamette Basin Update

The Willamette Basin Review was undertaken by the United States Army Corps of Engineers (Corps) in 2015 to evaluate the feasibility of reallocating 1.64 million acre-feet (AF) of stored water in the 13 federal Willamette Project reservoirs, adding municipal and industrial and fish and wildlife purposes alongside the already authorized irrigation use. Upon completion the report was adopted by Congress and signed by the President in December 2020.

This reallocated 1.59 million AF of stored water in the Willamette Project, being 154,750 AF for municipal and industrial uses, 327,650 AF for agricultural irrigation, and 1,102,600 AF for fish and wildlife purposes. The Corps and the Department are working on how management of Willamette reservoir water will be implemented following this multi-reservoir reallocation effort.

Prior to this larger reallocation, a small-scale reallocation of water in two southern Willamette Valley reservoirs was completed in 2014. This comprised the conversion of 437 AF of water in Cottage Grove and Dorena reservoirs for municipal use by the City of Creswell. Accessing the stored water requires a contract between the user and the Corps. The city did not pursue a contract for use of the water.

Recently, the Eugene Water and Electric Board, a water and electric provider for the Eugene, East Springfield, and McKenzie River Valley areas, has expressed interest in contracting with the Corps for that water. If successful, this would represent the first contract between the Corps and a municipal water provider for stored water from the Willamette Project reservoirs. This process will lay the groundwork for other municipalities seeking to access municipal water from the Willamette reservoirs.

In the 2021-2023 Legislatively Approved Budget, the Department received position authority for and recently hired a Willamette Basin Coordinator. This position is responsible for coordinating the agency around complex water issues in the basin, including the scoping and implementation of the Willamette reallocation project. The Department will provide a presentation on Willamette Basin activities at a future Commission meeting.

C. Walla Walla Basin Update

The Department continues to meet 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. The Executive Team has been meeting quarterly and staff level meetings are occurring weekly.

The groundwater basin study continues in the data collection phase. Over the past several months Department staff, along with collaborators from the U.S. Geological Survey, Ecology, and the CTUIR have conducted stream seepage measurements, collected groundwater level data, collected groundwater and surface water samples for isotope analyses, worked to establish additional Agrimet stations in the basin, and collated existing data and information.

D. Walla Walla Watershed 2050 Strategic Plan Update

The Strategic Plan was finalized in June 2021 and work and focus has now transitioned into an implementation phase as the basin works to prioritize and implement the measures identified in the plan. The Department has actively engaged with Washington Department of Ecology and the Confederated Tribes of the Umatilla Indian Reservation to develop a new advisory committee to continue this work into 2022. This group will provide advice and recommendations on priority projects, identify funding needs, and highlight other important policy or operational issues for the co-managers consideration.

The Department is also working with the co-managers and other basin stakeholders to identify any funding needs that may be requested during the 2023 Legislative Session. These funds may help further the work of the Bi-State Flow Enhancement Study, Strategic Plan implementation, or other stand-alone projects.

E. Klamath Basin Update

Streamflow and precipitation remain below normal in the Klamath Basin, suggesting 2022 will be another water-short year. In February, Klamath County officials applied for a drought declaration under ORS 536, and for an emergency declaration under ORS 401.

Staff read flow meters and measured groundwater levels in and around the Project area in late 2021 and early 2022, and again in mid-March. Data indicate that groundwater pumped in 2021 exceeded the amount pumped in 2020, and groundwater levels are approximately 10 feet lower than at the same time in 2021. In 2021, the Klamath Watermaster's office received 221 dry well complaints in the Klamath Falls area.

Klamath County and the Office of Emergency Management provided water tanks to impacted households, and began a water hauling program, which continued through the winter. Sixteen additional dry well complaints have been received since January 1, 2022. Because of widespread groundwater level declines, and the significant impact to domestic wells in 2021, the Department will not be issuing drought permits in the Klamath Basin for 2022.

The irrigation season began on March 1st. Flows in the Williamson River and other streams in the basin are below the Tribal instream determined flow levels. This will result in the regulation off of all irrigation water rights in the Williamson and Sprague River basins. The Wood River will also likely be subject to regulation due to very low baseflow conditions.

In *United States v. OWRD*, in the US District Court in Oregon, Magistrate Judge Clark granted the US a request for a stay of this case pending the outcome of the US filing of a crossclaim against OWRD in the *Yurok vs BOR* case, which is in US District Court, Northern District of California.

