



March 24, 2021

MEMORANDUM

TO: Senator Kathleen Taylor and Representative Jeff Reardon, Co-Chairs
Joint Committee on Way and Means Subcommittee on Natural Resources

C: Matt Stayner, Legislative Fiscal Office

FROM: Thomas M. Byler, Director

SUBJECT: Response to Questions from Budget Hearing on March 22

During the March 22, 2021, Joint Committee on Way and Means Subcommittee on Natural Resources public hearing on the Water Resources Department's Budget, the Department committed to following up on requests for further information. Responses to the questions are provided below.

1. How much will the Department be billed as a result of House Bill 3315 (2015)?

House Bill 3315 (2015) required the Department of Fish and Wildlife to recoup costs incurred providing services to executive department agencies beginning July 1, 2019. Currently, the Department has received one invoice, totaling \$94,833.68 for the statement period of 7/1/2019 thru 6/30/2020. The Department projects that future invoices will be of similar dollar value and has projected that amount in each year of the biennium for a total of \$189,667.36 due to Oregon Department of Fish and Wildlife billings in the 2019-21 biennium. The Department anticipates this amount will increase each biennium due to state employee personnel cost adjustments. The Department has not received any additional funding to cover this new cost, which is roughly equal to leaving one position vacant for a biennium.

2. Does the Department have a plan that prioritizes dams? Please provide a list of the condition of dams needing repair across the state.

Over the years, limited resources have been dedicated to the safety of dams, and challenges in ensuring their safety are compounding. Engineering standards have evolved over time as our understanding of risks to dams and modes of failure have increased. Our understanding of seismic and flood risks in Oregon have also changed. Increased risks of severe floods as a result of climate change further heighten the Department's concern over the safety of dams across the state. Meanwhile, the majority of our dams are more than 50 years old, with some

showing signs of degradation or experiencing safety incidents requiring urgent repairs. For example, many of the high and significant hazard dams have large corrugated metal pipes penetrating the that are now rusted and deteriorated. In some cases, water leaks from the reservoir through the pipe and is posing some risk of dam failure. These emerging risks necessitate the need of additional assessments of dams to be conducted to evaluate their vulnerabilities to these risks.

The Department regulates dams across the state and prioritizes work on dams based on hazard ratings and, for high hazard dams, based on condition ratings. The hazard rating identifies the impacts of failure, whereas the condition rating identifies the condition of the dam and whether it has deficiencies. Failure of a high hazard dam would likely cause fatalities, and property damage. Failure of a significant hazard dam is unlikely to cause fatalities, but major property damage would likely occur. A low hazard dam poses little risk to people and limited risk to property. There are 78 high hazard dams, 151 significant hazard dams, and 716 low hazard dams that are regulated by the Department. Please see the Department's [response to questions](#) from the March 17, 2021 hearing.

The Department assigns a condition rating to each high hazard dam: fair, satisfactory, unsatisfactory, and poor. Chapter 4, page 67 of OWRD's written budget materials provides a summary of all high hazard dams that are of concern because they are either in poor or unsatisfactory condition. A list of the condition of all high hazard dams is also included on page four of the [March 17, 2021 response](#). Nineteen of the high hazard dams are in poor or unsatisfactory condition.

Due to limited resources, the Department's Dam Safety Program primarily focuses on conducting regular visual inspections of dams to identify potential deficiencies and conducts more detailed inspections as resources allow. As a result, the condition ratings of dams outlined above are generally based on a visual inspection. Some dams could see their condition ratings improve or decline, if a full risk assesment was conducted for each dam and, in some cases, if more detailed analyses of dams were completed. As such, the Department is operating with incomplete information as to the full spectrum of the condition of the dams.

More specifically, all high-hazard and significant hazard dams should have a full risk assessment conducted to identify potential vulnerabilities to floods, earthquakes, internal erosion, landslides, structural deterioration, and debris. With assistance from a FEMA grant, the Department is developing a risk assessment protocol and will be assessing 18 high hazard dams that are classified in poor or unsatisfactory condition as part of the grant.

The Department's dam safety program has significantly less engineers per dam than neighbor states. This lack of staffing precludes further risk assessment of state regulated dams. To address this issue, the Department has proposed POP 101. This package would improve our understanding of dam vulnerability in the state, and begin to take necessary safety actions through:

1. Hiring two engineers to conduct assessments on dams to determine seismic, flood, internal erosion, and other safety risks, which will help to prioritize dams for repair and funding, as well as for further analysis. This will allow the Department to conduct risk assessments for the remaining 60 high hazard and 151 significant hazard dams.
2. Developing an Oregon specific flood methodology for evaluating risks to dams, given new information about the role of atmospheric rivers, and also considering climate change in extreme rainfall events in the Pacific Northwest.
3. Contracting out for engineering analyses on dams that have been identified to be at risk of failure to determine specific actions needed to bring these dam back into a safe condition.

POP 101 includes additional resources related to emergency preparedness at dams, which were discussed in our March 17 response. The full description of the POP is included in the Department's budget documents and can be provided upon request.

3. Can the Department provide a summary of where the Department has put conditions on permits due to other agencies Division 33 reviews and whether those have resulted in litigation or a contested case?

Division 33 (OAR 690-033) sets public interest standards for threatened, endangered, or sensitive fish species. The purpose of these rules is to determine if new water uses may affect the habitat of sensitive, threatened, or endangered fish species, and to assist in the protection and recovery of declining fish populations. At the time the rules were adopted, they were in response to potential listings of several fish stocks under the federal Endangered Species Act. This review and the associated conditions are developed by staff from the Department Environmental Quality, Department Fish and Wildlife, Water Resources Department, and other state natural resource agencies as appropriate.

The [2019 Department Budget Note Report](#) describes contested cases and litigation actions from 2015, including past, current, and pending items as of July 1, 2019. Division 33 related protests arose on new surface water and reservoir permit applications. It is important to note that many protests related to Division 33 also had several protested issues not related to Division 33, such as basin rules or water right injury or enlargement.

Between 2015 and July 1, 2019, there were a total of 235 protests filed in response to Department proposed final orders. Of the 235 protests, 14 protests were for surface water applications, 11 protests were for reservoir permit applications, and 38 protests were for groundwater permit applications. Eleven of the protests received were related to Division 33; ten were filed by the applicant following the denial of their application for a permit and one was filed by a third party following the approval of an application. Three protests were filed on surface water permit applications, seven were filed on reservoir permit applications, and one was filed on a groundwater permit. As of the writing of the budget note report all of the contested cases were resolved on the three surface water permit application protests. For the reservoir permit application protests: three of the contested cases were resolved, three cases

were pending, and one case was in the Court of Appeals. The groundwater application permit protest was pending.

4. Questions about the Agency Request Budget Policy Option Packages

There were a number of questions during the committee hearing about the Department's Agency Request Budget Policy Option Packages. Those packages can be found on our website [here](#).