

Governor Kate Brown

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December 5, 2016

Governor Brown,

Thank you for meeting with me earlier this year to discuss the future of the Willamette Falls Locks and the state's continued involvement in this important effort. The Task Force has successfully engaged a high level of public and private stakeholders in discussions about the value of the Locks as critical infrastructure for the region and state and developed a series of recommended next steps. I am forwarding these recommendations on behalf of the state Task Force for your consideration (attached).

As context for the recommendations, the U.S. Army Corps of Engineers received federal funding to conduct a Disposition Study which is already underway and on an expedited timeline. The Task Force recommends establishing a Willamette Falls Locks Commission through legislation in the 2017 Session to be responsive to the fast-tracked Disposition Study and maintain close coordination with the US Army Corps of Engineers that will be critical as tribal, state, regional, and local entities assess ownership options and potential future uses of the Locks. To support the needed due diligence of this Task Force, we are also requesting a state contribution of \$677,500 to match local contributions. We suggest this be budgeted in the Business Oregon Infrastructure Finance Authority.

Legislative concepts are being drafted for pre-session filing by Senator Devlin and Representative Barton. We would very much appreciate your leadership and support as Governor to maintain a high level of engagement from the state in partnership with tribal partners and local and federal stakeholders.

Thank you for your consideration. For follow up information or questions, please contact Lisa Naito: 503-234-1305 or lisa@hooleynaito.com

Sincerely,



Honorable Barbara Roberts

Willamette Falls Locks Task Force Convener

Willamette Falls Locks Task Force Final Recommendations Summary

The Willamette Falls Locks Task Force was established through Senate Bill 131 in 2015 to compile information related to the historic, economic, cultural, recreational and other current and potential future values of the Willamette Falls Navigation Canal and Locks. The Task Force, which includes tribal and appointed local, regional and state representatives (see list below), met six times between January and September 2016 to review and develop information to advance a potential future transfer of ownership of this important national and regional asset owned by the U.S. Army Corps of Engineers. The Task Force, which was convened by the Honorable Former Governor Roberts and facilitated by Oregon Solutions, developed a set of recommendations that are detailed in this memo.

The Task Force recommends that the Oregon Legislature establish a Willamette Falls Locks Commission to work with the U.S. Army Corps of Engineers through its federally funded disposition study. The Task Force also recommends that the Legislature allocate resources, in partnership with local and regional contributions, to support the technical requirements, due diligence, communications, and economic analysis that are critical to ensuring that tribal, local, regional, and state interests are considered during the federal disposition study. All relevant information must be available for evaluating a potential future transfer of the Locks. The Task Force recommends that the Willamette Falls Locks Work Group act as the interim body to ensure continuity between the conclusion of the State Task Force and the establishment of a Willamette Falls Locks Commission by legislation in the 2017 Legislative Session.

Convener	
Former Governor Barbara Roberts	
Task Force Members	
Jack Giffen, Jr.	Confederated Tribes of the Grand Ronde
Senator Alan Olsen	Oregon Senate
Senator Richard Devlin	Oregon Senate
Representative Brent Barton	Oregon House
Representative Julie Parrish	Oregon House
Rachel Graham	Oregon State Marine Board
Todd Davidson	Travel Oregon
John Mullen	Oregon State Parks and Recreation
Christine Curran	State Historic Preservation Office
Matt Garrett	Oregon Department of Transportation
Fred Myer	Port of Portland
Councilor Carlotta Collette	Metro
Commissioner Tootie Smith	Clackamas County
Mayor Dan Holladay	Oregon City
Mayor Russ Axelrod	City of West Linn
Peggy Sigler	Willamette Falls Locks Work Group
Sandy Carter	One Willamette River Coalition
Dave Bernert	Wilsonville Concrete Products and Marine Construction
Kevin Brice	USACE (ex-officio)

Willamette Falls Locks Task Force: Final Recommendations
November 2016

Overview

Over a two-year period, the US Army Corps of Engineers (USACE) will be conducting a Final Disposition Study of the Willamette Falls Locks. The study will provide valuable information about the engineering condition of the Locks, needed repairs, and potential future uses of the Locks while providing a federal perspective to the economic cost/benefits of the Locks. A parallel effort will be underway at the local level to provide a state and regional perspective to the economic and recreation cost/benefit of the Locks and possibilities for non-federal ownership, operations and funding. At the conclusion of this process, sufficient information will be available so that a decision can be made about the future status and/or ownership, operation, and financing of the Locks.

