



Association of
Oregon Counties

Oregon's Failing Tide Gates

Report to the Tide Gate Work Group from the December 2017 Listening Sessions

Hosted by



Introduction

This report was prepared by the Association of Oregon Counties (AOC). It is a compilation of what was heard at the four-listening session held in Newport on Dec. 11th, Tillamook on Dec. 12th, Coquille on Dec. 14th and Clatskanie on Dec. 15th 2017. This report also contains ideas developed by AOC staff for the OWEB Work Group's consideration derived from the advice received.

All meetings were well attended. Participants included landowners, agriculture and conservation organizations, watershed councils, soil and water conservation districts, tribes and elected representatives at the local and state level.

Engaging local landowners, tide gate owners, communities and others was critical, as voluntary participation is essential to achieving long-term economic, ecological and community resilience goals regarding failing tide gates.

Extensive notes from the input received were taken by AOC staff at each meeting. Themes were developed and categorized from the Worst Fears, Best

Outcomes and Specific Advice received. Advice/themes that came forward in multiple meetings were also identified. There is no priority order to the Themes. The six themes led to developing Ideas for Consideration by the OWEB Work Group that are contained in this document.

AOC wishes to specifically thank Lincoln, Tillamook, Coos and Columbia counties for convening these listening sessions. Thanks also to those that participated for your passion and particularly your advice on what actions should be taken to address failing tide gates.

Meeting Themes Heard at the Listening Sessions

Theme 1: Improving working relationships and outreach with landowners

- Recognize the importance of agriculture and water quality, not just the habitat. Landowners need a greater say on what works best for their properties. **(multiple meeting responses)**
- Agencies should work more collaboratively with landowners to achieve outcomes for the landowner and fish habitat values. **(multiple meeting responses)**
- Include landowners early in the process of repairing and replacing failing tide gates.
- When property is sold, tide gates should be identified in the property description so there are no potential hidden pitfalls for the new owner.
- Provide more information and education for landowners with tide gates on options for them to repair or replace tide gates. **(multiple meeting responses)**
- Agencies need to have more empathy for landowners needs and goals for their property. **(multiple meeting responses)**
- Landowners need technical support from a group or individual that can help write grants to secure additional funding for tide gate replacements.
- Tide gate owners include cities, counties and other entities as well as agricultural producers.

Ideas for consideration by the Work Group

- 1. Recognize the importance of agriculture** in the repair and replacement of tide gates. Develop approaches that ensure **landowners have a greater say** in what happens on their property and this can be done if the agencies take a more empathetic and collaborative approach. This includes effects not only on the existing

property but adjacent landowners who may be impacted or benefited from repairing or replacing a tide gate.

2. Agencies should **develop information and education materials and training** for landowners with tide gates that outline options for them to repair or replace tide gates. All information should be developed in a manner that is easy to follow and understand. Some examples include:
 - Clearly outline what can be done under maintenance and repair and what is required to replace a tide gate.
 - Clarify what landowners can do to clean ditches behind tide gates to insure properly functioning systems.
 - Clarify where mitigation is required and not required during maintenance activities.
3. **Develop a local list of groups, individuals and contractors** that can help a landowner through the process of securing permits, deciding which design options to use and secure needed funding.

Theme 2: Tide Gate Inventory

- Complete an inventory of tide gates and in particular who owns the tide gate and is responsible for maintenance, repair and replacement of the tide gate. **(multiple meeting responses)**
- There are jurisdictional/ownership issues around tide gates that need to be resolved/addressed. For some tide gates, it is unclear who owns and who is responsible for maintenance. **(multiple meeting responses)**
- Inventory will help decision-makers/legislators understand scale/scope of issue.
- Recognize that tide gate owners include cities, counties and other entities as well as agricultural producers – needs to be reflected in inventory.

Ideas for consideration by the Work Group

1. **Conduct a comprehensive inventory of all tide gates** using publicly available information. Following the inventory, work with landowners who are willing to voluntarily participate to better understand the current condition of their tide gates. This will help to **develop a list of tide gates needed to be repaired or replaced.**
2. **Clarify tide gate ownership** for those tide gates where there is confusion about who owns and is responsible for tide gate maintenance.

Theme 3: Funding

- Funding should be flexible to adapt to new science as it comes along and recognize a landowner's needs.
- Strong need to develop a collaborative funding process between agencies to spread limited dollars farther. **(multiple meeting responses)**
- Prioritization approach needs to take into account differing agency missions and requirements in order to be effective.
- Clarify what constitutes maintenance vs repair/replacement. **(multiple meeting responses)**
- Funding options should take into account different sizes of tide gates, public benefits funding and dollars available for removal of tide gates where landowners wish to remove them.
- Develop a funding system to help landowners who need cost share assistance to replace expensive tide gates. **(multiple meeting responses)**
- If public benefits are required for tide gate repair or replacement, then public dollars should help pay for those public benefits. **(multiple meeting responses)**
- Secure funding for landowners to replace or remove a tide gate that have no fish benefits.
- NRCS should develop a funding system for Oregon tide gates similar to what is occurring in Washington and California.

