



North Santiam Sewer Authority

northsantiamsewer@gmail.com

northsantiamsewer.net

P.O. Box 256
444 S 1st Ave
Mill City, OR 97360

NSSA Board Meeting #94
September 3, 2024, at 6:00 pm
Mill City, City Hall

<https://us06web.zoom.us/j/86874219981>

Meeting ID: 868 7421 9981

- A. Roll Call and Declarations of Conflicts of Interest
- B. Announcements
- C. Public Comment

Old Business

- D. Consent Agenda
- E. Approval of July 1st Regular Board Meeting Minutes
- F. Approval of August 5th Regular Board Meeting Minutes

New Business

- G. Treasurer's Report (Evans)
 - a. Motion to Approve \$500 for Scofield Airfare
- H. Staff Report (Conroy)
 - a. Resolution for Letter of Support
 - b. 3-Basin and Funding Legislative Flyer
 - c. 3-Basin Rule Amendment Flyer
- I. County Update (Einmo)
- J. Agency Updates (DEQ, Business Oregon, Regional Solutions Coordinator)

Upcoming Events:

Date	Event	Location
09/03/2024	NSSA Regular Board Meeting	Mill City, City Hall and Zoom
10/07/2024	NSSA Regular Board Meeting	Mill City, City Hall and Zoom



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**NSSA Board Meeting #92 Minutes
July 1, 2024 at 6:00 PM
Mill City, City Hall and Zoom**

Meeting called to order at 6:08 p.m.

A. Roll Call and Declarations of Conflicts of Interest

Present: Tim Kirsch, Chair, Mill City; Janet Zeyen-Hall, Secretary, Mill City; Ron Evans, Treasurer, Gates; Emily Scofield, Vice-Chair, Gates; Denny Nielsen, Detroit, Communications Chair

Marion County: Chris Einmo, Chris Eppley, Brian Nicholas

DEQ: Mary Camarata

Keller Associates: Pam Villarreal, Peter Olsen

COG Staff: Laura Conroy, Deza'Rae Collins

Others: Stephen Floyd

Absent: Tony Morones, Idanha; Marion County: Tsigereda Woldegiorgis; **Cable Huston:** Timmy Brooks;

No conflicts of interest were declared.

B. Announcements: None

C. Public Comments: None

Old Business:

D. Consent Agenda

Motion to approve the Consent Agenda by Nielsen, seconded by Scofield; Unanimous Motion passed. **In favor:** All present. **Opposed:** None. **Abstained:** None.

Approval of June 3rd Budget Committee Summary Notes.

Motion to approve the June 3rd Budget Committee Summary Notes by Nielsen, seconded by Scofield; Unanimous

Motion passed. **In favor:** All present. **Opposed:** None. **Abstained:** None.

Approval of June 3rd Board Meeting Minutes

Motion to approve the June 3rd Board Meeting Minutes by Nielsen, seconded by Scofield; Unanimous

Motion passed. **In favor:** All present. **Opposed:** None. **Abstained:** None.

New Business:

E. Treasurer's Report (Evans)

Treasurer Evans provided details on current spendings and balances as of June 30th. The accounting report included a starting balance of \$146,926k and an ending balance of \$52,568 to start the new budget fiscal year 24-25. There were discussions around budget and funding constraints impacting project plans however, still waiting to hear back about the pending grant of \$195k.

F. Staff Report (Conroy) (see packet)

Laura Conroy provided a staff report, emphasizing the team's efforts on preparing and filing the budget with the Department of Revenue for fiscal year 23-24 and 24-25, which satisfies requirements. Additionally, attorney hourly rates for Cable Houston will be increasing by \$5/hour and the \$195k is still pending therefore future work is on hold for time being.

G. County Update (Einmo)

Chris Einmo, Marion County and Peter Olsen, Keller Associates provided updates on the project design. Peter detailed ongoing tasks, including treatment plant site modeling, survey completions, environmental investigations, and progress on design phases. Discussions also touched upon operational timelines, permitting challenges, and ODOT right-of-way requirements for a particular commercial septic system. Reminded group that septic replacement grant applications is still open.

H. Mill City Construction Delivery Agreement Update (Kirsch)

Discussions about the delivery agreement remain ongoing. The current focus is property procurement and meetings are being scheduled with Marion County to discuss priority concerns to include in the agreement.

I. Agency Updates (DEQ, Business Oregon, Regional Solutions)

DEQ:

Keller Associates will meet to discuss preliminary limitations for the wastewater treatment plant and review the groundwater reports. DEQ is currently working with Marion County sanitary department to assess the usability of the current system.