Removal of the four Klamath River hydroelectric dams is scheduled to begin in 2023. Work is underway to address related issues such as the transfer of operation of Link River Dam from PacifiCorp to US Bureau of Reclamation and transfer of ownership of Keno Dam from PacifiCorp to US Bureau of Reclamation. These actions are scheduled to take place at the time of the hydroelectric dam decommissioning.

F. Harney Basin Update

Department staff met with Silvies River water users in Burns in November 2021 to provide an overview of Watermaster duties, how water regulation and distribution occurs, and to answer questions. A second meeting took place on February 25 to update water users on water conditions and upcoming processes and next steps the Department will need to take in the Harney Circuit Court to address litigation dating back to 2002. The Department sent a revised proposal to Farm Services Agency (FSA) for the Harney Basin CREP, a joint effort matching state and federal dollars to incentivize voluntary retirement of groundwater rights in the basin. If approved, this program could start funding groundwater retirements in 2023.

G. Greater Harney Valley Groundwater Area of Concern Update

The Malheur Lake Basin Program was amended by the Commission in April of 2016. This created the Greater Harney Valley Groundwater Area of Concern (GHVGAC). Part of the rules require an annual report to the Commission on new groundwater permits issued within the GHVGAC, information on groundwater level data and an update on the groundwater study, as well as staff recommendations, if any, on amending or repealing the rules.

New groundwater permits issued within the GHVGAC Since April 15, 2016, six permits have been issued within the GHVGAC (Table 1). No new permits have been issued since the Department's 2019 report.

Table 1: Summary of recent water right permits issued within the GHVGAC

	App #	Priority Date	Permit#	Issue Date	Name	Acres
G	17575	8/22/2012	18086	9/12/2018	JAMES AND SUE GILMOUR	40.7
G	17799	3/19/2014	17765	6/8/2017	BO THORENFELDT	693.0
G	17916	9/2/2014	17918	12/7/2017	PHILLIP W. SINGHOSE	900.0
G	17940	9/23/2014	17745	8/30/2017	PATRICIA M. JAGER	101.95
G	18000	2/17/2015	17667	10/13/2016	RIDDLE RANCH INC.	125.6
G	18129	8/11/2015	17647	8/30/2016	OTLEY BROTHERS INC.	426.0

Groundwater level data continues to be collected quarterly in the GHVGAC and surrounding areas. The observation well network was assessed in 2021 to identify wells monitored during the study that proved to provide redundant information, and the well network will be paired down in 2022 to focus on continued long-term data collection from high-quality, representative wells.

The cooperative USGS/OWRD groundwater study reports are in the final stages of publishing through the USGS Scientific Publishing Network. The study will be communicated in two companion reports that are self-referential and will be released concurrently. The hydrology report, describing the groundwater flow system of the area, is fully formatted and approved for publication. The water budget report, quantifying the inputs and outputs of the groundwater system, is fully peer reviewed and is currently going through final layout formatting. The final reports are expected to be published imminently.

As per the Division 512 rules, within one year after the Groundwater Study has been published, the Department will convene a Rules Advisory Committee to explore whether there is a need for updates or changes to these rules. Members of the Groundwater Study Advisory Committee will be invited to participate on the Rules Advisory Committee, as well as additional members representing interests identified during the place-based planning work in the basin. The Department's goal is to convene the RAC by mid-2022.

H. Planning, Collaboration, and Investments Updates

The Water Resources Development Program recently changed its name to the Planning, Collaboration, and Investments Section. This name better encapsulates the work of the section, including the existing programs (Place-Based Water Planning, Feasibility Study Grants, and Water Project Grants and Loans) and the new work the section is taking on. See Attachment 1 for a handout describing the work of the section.

The Commission requested follow up work in previous meetings that has been delayed due to staffing limitations and the need to prioritize the standing up of the new Well Abandonment, Repair, and Replacement Fund to begin more quickly providing assistance to those of low to moderate income whose well has gone dry in areas of drought and wildfire.

As such, the Department wanted to provide an update on those items. In September 2021, the Commission asked the Department to investigate the possibility of setting aside funding from Feasibility Study Grants and/or Water Project Grants and Loans to the four groups doing Place-Based Planning. While the Department started an analysis of what authority it or the Commission may have, additional research is needed on that as well as equity considerations, given that only four groups have been allowed to partner with the Department in piloting Place-Based Planning. In November, the Commission requested the Department investigate if/how the Commission and/or Department could increase grant awards when costs rise as the result of external factors such as the coronavirus pandemic and inflation. The Department recently hired a Grant Management Analyst and is recruiting for a Well Fund Coordinator, which will increase our capacity and ability to respond to these requests in the coming months.