To conduct the Disposition Study and ensure that critical local interests are considered, the USACE requires a local sponsor to work with throughout the Disposition Study. The local sponsor can be a single entity or a coalition of committed partners.

We suggest that a Facilitating Agency be designated to work with a Decision-Making Group (DMG) consisting of key government partners. In addition, we believe it would be beneficial to form and engage a Stakeholder Policy Advisory Group to assist with the project.

In addition to considering the due diligence of engineering, cost and ownership issues, we also recognize the merit of interim operations during the Disposition Study time period to demonstrate the possibilities for use of the Locks, not just theorize about future possibilities.

On the next several pages, further details are provided about this three-part recommendation:

1. Acknowledge the responsibility and policy framework of the USACE Final Disposition Study as a tool for determining the most appropriate federal course of action.
2. Initiate an effort in cooperation with the USACE Final Disposition Study to understand the due diligence information developed by the USACE, address issues of importance not addressed through the federal study to determine the most appropriate state and local course of action.
3. Seek to implement interim repairs sufficient to allow interim operations during the Final Disposition Study time period to pilot alternative uses of the Locks.

Acknowledge the USACE Final Disposition Study

The USACE operates under numerous federal directives established by Congressional actions, Presidential directives and internal USACE policies and practices. In aggregate, these various requirements address such matters as:

- Priority for Corps investment commensurate with the potential for economic benefits of national significance;
- Recognition of the potential for risk and methods to minimize or mitigate those risks.
- Requirements to address potential environmental impacts, especially where endangered species are involved and including compliance with the National Historic Preservation Act.
- Implementation of stipulations in the Memorandum of Agreement resulting from the consultation process under Section 106 of the National Historic Preservation Act.
- Requirements to ensure adequate public safety.
- Requirements to apply appropriate engineering practices consistent with national standards.
- Consideration of potential economic, environmental and social consequences of disposition alternatives, including potential cultural and historic impacts (the Locks are included on the National Register of Historic Places).
- Consideration of any treaty provisions of Native American Tribes associated with the facility.

In recognition of these and other requirements, on August 22, 2016 the USACE issued Interim Guidance on the Conduct of Disposition Studies. These are intended to provide a transparent basis for the ultimate USACE decision and consistency across multiple disposition studies across the United States.

In order to undertake this Final Disposition Study, the President has recommended in the FY '16 budget and Congress has acted through its appropriation actions for FY '16 and '17 the authorization and initial funding for the study. Funding has or is expected to be provided as follows:

- FY '16 - \$60,000
- FY '17 - \$280,000
- FY '18 - \$240,000 (anticipated)