Regional Solutions:

No updates.

Business Oregon

No updates.

Meeting Adjourned: 6:45 p.m.



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**NSSA Board Meeting #93 Minutes
August 5, 2024 at 6:00 PM
Mill City, City Hall and Zoom**

Meeting called to order at 6:10 p.m.

A. Roll Call and Declarations of Conflicts of Interest

Present: Tim Kirsch, Chair, Mill City; Janet Zeyen-Hall, Secretary, Mill City; Ron Evans, Treasurer, Gates; Denny Nielsen, Detroit, Communications Chair

Marion County: Chris Einmo, Chris Eppley, Tsigereda Woldegiorgis, Brian Nicholas

DEQ: Mary Camarata

Business Oregon: Arthur Chaput

COG Staff: Laura Conroy, Deza'Rae Collins

Others: Ken Woodward, Detroit

Absent: Tony Morones, Idanha; Emily Scofield, Vice-Chair, Gates

No conflicts of interest were declared.

B. Announcements: None

C. Public Comments: None

Old Business:

D. Consent Agenda

E. Approval of July 1st Regular Board Meeting Minutes

Consent agenda and approval of minutes was moved to September 3rd, 2024 Board Meeting.

New Business:

F. September 2nd reschedule date

September 2nd NSSA Boarding Meeting is rescheduled for September 3rd due to Labor Day.

G. Treasurer's Report (Evans)

The treasurer reported two invoices received for (1) \$2,000 from the COG and (2) a CNS insurance policy renewal.

Discussion took place regarding reimbursement for Emily's business trip to a symposium in the

Netherlands. Emily's scholarship covered certain expenses but not the airfare and food expenses which totaled about \$2500 round trip. After extensive discussion questioning the necessity and benefit to the association, the board decided not to fund the expense.

H. Staff Report (Conroy) (see packet)

The administrative services notified the board that the NSSA free Google account has reached storage capacity. Discussion included potential solutions such as purchasing additional storage for \$10/month or moving files to a thumb drive. The thumb drives would either be stored at city hall or the secretary's safe.

Staff will review the cost of a yearly subscription and the archive record timeline. Both solutions could be used by using thumb drives as backup while maintaining storage on Google Drive. The meeting videos are also stored on the NSSA YouTube channel which is not running out of storage.

Administrative staff also presented the possibility of re-organizing the electronic files in Google drive and will develop an organization structure chart to present to the board at September's meeting.

Laura Conroy notified the group that a 3-Basin Rule amendment toolkit has been created and is being used in support of a petition to the 3-Basin Rule. A resolution is planned to be ready and available in September.

Thus far, 121 residential Septic Grants have been issued in the North Santiam Canyon region totaling ~\$626,000.

I. County Update (Einmo)

Chris Einmo provided an update on the Mill City-Gates field testing being conducted on the affluent discharge and measurements of groundwater. Drone footage will be collected to present progress of the testing.

Einmo also provided an update on the 3-basin rule petition, emphasizing the importance of a viable permitting process. The board was asked for support on the petition to obtain permitting.

Discussion took place regarding issues related to the commercial septic system permitting process in Detroit which is different than the residential permitting process and presents its own challenges in fitting systems on smaller lots.

Einmo presented a short-term solution consisting of holding tanks that are more likely to be permitted.

J. Agency Updates (DEQ, Business Oregon, Regional Solutions):

DEQ:

DEQ has met with Marion County regarding the Cedars commercial property in Detroit which does not have enough space to repair an older septic system although, DEQ will remain available for consultation. Mary confirmed that the 3-Basin Rule petition could take about 6 months between the review process, receiving public comment and adopting the amendment.

Business Oregon: No updates.

Regional Solutions: No updates.

K. **Executive Session was cancelled.**

Meeting Adjourned: 7:27p.m.



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Date: August 30, 2024
To: NSSA Board
From: Laura Conroy, Project Manager and Budget Officer
Subject: August Staff Report

Introduction

This memo provides an overview of staff activities for August in support of the NSSA. Staff continued to prioritize efforts to update the three-basin rule with Marion County and other interested parties and advocate for funding for the completion of the Detroit/Idanha facility.

Communications

COG staff is continuing coordinate communications with Marion County to inform interested parties about the need for a three-basin rule update. Materials include an FAQ, letters and resolutions of support for cities and other public bodies to adopt, cover memo and actual petition language. A media release was also created and distributed regarding the three-basin rule amendment. An email was sent to over 20 interested parties on Friday August 30, 2024 requesting support for the petition and offering to have the project team meet with interested communities and organizations. COG continues to assist with reaching out ensure engagement with all known or knowable interested parties.