I. Reservations of Water

From 2015 to 2016, the Department worked with the Commission to extend several reservations of water in a number of basin programs. A reservation of water for future economic development sets aside a quantity of water for multi-purpose storage to meet future needs. To use reserved water, one needs to apply for a storage water right under the Department's regular permitting process. If successful, the new storage right retains the priority date of the reservation. A secondary permit is required to put the stored water to beneficial use.

The Commission requested annual updates on interest in and progress on accessing water from reservations. Reservations are held by the Oregon Department of Agriculture in the Malheur Lake, Burnt, Owyhee, Powder, Hood, and Grande Ronde river basins. Two Feasibility Study Grant awards from 2021 are investigating the feasibility of storage and considering a reservation as a potential source of water. In the Hood River Basin, the Fifteenmile Watershed Managed Underground Storage Facilities Feasibility Study Phase II is interested in accessing a reservation of water for artificial recharge and recently applied for a limited license. The Upper Grande Ronde River Watershed Storage Feasibility Study is conducting a basin-wide assessment to identify potential storage sites and evaluate instream flow needs. One factor the study will consider in identifying potential storage sites is water availability, and in this analysis the study will consider the use of reserved water.

J. Reopening State Offices and Reimagining the Workplace

Governor Brown recently announced that Oregon is revising its indoor mask requirement due to declining covid-19 case rates and hospitalizations. After March 11, 2022, the statewide mask requirement will be lifted and state employees working in state facilities will no longer be required to wear a mask. In addition, Oregon's covid-19 emergency declaration will end on April 1, 2022, which will have the effect of terminating the vaccination requirement for state employees. Oregon is targeting to reopen state offices beginning May 1, 2022.

For the Department, this means staff will be ready to receive unplanned visitors at our Salem and field offices by that date. In the longer term, the Department continues to develop its reimagining the workplace plan, which will modernize the agency's office spaces and functions to accommodate a workforce that will work both in the office and remotely.

K. 2021 Second Special Legislative Session

During the 2021 Second Special Legislative Session, \$9,150,000 and 32 positions were allocated to the Department for drought and cannabis related work.

Drought

Drought relief package budget components approved a one-time appropriation of \$300,000 General Fund to contract for a statewide drought vulnerability assessment for both instream and out-of-stream needs. The assessment is primarily intended to examine the drought vulnerability of agriculture, environmental ecosystem, and domestic uses in the near term. There was also a one-time appropriation of \$3,750,000 General Fund to capitalize the Water Well Abandonment, Repair, and Replacement Fund and established three limited-duration positions (1.88 FTE) for program administration, technical evaluations, and reporting.

Cannabis

In response to water theft tied to the proliferation of illegal cannabis grows, \$5 million General Fund to pay for 29 permanent, full-time positions (18.13 FTE) was approved to expand the agency's capacity related to water rights enforcement activities. Investments in the Department support enforcement activities allow the Department to address backlogs and workloads associated with cannabis, as well as to proactively identify and respond to unauthorized water use across the state. This work is important to protecting individuals that have obtained a water right from harm caused by those that have not obtained a water right and are using water without authorization. As such this work is important to protecting other water users and instream rights.

L. Lake Abert Update

The Department has recently been meeting with the Governor's Office, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality to discuss Lake Abert and concerns expressed by stakeholders and the media about Lake Abert water levels. The challenges in the Lake Abert watershed are complex as there are not only the challenges associated with meeting the needs for water for ecological, community, and economic purposes, but there are also competing ecological needs for the water. Conversations regarding Lake Abert water levels will require a holistic approach and understanding of the multiple uses and needs for water in the basin, taking into account the impacts of a warmer and drier climate.

Given the complexity of the species needs, impacts of drought cycles, and cultural resources present within this system, the state believes it is important to build and convene a collaborative group to discuss relevant science and data gaps, and to identify and develop support for any actions taken in the basin. The Governor's Office has reached out to the National Policy Consensus Center regarding assistance for a potential collaborative effort.

Any collaborative effort would necessarily need to involve Tribes, local water users and community interests, and conservation interests. The Department along with ODFW and ODEQ presented on the complex nature of the basin's issues during a February hearing before the House Committee on Agriculture, Land Use and Water.