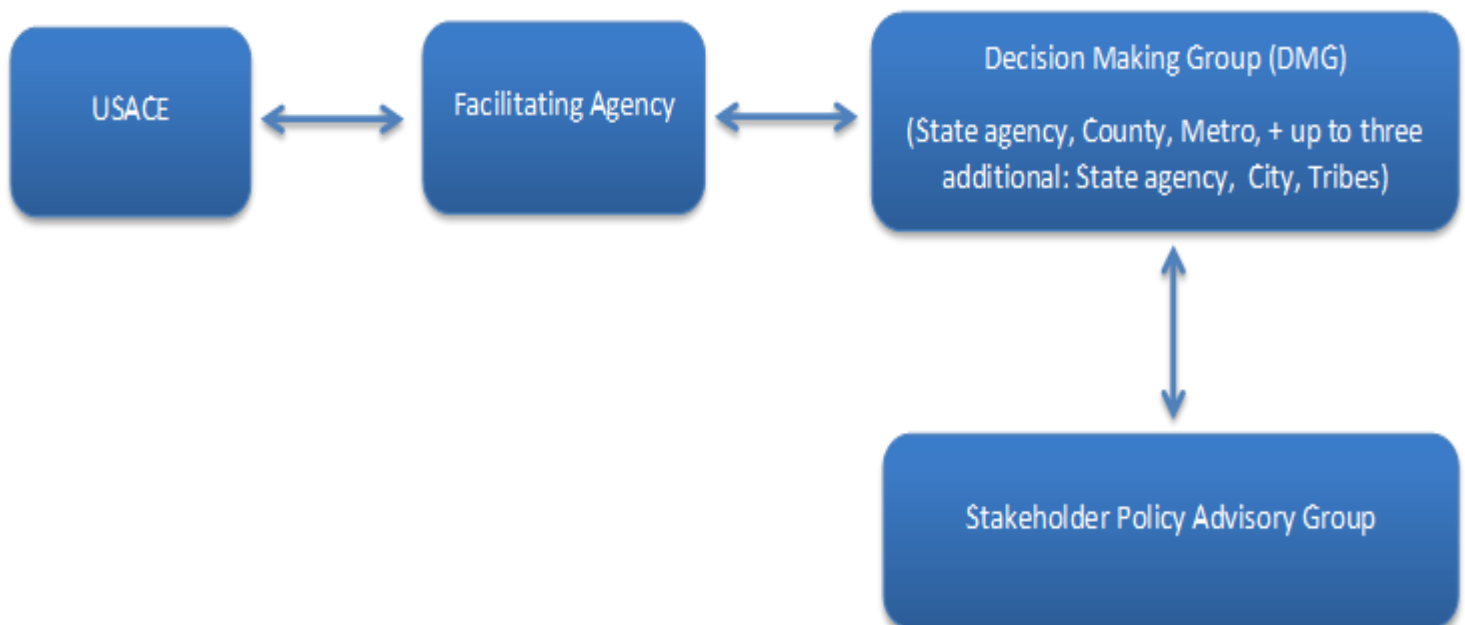
Based upon funding authorization currently available, the USACE has formally initiated the Final Disposition Study and accomplished the first milestone. On August 15, there was a Decision Meeting convened under the authority of the USACE Chief of the Planning and Policy Division at Headquarters in Washington DC. Participants included other Headquarters offices, including the Assistant Secretary for Civil Works, the Real Estate Division, the Operations Division, the Portland District office and many others. The purpose of this Decision Meeting was to assess the federal, state and local interests and readiness and determine if there is a reasonable expectation that the Final Disposition Process will lead to a fruitful result. Based upon this assessment, authorization to proceed was approved. The USACE study process is now underway.

The need for a state and local companion effort to the USACE Final Disposition Study

The USACE will produce a significant amount of valuable information designed to inform a federal decision about future actions related to potential disposition of the Locks. However, there is a need to establish a state and local due diligence process to enable a local decision to be made, especially if it involves a transfer of the facility to a non-federal entity at the state or local level. At a minimum, it is important to understand the information generated by the USACE Final Disposition Study and accept the evaluation methods and validity of the results. More important, if the Final Disposition involves transfer to a state or local entity, there is a need to evaluate alternative ownership, governance, operations and funding options and decide which the preferred approach is for such a transfer. Finally, if information is needed to inform a state or local decision that is not being generated by the USACE process, that information will need to be generated locally. To date, there is an identified need to develop information about the economic and recreation benefits of state and local significance since the USACE study will be based only upon information generated about economic benefits of national significance.

Initiation of this state and local due diligence effort does not fit entirely within the mission of any single existing state, regional or local government. However, there is a united interest of diverse state and local entities to repair and reopen the Locks for the benefit numerous constituencies and public policy objectives. As such, it is recommended that this state and local effort be undertaken as a collaborative process supported by a budget to carry out the needed work in partnership, with contributions from multiple leading organizations.

Presented in the next several pages is a description of a proposed structure for ongoing coordination and engagement at the state and local level, working in close coordination with the USACE Final Disposition Study. Three groups are formed to provide the structure to move the project forward. The roles and responsibilities of the three groups are described after the graphic below.



Decision-Making Group (DMG). A group comprised of at least three entities: one agency designated as the Facilitating Agency; Metro; and Clackamas County and up to four additional positions: one additional state agency; one position to collectively represent the interests of cities; one position to collectively represent the interests of business/economic development/tourism/river users and The Confederated Tribes of the Grand Ronde. Upon creation of the Commission by an act of the Legislature, the DMG would include four ex-officio members appointed by Legislative Leadership (as described below). This group would serve as the primary decision-making body providing direction to the Facilitating Agency throughout the Disposition Study. The DMG would be a legislatively created commission with the start-up work program, budget and funding contributions agreed to through the existing Willamette Falls Locks Working Group with additional membership (more discussion below). Members of the DMG would each contribute financially to support the effort.

Facilitating Agency. A single entity and member of the DMG that serves as the primary point of contact with the USACE throughout the Disposition Study. This agency would have a full-time staff position dedicated to working with the USACE on the Disposition Study and related matters and would serve as the liaison and project manager to/for the DMG and would report directly to the DMG.