DEQ Regulatory Pathway Meetings

COG staff continue to coordinate with County staff, DEQ and interested parties in support of a petition to update the Three Basin Rule in response to the Supreme Court's *Maui* decision and draft EPA guidance to ensure the treatment facilities being designed and constructed can be permitted to operate. Efforts have primarily been focused on communications and outreach. A **flyer** which includes information about the three basin rule amendment is in the packet.

COG continues to support staff level meetings between the County and downstream parties to discuss the need for a three basin update. COG participated in a second meeting with Marion County and the Confederated Tribes of Grand Ronde staff to discuss the update to the three-basin rule. Tribal staff requested additional information and will work to present information to the tribal council in September. COG staff participated in a meeting with City of Salem staff on August 30th. Staff believe the Salem Council will issue a policy statement directing City of Salem staff to work with Marion County on the petition. COG staff emailed over 20 interested parties on August 30th with a request to support the Three Basin Rule petition and offer to present information about the Three Basin Rule petition. The content of the email and list of interested parties that were sent the email is attached.

The petition for the rule update was filed on August 8th. DEQ advised Marion County that it would like to give Marion County time to amend its petition. Marion County resubmitted its petition on August 30th. The DEQ has 90 days from August 30th to decline the petition or begin rulemaking process which could take up to a year to complete.

Legislative Pathway for Permitting

Conversations have restarted about a bill for the 2025 session that would create statutory authority for the development and permitting of domestic sewage treatment facilities in the three basins in the event an administrative rule change process is unsuccessful or not timely. A flyer which includes the funding request and statute change to allow a CWA permit for domestic municipal sewage facilities is in the packet.

Construction Funding

COG staff continued to meet with county staff, business Oregon and the regional solutions team coordinator regarding other funding sources.

Detroit Commercial Septic Grants

The County continues to reach out to commercial septic owners in Detroit. As the county will explain in their update, the DEQ has signaled that commercial septic owners will be required to obtain WPCF permits. This is a change in agency interpretation its rules that may delay construction of commercial septic solutions.

Residential Septic Grants

The deadline for applying for residential septic grants is October 1 of this year. COG and Marion County both have grant funds available for residential septic grants. COG received a 2 million dollar grant from DEQ. The amount of COG's grant awards depends on the property

owners income in 2021. Higher amounts are available for individuals with income below the Census determined median income level.

Google Drive storage packages

1GB of data is required per hour of video, so about 12-24GB is needed per year

Basic (100 GB)

\$11.99 for 1 year

\$19.99/year after

- 100 GB of storage for Photos, Drive & Gmail
- Share storage with up to 5 others

Standard (200 GB)

\$17.99 for 1 year

\$29.99/year after

- 200 GB of storage for Photos, Drive & Gmail
- Share storage with up to 5 others
- 3% back in the Google Store

Premium (2 TB)

\$59.99 for 1 year

\$99.99/year after

- 2 TB of storage for Photos, Drive & Gmail
- Share storage with up to 5 others
- Unlimited Magic Editor saves in Google Photos
- 10% back in the Google Store
- Google Workspace premium features

Organization	Contact Name
Grande Ronde Tribe	Michael Karnosh
Warm Springs Tribe	Tribal Preservation Officer, or Robert Brunoe, Nat. Res. GM (?)
Siletz Tribe	Isaac Kentta, Infrastructure Mike Kennedy, Nat. Res. Director
City of Salem	Jason Pulley
City of Stayton	Lance Ludwick (Director PW) Jennifer Siciliano (Community & Economic Development Directc
City of Sandy	Jenny Coker (PW Director)
City of Springfield	City Managers Office
Linn County	Linn Co Environmental Health Annex
Clackamas County	Septic and Wastewater Program Public Health
Lane County	Dan Hurley (PW Department Director)
Clackamas River Water Providers	Christine Hollenbeck (WR Mgr) Kimberly Swan (Public Outreach)
City of Eugene/Eugene Water and Electric Board (EWEB)	Water Quality & Safety
Watershed Council List	See tab
SWCD	Kevin Fenn (PM) Isaak Stapleton (Director of Natural Reosurces Program Area)
Oregon Dept of Fish and Wildlife (ODFW)	Beth Quillian (Communications Coordinator)
Partners of the North Santiam	*See notes section
Council of Water Leaders	Suzanne de Szoeki
Willamette River Keepers	Bob Sallinger (ED and Riverkeeper) Vanessa Youngblood (Restoration Manager)
McKenzie River Trust	*No direct contact, but contact form