Meeting slides are available online here:

(<https://olis.oregonlegislature.gov/liz/2022R1/Downloads/CommitteeMeetingDocument/253884>)

and video of the presentation is available here:

(<https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2022021260>).

Several staff will be participating in a tour of the watershed in March at the invitation of Representative Mark Owens.

II. Litigation Update

Circuit Court Filings

Golden Rule Farms, Inc. v. Oregon Water Resources Department; Harney County Circuit Court, Case No. 19CV53051

On December 10, 2019, a petition for judicial review was filed by a water right holder in Harney County against a Department final order denying an extension of time for lack of diligence to complete construction and apply water to a beneficial use under a water right permit. The case was voluntarily dismissed by the petitioner and an order dismissing the case was entered in July 2020. An order granting motion to reinstate the case was issued in August 2020. An order staying the proceedings pending the Court of Appeals' rulings in Case Nos. A172879 and A172880 was issued in August 2021.

Fern Valley Estates Improvement District v. Water Resources Department, Water Resources Commission, and Oregon Health Authority; 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. Enforcement commenced with a notice of violation being issued to Fern Valley Estates Improvement District on May 2, 2020. On May 27, 2020, the District filed a petition for judicial review in Jackson County Circuit Court. The case has been extended several times to give the parties an opportunity to resolve the issues. Settlement discussions are on-going.

Klamath Basin Adjudication; Klamath County Circuit Court

This adjudication is the process of determining claims to the use of surface water in the Klamath River Basin. On-going since 1975, the first phase was the review and determination of these claims by the Oregon Water Resources Department, including the hearing of contests to claims and the issuance of proposed orders by administrative law judges from the State's Office of Administrative Hearings.

This phase of the process was completed with the Department's issuance of and filing of the Adjudicator's Findings of Fact and Final Order of Determination with Klamath County Circuit Court on March 7, 2013. The process is now in the second phase. This is the review of the Final Order of Determination by the Courts. Adjudication claimants or contestants who dispute the Department's determination of their claims or contests have an opportunity to file exceptions with the Klamath County Circuit Court. The Court then reviews these exceptions and will ultimately issue a water rights decree affirming or modifying the Final Order of Determination. The Department can issue water right certificates in accordance with the final decree once it is issued by the Court.

Fort Klamath Critical Habitat Landowners, Inc., et al. v. Oregon Water Resources Department; Marion County Circuit Court, Case No. 21CV37688

On September 22, 2021, the Fort Klamath Critical Habitat Landowners, Inc. filed an amended petition for judicial review opposing a temporary transfer of the place of use and points of diversion of a determined claim from the Wood River Valley above Upper Klamath Lake (UKL) to the Lower Klamath National Wildlife Refuge below UKL. The Court granted an extension of time for this case on December 29, 2021. On January 20, 2022, the petitioners filed a second amended petition for judicial review. A hearing date has not been set.

Annunziata Gould. v. Oregon Water Resources Department; Marion County Circuit Court, Case No. 21CV48665

On December 22, 2021, Deschutes County resident Annunziata Gould filed a petition for judicial review of a final order of the Department granting a temporary change in place of use and points of groundwater appropriation in the Deschutes Basin. Temporary transfer applicant, Pinnacle Utilities, filed a motion to intervene in the case. A hearing date has not been set.

Klamath Irrigation District v. Oregon Water Resources Department; Marion County Circuit Case No. 21CV39570

On October 1, 2021, Klamath Irrigation District (KID) filed a petition for judicial review in Marion County Circuit Court. The petition was filed in response to an order issued by the Department on April 6, 2021 to the U.S. Bureau of Reclamation regarding releases of stored water from Upper Klamath Lake. The order to Reclamation was issued in compliance with an order from Marion County Circuit Court directing the Watermaster to prevent releases of stored water in excess of water rights entitled to the use of that water. The Department is awaiting a demand to appear.

WaterWatch of Oregon v. Oregon Water Resources Department; Marion County Circuit Court, Case Nos. 21CV32178

On August 6, 2021, WaterWatch of Oregon filed a petition for judicial review of a final order of the Department allowing the Port of Morrow to withdraw groundwater from two additional locations under an existing permit. An amended petition was filed November 12, 2021. A hearing date has not been set.

