



Staff Report

File #: 24-420

Version: 1

Date: 10/14/2024

Item #: 3.3e.

TO: Mayor and City Council
THROUGH: Keith Stahley, City Manager
FROM: Brian D. Martin PE, Public Works Department

SUBJECT:

City of Salem's comments to the Oregon Department of Environmental Quality on Marion County's Three Basin Rule rulemaking petition.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Reliable and Efficient Infrastructure

SUMMARY:

Marion County submitted a petition for rulemaking to amend the Three Basin Rule (OAR 340-041-0350) as a necessary step to obtain a permit for a proposed community wastewater system for the cities of Mill City and Gates in the North Santiam canyon. The Three Basin Rule as currently written prohibits the issuance of a National Pollutant Discharge Elimination System (NPDES) permit for the Clackamas, North Santiam, and McKenzie river basins. The petition would allow the Oregon Department of Environmental Quality (DEQ) to issue an NPDES permit for the project. The City's position is that the NPDES permit is the only regulatory pathway that could be supported for the proposed facility. In order to timely submit comments to DEQ on the rulemaking in support of the proposed the amendments, staff asked the Mayor to sign the comments on behalf of the City. City Council is being asked to ratify the Mayor's endorsement of the rulemaking.

ISSUE:

Shall City Council ratify the attached Mayor's comments to DEQ on Marion County's Three Basin Rule petition for rulemaking.

RECOMMENDATION:

Ratify the attached Mayor's comments to DEQ on the Three Basin Rule rulemaking petition from

Marion County.

FACTS AND FINDINGS:

Marion County submitted a petition to DEQ on August 30, 2024, to amend the Three Basin Rule. The need for the amendments is to allow DEQ to issue a permit for a proposed wastewater treatment facility that will serve the cities of Mill City and Gates in the North Santiam canyon. Under the current Three Basin Rule, DEQ is prohibited from issuing an NPDES permit for discharges within the Clackamas, North Santiam, and McKenzie river basins.

The City has been working closely with Marion County throughout the planning and permitting process for the Mill City/Gates wastewater treatment facility. The proposed amendments to the Three Basin Rule will result in a positive impact to the water quality of the North Santiam River, which is the source of drinking water to approximately 200,000 water customers of the City.

Any concerns that the proposed amendments to the Three Basin Rule will adversely impact water quality are misplaced. The amendments would not entail any increased risk of harm to the North Santiam River or Salem water customers. In fact, the opposite is true because the quality of treated effluent discharged from the Mill City/Gates facility will have a higher quality of treatment and will be subject to the stricter oversight, monitoring, and reporting requirements of an NPDES permit issued under the authority of the federal Clean Water Act in comparison to a Water Pollution Control Facility permit issued under Oregon state authority.

BACKGROUND:

The Three Basin rule was promulgated in 1976 to protect the water quality in the Clackamas, North Santiam, and McKenzie rivers. The rule prohibits new or increased wastewater discharges to the rivers. Any wastewater facility permitted after 1976 is prohibited from directly discharging wastewater effluent to the three rivers and must discharge only to the ground under DEQ's Water Pollution Control Facility (WPCF) requirements.

On April 23, 2020, the U.S. Supreme Court held in *County of Maui v. Hawaii Wildlife Fund*, 590 U.S. 165 (2020) (the *Maui* decision) that discharges to groundwater are subject to the Clean Water Act (CWA) and require a federal NPDES permit if the discharge is the "functional equivalent of a direct discharge to surface waters." This situation is remedied by the proposed amendments to the Three Basin Rule. Marion County's proposed amendments would serve the purpose of the Three Basin Rule -to preserve or improve the existing high-quality water for municipal water supplies, recreation, and preservation of aquatic life. The only difference the amendments make to the Three Basin Rule is that any proposed wastewater treatment facility that meets the functional equivalency criteria of the *Maui* decision would now be required to comply with the more stringent requirements of an NPDES permit rather than the less extensive requirements of a WPCF Permit.

Robert D. Chandler, PhD PE
Assistant Public Works Director

Attachments:

1. Salem Comments on Marion County's Three Basin Rule Petition