McKenzie Watershed Council	Jared Weybright (ED) Haley Case-Scott (Upper Willamette Tribal Liaison) Lara Colley (Watershed Restoration Specialist) Alex Renirie (Pure Water Partners Coordinator)
Santiam Canyon Long Term Recovery Group	Kevin Dial (Recovery Manager)
North Santiam Water Council	Brandon Hilbrandt
Pure Water Partners	General inquiries
Oregon Water Resources Department	Oregon Water Resources Department Data/Maps
Clackamas Partnership	See tab
Clackamas Water Environment Service	Customer service
Oregon Association of Water Utilities (OAWU)	General office contact
ACWA (Oregon)	*Member directory blocked unless a member, but contact for
Northwest Environment Advocates	*No direct contact, but contact form
Beyond Toxics	Lisa Arkin (ED) Eric Richardson (NAACP Environmental & Climate Justice Liaison) Raevyn Thompson (Environmental & Climate Justice Organizer)
Northwest Environmental Defense Center	Jonah Sandford (ED) Mary Stites (Legal Fellow) Grayson Murray (Law Clerk)



NSSA <northsantiamsewer@gmail.com>

Request for Support of Petition to Update the Three Basin Rule

4 messages

Denny Nielsen, Board Member <northsantiamsewer@gmail.com>

Fri, Aug 30, 2024 at 11:30 AM

To: Michael.Karnosh@grandronde.org, JPulley@cityofsalem.net, pw@ci.sandy.or.us, cmomail@springfield-or.gov, linneh@linncountyhealth.org, lcpwadmn@lanecountyor.gov, water.quality@eweb.org, beth.s.quillian@odfw.oregon.gov, sdeszoeke@gsiws.com, kdial@santiamrecovery.org, council@northsantiam.org, info@purewaterpartners.org, wescustomerservice@clackamas.us, office@oawu.net, MikeK@ctsi.nsn.us, lludwick@staytonoregon.gov, jsiciliano@staytonoregon.gov, septicinfo@clackamas.us, publichealthdivision@clackamas.us, christine@clackamasproviders.org, kims@clackamasproviders.org, kevin.fenn@oda.oregon.gov, isaak.stapleton@oda.oregon.gov, bob@willametteriverkeeper.org, vanessa@willametteriverkeeper.org, jared@mckenziawc.org, haley@upperwillamette.org, lara@mckenziawc.org, alex@mxkenziawc.org, larkin@beyondtoxics.org, arichardson@beyondtoxics.org, rthompson@beyondtoxics.org, jonah@nedc.org, mary@nedc.org, nedc@lclark.edu

Bcc: Chris Eppley <ceppley@co.marion.or.us>, Chris Einmo <CEinmo@co.marion.or.us>, Brian Nicholas <bnicholas@co.marion.or.us>, dcollins@mwwcog.org

Good morning,

We are writing this morning to share information about wildfire recovery efforts in the Santiam Canyon, the North Santiam Canyon Wastewater Project and an effort to update and align the Three Basin Rule with recent US Supreme Court decisions. The North Santiam Sewer Authority is strongly supportive of collaboration and cooperation with interested parties regarding the project and the rule aligning effort. We invite interested parties to engage in conversation with us regarding the project and the need for an update to the Three Basin Rule.

[Marion County is the fiscal and operational partner for the North Santiam Canyon Wastewater Project. The County is coordinating a petition to amend OAR 340-041-0350, also known as the Three Basin Rule.](#) The North Santiam Canyon Wastewater Project is a key initiative aimed at replacing outdated septic systems with a modern sewer treatment system in the wildfire affected communities of Gates, Mill City, Idanha, and Detroit.

Current rules pose significant barriers and risks to issuing the necessary permits for the proposed new wastewater treatment facilities in the North Santiam area. They also create barriers to the development of effective, high-quality treatment facilities that can be permitted with confidence in the McKenzie and North Clackamas river basins. Adjustments to the Three Basin Rule are needed to address these challenges.

What does this Amendment Mean? How does this Impact My Organization and Community?

We understand that maintaining a high level of water quality and protecting drinking water, as well as fish and river resources in these areas is a priority for community members and for downstream water users. It is important to emphasize that the proposed sewage treatment upgrades are designed to achieve these goals, support the community's economic recovery, and provide further protection of our water resources, especially in the aftermath of the devastating 2020 wildfires.