Ideas for consideration by the Work Group

1. **Review what other states are doing** to fund the repair or replacement of failing tide gates to determine what might work in Oregon that we are not currently doing.
2. **Develop funding opportunities** for tide gates that need to be replaced that are not a high priority for fish passage, but have other strong public benefits like protection of transportation or community infrastructure, water quality or flood reduction.
3. Since it is clear that there is now and will be a growing need to repair or replace tide gates now and into the future, there needs to be a **task force convened to develop funding strategies** to assist landowners with public benefits derived from them participating in this effort for both the legislature and congressional funding opportunities.

Theme 4: Engineering Options

- Agencies should certify/approve more contractors or designs to repair and replace tide gates.
- Need more engineering options to fix/repair tide gates vs essentially one option that is very expensive. **(multiple meeting responses)**
- Recognize sea level rise in engineering solutions so we don't have to come back and replace tide gates because sea level rise wasn't considered
- Regulatory agencies should help with alternate solutions vs one size fits all approach. **(multiple meeting responses)**
- There needs to be cheaper solutions made available that can pass agency muster. **(multiple meeting responses)**
- Fish-friendly tide gates may not be needed in all cases.
- Need clear definition of the difference between an 'irrigation control structure' and a tide gate.

Ideas for consideration by the Work Group

- 1. Review what other states are doing** to develop new engineering solutions to repair or replace failing tide gates to determine what might work in Oregon that we are not currently doing.
- 2. Develop an agency (federal and state) approved list of various tide gate options** that can be used under different circumstances from small replacements to large replacements. Consider a variety of options that include **low-cost engineering options** that expand designs available to landowners and options available to contractors.

Theme 5: Regulations, permitting, and streamlining

- Agencies should not set the regulatory bar so high that it can't be achieved with a landowner's consent.
- Develop a General Type Permit for tide gate replacements. **(multiple meeting responses)**
- Work with landowners to approve permits in advance (pre-approval process) so landowners don't have to wait so long to secure the necessary permits when a tide gate needs replacement. **(multiple meeting responses)**
- Establish a lead agency or single point of contact at state and federal level to help be an advocate or an ombudsman to help landowners through regulatory maze. **(multiple meeting responses)**
- Increase agency alignment for requirements to repair or replace tide gates; improves consistency and makes process more streamlined for applicants **(multiple meeting responses)**
- Develop a simplified permit for emergency repairs. Some agencies already have system in place so use their model. **(multiple meeting responses)**

- Provide opportunities for landowners to have regulatory certainty when they replace a tide gate that they have met regulatory requirements. **(multiple meeting responses)**
- Identify permitting approach that minimizes risk to landowners so a landowner is willing to participate.
- Evaluate need for fines. Work with landowners to achieve objectives of both parties.
- Fish passage regulations can be onerous and costly to a landowner and it is recommended the legislature review the impacts and costs of ODFW's OAR's and the ORS concerning this issue. **(multiple meeting responses)**
- Maintenance and repair practices of a drainage system that is not converting the land use but maintaining the existing land use is historic and should not require mitigation. **(multiple meeting responses)**

Ideas for consideration by the Work Group

- 1. Establish an 'ombudsmans' office** to assist tide gate owners in navigating the relevant permitting and other requirements for tide gate repair and replacement, as well as permits required to address associated infrastructure (levies, interior gates, ditches, etc.)
- 2. Research ways to provide 'permitting in advance'** of the need to replace a tide gate so tide gate owners can quickly replace gates when the need arises.
- 3. Review what other states are doing** to streamline regulatory approaches to repair or replace failing tide gates to determine what might work in Oregon that we are not currently doing.
- 4. Analyze state agency statutes and rules** affecting tide gates to look for efficiencies and ways to reduce costs of compliance with repair or replacement of tide gates. With federal agencies support, task force could also review federal requirements for streamlining options. Ensure **regulations are applied consistently** up and down the coast and lower Columbia River.
- 5. Assess the feasibility of a one-stop General Permit** that streamlines the permitting processes for repairing or replacing tide gates.
- 6. Develop a streamlined simplified permit for an emergency repair.** Need to define an emergency repair so it is clear when an emergency repair can take place.

7. **Develop a Safe Harbor certificate or Habitat Conservation Plan** so that once a project is completed to agency satisfaction, the landowner is protected for a certain period of time from further requirements. Look for pilot locations to test this model.
8. **Review rules and regulations** affecting a landowner's ability to clean and maintain ditches behind tide gates to ensure proper flow of water in the system.
9. Identify and agree to have one state agency and one federal agency as the **primary point of contact** for a landowner wishing to repair or replace a tide gate. They would be responsible for shepherding the landowner through the permitting process.

Theme 6: On-the-Ground Projects

- Once projects are implemented, need a safe harbor provision or regulatory assurances to protect against having to replace tide gates prior to failure. **(multiple meeting responses)**
- Need to be able to clean out ditches behind tide gates because if you don't tide gates don't function properly. **(multiple meeting responses)**
- Clarify manmade ditches vs natural ditches (former streams) and what is allowed for cleaning/maintaining these ditches.
- Landowners need clear expectations and desired outcomes in order to participate. **(multiple meeting responses)**
- Develop a set of guidelines and information sheets that are clear and can help landowners weave their way through the process to repair or replace a tide gate **(multiple meeting responses)**
- Tide gate replacements, failures and removals can have effects on surrounding landowners that need to be considered.