Stakeholder Policy Advisory Group. A group comprised of interested stakeholder representatives such as state agencies, nonprofit organizations, local governments, Tribes, businesses and others as appropriate. Members would be appointed by the DMG and would provide input into key DMG decisions. In order to maintain close coordination, there would be frequent meetings between the DMG and Stakeholder Group (such as quarterly).

OPTIONS FOR THE DMG

The primary role of the Facilitating Agency is to work with the Corps of Engineers on the Final Disposition Study, with direction and funding from the partnership of agencies. The primary role of the partnership of agencies is to provide leadership and overall direction to the project and serve as the decision-making body.

Recommendation: Legislatively Created Commission and State Agency. The Oregon Legislature creates a new Willamette Falls Locks Commission as the primary governing body with a State Agency serving as the facilitating agency and staff to the Commission. The Board of Directors of the new Commission would consist of representatives from the facilitating state agency, Metro, Clackamas County and up to four additional positions: one additional state agency, one position to collectively represent the interests of cities, one position to collectively represent the interests of business/economic development/tourism/river users and The Confederated Tribes of the Grand Ronde. In addition, the group would include four ex-officio members appointed by Legislative leadership to include both chambers of the Legislature and both the majority and minority parties. The purpose of including these non-voting members is to maintain a strong relationship with the full Oregon Legislature.

Recommendation: Hold interim discussions about the work program and budget through the existing Willamette Falls Locks Work Group with additional membership from state agencies and transition to the Legislatively created Commission.

In order to maintain alignment and schedule with the USACE Final Disposition Study, it is necessary to initiate the work program by January 1, 2017. Since the Legislatively created Commission and state funding contribution cannot be accomplished until the start of fiscal year 2017-18, it will be necessary to utilize the existing Willamette Falls Locks Work Group to ensure continuity in work with the USACE. Invitations will be extended to state agency leads and new regional elected leaders to ensure representative participation. The Work Group will establish the governance structure, dedicate the staffing, and initiate the work program with non-state funding contributions.

The next part of this memo gets more specific and describes some potential components of the framework. The wording used is similar to wording one would find in an actual agreement or in legislation.

WILLAMETTE FALLS LOCKS COMMISSION A POSSIBLE GOVERNANCE FRAMEWORK

1. Members. The membership on the Commission or partners on the Decision-Making Group for the intergovernmental entity is as follows (dependent upon final agreement for contributions to the commission budget):

- a) The agency selected as the Facilitating Agency can elect to be a member of the Decision-Making Group. The funding contribution on behalf of the agency will be sought from the 2017 Oregon Legislature with a state agency (likely Business Oregon) acting as the granting entity to receive and apply funding as approved through the Decision-Making Group
- b) Metro will be a member of the Decision-Making Group if they are a funding contributor.
- c) Clackamas County will be a member of the Decision-Making Group if they are a funding contributor.
- d) There will be a member of the Decision-Making Group to represent the collective interests of cities along the Willamette River. Since the Locks are located in West Linn, West Linn should provide the leadership in working with the other cities to obtain funding contributions and determine who should be the member and alternate on behalf of cities on the Commission.
- e) There will be a member of the Decision-Making Group to represent the collective interests of business, economic development agencies, tourism and users of the Willamette River. Those organizations should work together to determine funding contributions and determine who should be the member and alternate on behalf of these interests.
- f) There will be a member of the Decision-Making Group from the Confederated Tribes of the Grand Ronde if they are a funding contributor.
- g) If all of the parties described above are funding contributors and members of the Decision-Making Group, there will be a second state agency (likely Oregon State Parks or Oregon Department of Transportation) to represent the broader interests of the State of Oregon.

With the exception of the representative of the Confederated Tribes of the Grand Ronde who will be appointed by tribal council, all of the positions described above will be nominated by their respective organizations and appointed by the Governor of Oregon, assuming the DMG will be a Legislative Commission. If it becomes an intergovernmental entity, then the appointments would be made by the respective governmental organization.

- h) Upon creation of the Commission through Legislative action, there will be four ex-officio, non-voting members of the Legislature appointed by the Senate President, Senate Minority Leader, Speaker of the House and House Minority Leader.