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 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. Oral argument was made before the Court of Appeals on January 11, 2021. A decision was issued on May 9, 2021, affirming the lower Court decision in favor of the petitioners. The decision was not appealed.

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

On December 13, 2019, a petition for judicial review was filed by a water right holder in Harney County against a Department final order denying an extension of time for lack of diligence to complete construction and apply water to beneficial use under a water right permit. Opening brief was filed December 4, 2020. On February 23, 2021, the Department filed a notice of withdrawal of the final orders for reconsideration. The Department reissued the orders denying extension of time on June 11, 2021. Oral argument in this case was heard on February 10, 2022.

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

This case involves Mr. Schneider challenging the denial of an application for a license to construct water monitoring wells. He challenged the Department's interpretation of their rules which set forth the necessary qualifications for such a license. This appeal, filed April 22, 2020, is the result of contested case order upholding the Department's interpretation of the rules. Oral argument was heard June 3, 2021. An appellate judgement in favor of the Department was issued January 5, 2022. The judgement was not appealed.

WaterWatch of Oregon 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. The Department approved municipal permit extensions in 2010, which WaterWatch appealed and the Court remanded the orders to OWRD for clarification. A hearing was held and the order on remand was issued in 2018. WaterWatch appealed. Oral arguments were heard January 8, 2021. The parties are awaiting a decision.

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

This appeal, filed with the Court in January 2020, challenges an order of the Oregon Water Resources Commission that denies a reservoir application filed by the water district. Multiple extensions on filing briefs were requested by the parties. Petitioners East Valley Water District and WaterWatch of Oregon filed opening briefs on February 25, 2021. On July 27, 2021, WaterWatch's petition for judicial review was dismissed for lack of standing, and WaterWatch's motion for reconsideration of that order was denied on October 4, 2021. Court briefings have been filed.

Klamath Irrigation District v. Oregon Water Resources Department; Oregon Court of Appeals, Case No. A176270 (Marion Circuit Case No. 20CV17922)

On May 14, 2020, Klamath Irrigation District (KID) filed a Complaint for Declaratory and Injunctive Relief in Marion County Circuit Court. The complaint was filed under ORS 183.490 and ORS 540.740. KID is seeking an injunction compelling the Department to carry into effect the Amended and Corrected Order of Determination (ACFFOD) in the Klamath Adjudication by ordering the Bureau of Reclamation (BOR) not to divert stored water through the Link River Dam for instream purposes unless or until it obtains a water right or instream lease authorizing the use of water for such purpose, obtains a stay of the ACFFOD pursuant to ORS 539.180, or obtains a final judgment providing that federal law authorizes the BOR to use stored water in UKL reservoir for instream purposes without securing a water right in accordance with state law and the Reclamation Act.

A hearing was held in Marion County Circuit Court on June 18, 2020. On July 30, 2020, Judge Bennett issued an opinion letter approving the KID's motion for partial summary judgment on the injunction claim under ORS 540.740 and denying the Department's motions on the same claim. An order was issued October 13, 2020, by the Court. In June 2021, the Department appealed the Circuit Court order. On December 27, 2021, the Oregon Court of Appeals issued an order granting a stay and expediting the case.

Middle Fork Irrigation District v. Oregon Water Resources Commission, et al; Oregon Court of Appeals, Case No. A177625

On February 23, 2021, Middle Fork Irrigation District filed a petition to compel agency action, seeking an order from the Court directing the 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 a Department rulemaking process for converting hydroelectric water rights to instream water rights. In April 2021, the Department filed a motion to dismiss, and on October 6, 2021, the Court held oral argument on the motion. An order granting the order to dismiss was issued on October 28, 2021, in favor of the Department. On December 22, 2021, the plaintiff filed a notice of appeal. An appeal Court date has not been set.

Oregon Supreme Court Filings

WaterWatch of Oregon v. Oregon Water Resources Department; Oregon Supreme Court, Case No. S067938

This case involves an order in other than a 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 Circuit 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 affirming the lower Court's ruling in favor of the Department was issued June 10, 2020. WaterWatch filed an appeal with the Oregon Supreme Court. Oral argument was heard April 29, 2021. On December 23, 2021, the Court issued an opinion reversing the lower Court's in favor of the petitioner.