Project Team Presentation and Discussion With Your Organization

The North Santiam Sewer Authority is strongly supportive of collaboration and cooperation with interested parties regarding the project and the rule aligning effort. The project team is available to present to your organization to share information and respond to questions. Please contact Laura Conroy Project Manager with North Santiam Sewer Authority lconroy@mwvcog.org if you would like the project team to present to your organization or community.

Call To Action! We are requesting local organization and community support for the petition to update the Three Basin Rule. Updating the Three Basin Rule will enable us to:

1. Rebuild and revitalize our communities;
2. Promote sustainable growth; and
3. Preserve high-quality water standards.

Thank you for your consideration of this important matter! We look forward to finding a solution that benefits both our communities and the environment. For more information including a copy of the petition, sample language of support and project updates, please visit the project website: <https://www.northsantiamsewer.net/>



North Santiam Sewer Authority
[northsantiamsewer.net](https://www.northsantiamsewer.net)

BEFORE THE BOARD OF DIRECTORS
FOR THE NORTH SANTIAM SEWER AUTHORITY

RESOLUTION 2024-3

WHEREAS, NSSA wishes to express strong support for Marion County’s petition to amend the Three Basin Rule (OAR 340-041-0350).

WHEREAS, amendments to the rule are essential to ensuring the state and local communities can continue to maintain the water quality of the North Santiam, Clackamas, and McKenzie rivers while allowing for local communities in these areas to thrive.

WHEREAS, due to recent court decisions, the current provisions of the Three Basin Rule represent a barrier to effective regulation of water quality in the areas subject to the rule, and proposed changes to the rule will allow the Oregon Department of Environmental Quality (DEQ) to regulate effluent from local sewer systems through federal permitting requirements, and these federal requirements will allow DEQ to regulate water quality to a higher standard in comparison to current rules.

WHEREAS, the changes to the rule will also allow local communities more flexibility in how they manage and treat wastewater in these areas., and in turn, that flexibility will allow these communities to continue to grow and thrive, contributing to their economic vitality and environmental health, and this is particularly critical for communities in the North Santiam Canyon who are in the process of rebuilding after suffering the devastation brought by the Beachie Creek and Lionshead wildfires in 2020 which destroyed large portions of the cities of Mill City, Gates, Detroit, and Idanha.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the North Santiam Sewer Authority:

THAT, the NSSA Board supports the petition to amend the Three Basin Rule attached as Exhibit A, as these necessary and critical changes to the Three Basin Rule are essential to maintaining a healthy environment, allowing rural communities to chart a sustainable future, and allowing for flexibility in adjusting to regulatory goals and challenges.

THAT, we urge the Environmental Quality Commission (EQC) to adopt these changes.

ADOPTED by the Board of Directors of the North Santiam Sewer Authority this 3rd day of September, 2024.

ATTEST

Tim Kirsch
NSSA Board of Directors

Laura Conroy
Budget Officer

Protect Water. Build Communities. Support Sewer, Not Septic.



Current Challenges

Regulatory Prohibitions: Currently, DEQ prohibits Clean Water Act discharge permits for municipal sewage treatment facilities in three Oregon river basins. DEQ issues these permits to other communities in the state.

Funding Limitations: The tourist influx in Detroit demands a robust sewer treatment system, costing approximately \$80 million. Given the small local population, securing sufficient funding through typical state loans or grants is challenging, necessitating legislative appropriation.

Proposed Solutions

Permit Issuance: We need the Oregon legislature to pass a law directing DEQ to issue Clean Water Act permits for modern wastewater treatment facilities in the Three Basins. This will enable communities to upgrade from outdated septic systems.

Funding Allocation: We need the Oregon legislature to allocate funds to construct a municipal sewer system for Detroit and Idanha. With master planning and site investigations completed, \$80 million is needed to finalize the design and construction of the facility.

What is the North Santiam Canyon Wastewater Project?

The North Santiam Canyon Wastewater Project is a plan to improve how wastewater is handled in the Gates, Mill City, Idanha, and Detroit communities. Instead of using septic systems, these communities will switch to a modern sewer system. This project is important for helping these communities recover and grow after the 2020 wildfires, and it also helps protect the environment and support the local economy.

How will the project impact water quality and aquatic species?

The new wastewater treatment plant in Mill City will use advanced methods to clean the water before it goes back into the environment. It will use a multi-step system, including rapid infiltration basins and natural filtration through the ground before reaching the river. These steps will ensure high water quality and help protect local aquatic life.

Who is involved in rebuilding efforts for the North Santiam Canyon?

Many local agencies are helping, including the four cities (Gates, Mill City, Idanha, and Detroit), the North Santiam Sewer Authority (NSSA) board, DEQ, Linn County, Marion County, Santiam Hospital, and downstream communities that use water from the North Santiam River.

What changes in federal law are affecting this project?

Recent court cases are changing the rules and permitting processes for some types of wastewater treatment. In Oregon, the "Three Basin Rule" controls how treated wastewater can be released into groundwater and surface water in the North Santiam, McKenzie, and Clackamas River basins. These legal decisions mean the Three Basin Rule will need updates to allow projects like the North Santiam project to move forward.

What is the Three Basin Rule, and why does it prohibit Clean Water Act permits in these basins?

The Three Basin Rule is a law that regulates water quality in the Clackamas, McKenzie, and North Santiam Rivers. It does this by not allowing new permits. Places like city wastewater treatment plants, factories, and stormwater systems need permits to release water. The main goal of these permits is to keep the water safe and clean, protecting the environment and our health.

What steps are being taken to address these changes in regulations?

Marion County has petitioned the DEQ to update the Three Basin Rule. These proposed changes will allow local wastewater treatment plants, like the one planned in Mill City, to discharge treated water with a federal permit. We also need the Oregon Legislature to pass legislation to allow the permits and allocate funding.

Petition to Amend a Rule

Oregon Department of Environmental Quality

In the matter of the Amendment)	PETITION TO AMEND
of OAR 340-041-0350, amending)	OAR 340-041-0350
the Three Basin Rule.)	(Three Basin Rule)

1. Petitioner is Marion County, 555 Court St. NE, Suite 5232, Salem, OR 97301.
2. The 2020 Beachie Creek and Lionshead wildfires devastated the communities of Mill City, Gates, Detroit, and Idanha in the basin of the North Santiam River. These cities are home to several thousand Oregon residents and draw tens of thousands of visitors every year. Rebuilding and economic recovery efforts in these communities have been paralyzed by the lack of a modern domestic sewage system. Petitioner has been working towards the design of sewer systems (the “Facilities”) since 2019 and is relying on ARPA funding via the state to construct and commission these systems.
3. Petitioner has incurred significant expenses toward the design of the Facilities, which would create important ecological, environmental, and societal benefits, consistent with the goals of the Three Basin Rule.
4. On April 23, 2020, the U.S. Supreme Court held in *County of Maui v. Hawaii Wildlife Fund*, 590 U.S. ____ (2020), that discharges to groundwater require a National Pollutant Discharge Elimination System (“NPDES”) permit if the discharge is the “functional equivalent of a direct discharge to surface waters.” In November 2023, the Environmental Protection Agency published a guidance on the topic confirming that certain groundwater discharges may require NPDES permits if deemed the functional equivalent of a direct discharge to surface waters.
5. The Three Basin Rule prohibits the issuance of new NPDES permits in the North Santiam Basin, and instead directs the Oregon Department of Environmental Quality (“DEQ”) to rely on its Water Pollution Control Facilities (“WPCF”) program to permit new discharges. The Facilities are designed to discharge wastewater to the ground under the WPCF permit program. However, the *Maui* decision and subsequent EPA guidance indicate that discharges from the Facilities could be deemed the “functional equivalent of a direct discharge to surface waters.” This legal and regulatory landscape creates a situation in which the Facilities may be required to obtain NPDES permits under the Clean Water Act that the DEQ is not authorized to issue under the Three Basin Rule, despite the Facilities advancing the goals of the Three Basin Rule.
6. Petitioner proposed that OAR 340-041-0350 be amended to grant DEQ the authority to issue new NPDES permits for domestic sewage treatment facilities in the Clackamas, McKenzie (above RM 15) & North Santiam Basin if DEQ finds that: (1) groundwater discharge of treated municipal sewage effluent from the facility is the functional equivalent to a direct discharge to waters of the state (the “Maui component”); and (2) the

new domestic sewage treatment facility will help preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life after considering several factors introduced in this Petition to Amend (the “Three Basin Rule component”).

7. OAR 340-041-0350 as petitioner proposes to amend it would read as follows:

OAR 340-041-0350. The Three Basin Rule: Clackamas, McKenzie (above RM 15) & the North Santiam

(1) In order to preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life, new or increased waste discharges must be prohibited, except as provided by this rule, to the waters of:

(a) The Clackamas River Subbasin;

(b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);

(c) The North Santiam River Subbasin.