U.S. District Court

Klamath Irrigation District v. United States Bureau of Reclamation; U.S. District Court, Medford, Oregon, Case Nos. 1:21-cv-00504-AA

On March 29, 2021, the Klamath Irrigation District filed an emergency motion for preliminary injunction against the Bureau of Reclamation in Klamath County Circuit Court, which is managing the judicial phase of the Klamath adjudication. The preliminary injunction was filed to prevent the Bureau of Reclamation from using stored water contrary to the water rights determined in the Amended and Corrected Findings of Fact and Order of Determination. On April 5, 2021, the Bureau of Reclamation filed notice with the Court of removal of the case to the U.S. District Court of Oregon. On April 12, 2021, Oregon Water Resources Department filed a motion to intervene in the case, which was granted. On April 20, 2021, Klamath Irrigation District filed a motion to remand the case back to Klamath County Circuit Court. The hearing on remand was held at U.S. District Court on May 20, 2021. No decision has been issued.

United States of America v. Oregon Water Resources Department; U.S. District Court, Medford, Oregon, Case Nos. 1:21-cv-1442

On October 1, 2021, the United States filed a complaint challenging the April 6, 2021 final order of the Department issued against the Bureau of Reclamation relating to the release of stored water from Upper Klamath Lake, as well as two notices of violation. Additionally, the complaint contained a petition for judicial review under the Oregon Administrative Procedures Act. A hearing date has not been set.

Yurok Tribe, et al. v. United States Bureau of Reclamation and National Marine Fisheries Service; U.S. District Court, Northern California, Case Nos. ND CA3:19-cv-0445

In 2019, Yurok Tribe and others challenged the final Biological Opinion under multiple Endangered Species Act and National Environmental Policy Act provisions. Klamath Water Users Association and Klamath Tribes filed as intervenors in the case. In October 2021, the United States filed a crossclaim in this case against the Department to bring the State of Oregon into the federal case. The crossclaim centered around the April 6, 2021 order issued by the Department to the Bureau of Reclamation relating to the release of stored water from Upper Klamath Lake. Oral argument has not been set.

III. Upcoming Commission/Board Schedules

<u>Commission / Board</u>	<u>Date</u>
Land Conservation and Development Commission	March 31 – April 1
Parks and Recreation Commission	April 13 – 14
Fish and Wildlife Commission	March 19
State Land Board	April 12 - Tentative
Environmental Quality Commission	March 31 – April 1
Watershed Enhancement Board	April 26 – 27
Board of Agriculture	May 3 – 5

Attachments:

1. Water Planning, Collaboration, and Investments Handout
2. Rulemaking Calendar

Water Planning, Collaboration, and Investments

What We Do

The **Planning, Collaboration, and Investments (PCI)** Team builds partnerships and incentivizes Oregonians to pursue integrated and innovative solutions for complex water challenges and an uncertain water future.

Why We Do It

We do this work to achieve a secure and sustainable water future, addressing instream and out-of-stream needs, for all Oregonians and Oregon's environment, economy, communities, and cultures.



How We Do It

- **Cooperative Partnerships.** Encourage Oregonians to partner with each other and the State of Oregon to reduce conflict and cooperatively manage water.
- **Strategic Investments.** Strategically invest in water supply planning, studies, and projects that provide social, environmental, and economic benefits.
- **Adaptive Planning.** Advance water planning and implementation that involves and empowers Oregonians and adapts to changing conditions.
- **Accessible Information.** Connect Oregonians to available data and information to help understand their water situation and explore strategies and solutions.
- **Effective Coordination.** Bring people and resources together through a coordinated approach that achieves results in priority basins and projects.

Highlighted Efforts

[Oregon's 2017 Integrated Water Resources Strategy](#) provides a blueprint for understanding and addressing our water resources needs and challenges. Our team partners with Oregonians to implement the state strategy through recommended actions such as:

- **Place-Based Water Planning** empowers communities to work collaboratively, in partnership with the state, to understand their instream and out-of-stream water resources needs and identify integrated solutions;
- **Feasibility Study Grants** cover up to 50 percent of qualifying costs to evaluate the feasibility of developing water conservation, reuse, and storage projects that advance the Department's mission and goals;
- **Water Project Grants and Loans** funds instream and out-of-stream water supply projects that achieve economic, environmental, and social/cultural public benefits.

Learn More!

Contact: Kim Fritz-Ogren, Section Manager | Kim.L.Ogren@oregon.gov | 503-509-7980

Funding Website: <https://www.oregon.gov/OWRD/programs/FundingOpportunities/Pages/default.aspx>

Planning Website: <https://www.oregon.gov/owrd/programs/Planning/PlaceBasedPlanning/Pages/default.aspx>

Water Planning, Collaboration, and Investments

Building partnerships and incentivizing strategies and solutions for complex water challenges and an uncertain water future.