(2) Except as otherwise provided for in this rule, this rule becomes effective and applies to all permits pending or applied for after the date of filing with the Secretary of State.

(3) Special Definitions. The following special definitions apply to this rule:

(a) “Waste Discharges” are defined to mean any discharge that requires an NPDES permit, WPCF permit, or 401 Certification. Individual on-site sewage disposal systems subject to issuance of a construction-installation permit; domestic sewage facilities that discharge less than 5,000 gallons per day under WPCF permit; biosolids land applied within agronomic loading rates pursuant to OAR 340-050; and reclaimed domestic waste water land applied at agronomic rates pursuant to OAR 340-055 are excluded from this definition.

(b) “Existing Discharges” are defined as those discharges from point sources which existed prior to January 28, 1994;

(c) “Existing Facilities” are defined as those for which construction started prior to January 28, 1994. Where existing facilities are exempted from requirements placed on new facilities, the exemption applies only to the specific permit(s) addressed in the subsection which allows the exemption;

(d) “New” NPDES and WPCF permits are defined to include permits for potential or existing discharges which did not previously have a permit, and existing discharges which have a permit, but request an increased load limitation;

(e) “Agronomic Loading Rate” means the application of biosolids or reclaimed effluent to the land at a rate which is designed to:

(A) Provide the quantity of plant nutrients, usually nitrogen, needed by a food crop, feed crop, fiber crop, cover crop or other vegetation grown on the land; and

(B) Minimize the quantity of nitrogen or other nutrients from land applied materials that pass below the root zone of the crop or vegetation grown on the land to groundwater.

(f) “Biosolids” means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemical stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application;

(g) “Reclaimed Wastewater” means treated effluent from a domestic wastewater treatment system which, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.\

(h) “Groundwater Discharge” means the disposal, deposit, or placement of treated wastewater effluent or other fluid below the ground surface or the disposal, deposit, or placement of treated wastewater effluent or other fluid to the ground surface in a manner and location where it is reasonably assumed the treated wastewater effluent or other fluid will infiltrate the ground surface and impact the groundwater resources of the state.

(4) To respond to emergencies or to otherwise avoid imminent serious danger to public health or welfare, the Director or designee may allow lower water quality on a short-term basis.

(5) The Director or a designee may renew or transfer NPDES and WPCF permits for existing facilities. Existing facilities with NPDES permits may not be granted increases in their permitted mass load limitations. The following restrictions and exceptions apply:

(a) The Department may conduct an inspection prior to permit renewal. Existing sources with general permits that are found not to qualify for a general permit, and who wish to continue discharging, must apply for an individual permit;

(b) Fish hatcheries (General Permit 300) and log ponds (General Permit 400) are required to apply for an individual permit at the time of permit renewal;

(c) Additional industrial, confined animal feeding operations, or domestic waste loads that are irrigated on land at agronomic rates or that otherwise meet the conditions of section (78) of this rule is not be considered to be an increase in the permitted wasteload.

(6) The Director or a designee may issue the following General Permits or Certifications subject to the conditions of the Permit or Certification:

(a) Stormwater construction activities (General Permits 1200C and 1200CA);

- (b) Underground storage tank cleanups using best available treatment technology (General Permit 1500);
- (c) Non-contact cooling water (General Permit 100);
- (d) Filter backwash (General Permit 200);
- (e) Boiler blowdown water (General Permit 500);
- (f) Suction dredging (General Permit 700) only in portions of the basins that are not designated as Scenic Waterways under ORS 390.805 (Definitions for ORS 390.805 to 390.925) to 390.925 (Enforcement);
- (g) Federal Clean Water Act Section 401 water quality certifications.

(7) The Department may issue a new NPDES permit for a new publicly owned treatment works utilizing groundwater discharge if the Department finds that:

(a) Groundwater discharge of treated municipal sewage effluent from the publicly owned treatment works is or is likely to be the functional equivalent to a direct discharge from a point source into navigable waters;

(b) The new publicly owned treatment works meets discharge requirements that will result in the best practicable treatment or control of the discharge necessary to maintain or improve water quality consistent with the authorized beneficial uses identified in OAR 340-041-0340 Table 340A;

(c) The new publicly owned treatment works treats the wastewater discharge to equivalent to secondary treatment standards or higher;

(d) All relevant statutory and regulatory requirements for all new point source discharges and all reasonable best management practices for nonpoint source control are achieved;

(e) The groundwater discharge, as regulated under the NPDES permit program, will preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life in the Clackamas, McKenzie, and North Santiam basins. DEQ may consider emerging contaminants in making this finding.

(f) Any bypass or upset from the publicly owned treatment works that results in untreated wastewater effluent shall be contained, transported offsite, or directed to the groundwater discharge location. Untreated wastewater shall not be directly discharged to any surface water body; and

(g) The groundwater discharge is located a sufficient distance from the rivers described in Section (1) of this Rule in order to provide reasonable additional protection above and beyond that required by the NPDES Permit. The factors to be considered include increased travel time, groundwater dilution, and attenuation of the discharge. In no event

shall the groundwater discharge be located closer than 500 feet from the nearest ordinary high water mark of any water body covered under Section (1) of this Rule.

(7-8) Long-term general and individual stormwater permits may be allowed as required by State and/or Federal law. The following requirements apply:

(a) New stormwater discharge permit holders must maintain a monitoring and water quality evaluation program that is effective in evaluation of the in-stream water quality impacts of the discharge; and

(b) When sufficient data is available to do so, the Department will assess the water quality impacts of stormwater discharges. Within a subbasin, if the proportion of total degradation that is contributed by the stormwater is determined to be significant compared to that of other permitted sources, or if the Department determines that reducing degradation due to stormwater is cost-effective when compared to other available pollution control options, the Department may institute regulatory mechanisms or modify permit conditions to require control technologies and/or practices that result in protection that is greater than that required Statewide.

(89) Industrial waste discharge sources, confined animal feeding operations, and domestic sewage treatment facilities must meet the following conditions:

(a) No NPDES permits for new industrial or new confined animal feeding operation waste discharges, or new domestic sewage treatment facilities may be issued, except as allowed under sections (3), (4), (5), ~~and~~ (6), and (7) of this rule;

(b) The Department may issue WPCF permits for new industrial or confined animal feeding operation waste discharges provided:

(A) There is no waste discharge to surface water; and

(B) All groundwater quality protection requirements of OAR 340-040-0030 (Permitted Operations) are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030 (Permitted Operations), unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held prior to Commission action on the request.

(c) The Department may issue WPCF permits for new domestic sewage treatment facilities provided there is no waste discharge to surface water and provided:

(A) All groundwater quality protection requirements of OAR 340-040-0030 (Permitted Operations) are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030 (Permitted Operations), unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change

in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held and the permit application will be evaluated according to paragraphs (B) and (C) of this subsection;

(B) The Commission finds that the proposed new domestic sewage treatment facility provides a preferable means of sewage collection, treatment and disposal as compared to individual on-site sewage disposal systems. To be preferable, the Commission must find that one of the following criteria applies:

(i) The new sewage treatment facility will eliminate a significant number of failing individual on-site sewage disposal systems that cannot be otherwise reliably and cost-effectively repaired; or

(ii) The new sewage treatment facility will treat domestic sewage that would otherwise be treated by individual on-site sewage disposal systems, from which the cumulative impact to groundwater is projected to be greater than that from the new facility; or

(iii) If an individual on-site sewage disposal system, or several such systems, would not normally be utilized, a new sewage treatment facility may be allowed if the Commission finds that the social and economic benefits of the discharge outweigh the possible environmental impacts.

(C) Applicants for domestic wastewater WPCF permits must meet the following requirements:

(i) Application must be for an individual permit; and

(ii) The proposed discharge must not include wastes that incapacitate the treatment system; and

(iii) The facility must be operated or supervised by a certified wastewater treatment plant operator as required in OAR 340-049-0015 (General Requirements), except as exempted by ORS 448.430 (Certification exception); and

(iv) An annual written certification of proper treatment and disposal system operation must be obtained from a qualified Registered Sanitarian, Professional Engineer, or certified wastewater treatment system operator.

(910) The Environmental Quality Commission may investigate, together with any other affected State agencies, the means of maintaining at least existing minimum flow during the summer low flow period.

8. Petitioner has no knowledge of any person who may have a particular interest in the proposed amendment of OAR 340-041-0350.
9. The rule as amended would not overlap, duplicate, or conflict with any state, federal or local regulation that petitioner has identified.

10. Since the rule was first adopted, the Supreme Court decision in *Maui* and EPA guidance has made the rule prohibition on NPDES permits for domestic sewage treatment facilities unworkable and threatens the ecology of the Three Basins and the livelihood of the communities that live there.
11. The proposed rule amendment is necessary to rebuild the communities impacted by the Beachie Creek and Lionshead wildfires and to preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life, in the Clackamas, McKenzie (above RM 15) & North Santiam Basin.

Dated August 8, 2024

Marion County

By _____