Looking Back

Highlights from the past five years

Looking Forward

To the next five years and beyond

Strategic Investments



Over the last five years we invested:

- Four **planning grants** totaling ~\$1.2 million.
- Forty-one **feasibility study grants** totaling ~\$3.3 million.
- Twenty-eight **water project implementation grants** totaling ~\$28.7 million.

We will continue to offer annual funding cycles for [Feasibility Study Grants](#) (deadline in the fall) and [Water Project Grants and Loans](#) (deadline in the spring). We will develop the new **Well Abandonment, Repair and Replacement Fund** and new **Harney Domestic Well Remediation Fund**. We are also assuming management of the **Cost-Share Measurement Program**.

Adaptive Planning



We are partnering with four places, ([Upper Grande Ronde](#), [Lower John Day](#), [Mid-Coast Region](#), and [Harney Basin](#)) to develop **place-based integrated water resources plans**.

We are conducting [Planning Assessment](#) to evaluate place-based water planning and answer the question “how can we structure and support future planning?” We will help staff the **Regional Planning and Management work group** and continued conversations about future planning.

Cooperative Partnerships



We joined with **The Ford Family Foundation** and four planning groups to form the [Place-Based Planning Learning Partnership](#). We also partnered with **Sustainable Northwest, Association of Oregon Counties, National Policy and Consensus Center, and Oregon Community Foundation** in support of planning.

We host monthly [virtual conversations](#) for shared learning by those interested in, doing, or supporting water planning. We will work with others in the Department, the USGS, and communities on the development of **water budgets** and in support of the **Walla Walla Groundwater Study**, taking the lead on community engagement.

Accessible Information



From late 2017 to early 2021, we coordinated **76 technical assistance projects**, helping planning groups access, understand, and use data and information about water rights, surface water, groundwater, evapotranspiration, and more.

We are working with the Institute for Natural Resources, who will geospatially display available water data via [Oregon Explorer](#) and produce water snapshots by basin and county. This will support the Planning Assessment and places doing or looking to do water planning.

Effective Coordination



We coordinated Department participation in the [Upper Deschutes Basin Study](#) and efforts in support of a series of water development projects in the Umatilla Basin.

Our group will coordinate Department assistance and pursue solutions for the **Willamette, Deschutes, Umatilla, and Harney Basins** on complex issues for improved communication, alignment, and service.



Oregon Water Resources Department Current/Anticipated Rulemaking

Rule Division	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 10 – Critical Groundwater Areas (CGWA)	Conform Rules with ORS 537.730–742 / Establish Framework for CGWA Designations	Ivan Gall, Justin Iverson	Yes	2022	Preparing for Additional RAC Meetings
Division 54 (New Rule Division)	Conversion of Hydroelectric Water Right to Instream Water Right	Dwight French, Mary Graine	No	2022	Rules Prepared for WRC Decision
Division 77 – Instream Water Rights	Updates to Rules / Streamline District Lease Process / Consistency with SB 199 (2013) & SB 206 (2015) / Instream Leases and Transfers of Stored Water	Dwight French, Lisa Jaramillo, Sarah Henderson	No	TBD	Preparing to Reconvene RAC
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 Relating to Temporary Authorizations for Armed Forces Spouses	Kris Byrd	Yes	TBD	On Hold

Division 215	Replace Erroneously Repealed Section Relating to Dedicated Measuring Tubes (690-215-0200)	Kris Byrd	No	TBD	On Hold
Divisions 190 225 & 260	Updates to Rules / HB 2145 (2021) Implementation Relating to Exempt Map and Recording Fee / Civil Penalties	Kris Byrd, Travis Kelly	No	2022	Preparing for RAC
Division 51 – Hydroelectric Fees	HB 2143 (2021) Implementation (Repeal) Relating to Annual Fee	Dwight French, Mary Grainey	No	2022	Rules Prepared for WRC Decision
Division 380 – Water Right Transfers	HB 3103 (2021) Implementation Relating to Stored Water Character of Use Transfers	Dwight French, Lisa Jaramillo	No	2022	Preparing Draft Rules
Division 512 – Malheur Lake Basin Program	Update to Rules Following Publication of Groundwater Study	Ivan Gall, Justin Iverson	Yes	2022	Not Started