In general, the size of the Decision-Making Group is intentionally small to allow it to be nimble and efficient in interacting with the USACE while including the appropriate diversity of interests. It is intended that regular meetings will be held between the Decision Making Group and the Stakeholder Policy Advisory Committee to ensure that all parties are informed of progress throughout the study.

2. Purposes of the Commission. A summary list of the Commission's functions includes:

- a. Work in a collaborative partnership to facilitate the repair and reopening of the Willamette Falls Locks.
- b. Direct a Facilitating agency to work with the U.S. Army Corps of Engineers on a Final Disposition Study of the Locks.
- c. Coordinate funding requests to local, state, federal agencies, and governing bodies.
- d. Determine and pursue long-term, sustainable financing to operate the Locks and provide for an appropriate level of repair and maintenance.
- e. Work with Tribal governments, the Willamette Falls Heritage Foundation, the Willamette Falls Heritage Area Coalition, and other heritage stakeholders to develop and promote the historic importance of the Locks and their remarkable natural and historical setting as part of a larger cultural tourism destination.
- f. Coordinate work on the Locks with the partnership group working on the master plan and vision for the Willamette Falls Legacy Project.
- g. Take such other or further actions as are necessary or agreed upon to achieve the goals and objectives of the Commission as may be provided under this Agreement or any subsequent amendments hereto.

A draft Work Program is at Attachment 1.

3. Evolution of Governance Structure. It is likely that the governance structure and the roles of government, nonprofit, and private partners will evolve over time as the needs of the organization change from the present concept stage to future stages involving more detailed planning, implementation, operations and maintenance. As the governance structure evolves, the Parties will need to determine how to reach additional collaborative agreements on overall project priorities and management functions.

4. Meetings. Meetings would be conducted consistent with the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.710.

5. Decision-Making. The DMG would strive to make decisions and recommendations by consensus. Consensus is defined as “all Commission Members can live with the decision or recommendation.”

Members are assumed to be contributing input on their own behalf and are not committing their business, agency, nonprofit, or government to any decision without approval by their associated decision-making body.

6. Officers. There would be a Chair and Vice Chair of the Commission, as determined by election among the members.

7. Committees. The Commission may establish standing and special committees. If committees are used, they should each have their own governance framework, which, at a minimum, should include: a purpose statement; the appointment process for members; and the requirements of a specific work program and an annual meeting with the Board of Directors.

8. Public Records. The Commission shall comply with the Oregon Public Records Act, ORS 192.410 to 192.505.

9. Project Budget; Appropriation of Funds. Each party to the intergovernmental agreement represents that it has appropriated the funds set forth in Attachment 2—Project Budget—for the fiscal year(s) covered by such party’s appropriation. Each party to the agreement will represent that it has authorized use during such fiscal year(s) of the appropriated funds in accordance with the Project Budget and this Agreement. The Project Budget may be revised from time to time by the parties, within the amounts appropriated by the parties in their individual capacities. Spending in future fiscal years is subject to appropriation by each party’s governing body, in such body’s sole legislative discretion, and all spending under this Agreement is subject to audit. The project budget presented in Attachment 2 is intended to accomplish the milestone of agreement with the USACE on the long-term party responsible for ownership, operation and funding of the Locks. Upon agreement, future costs and funding contributions to implement the agreement will be determined.

10. Administrative Agent. The Commission shall appoint a staff person or entity to serve as Administrative Agent for the Commission. Administrative support services to be provided by the Administrative Agent may include: (i) providing public notices; (ii) maintaining public records; (iii) receiving funds and making payments; (iv) assisting the Commission in complying with applicable public contracting requirements; (v) maintaining financial records; (vi) preparing budget reports; (vii) providing related clerical support; and (viii) other administrative support functions as explicitly agreed by the Administrative Agent and Commission.

11. Actions Needing Ratification. Certain actions of the Board of Directors may need to be formally ratified by each Board member’s parent organization. Members of the Board of Directors shall be responsible for determining whether an action contemplated by the Board requires ratification of the member’s parent organization.

Willamette Falls Locks and Canal “Commission”

Work Program

It is recognized that the US Army Corps of Engineers “Final Disposition Study” will produce a significant amount of information needed to arrive at a final conclusion on the long-term future for the Locks and Navigation Canal, particularly whether it will be transferred to a state or local organization. However, it is also recognized that the information sufficient for the Corps to make their decisions on the disposition is not sufficient for state and local entities to make their decisions. As such, there is a need for a state and local effort to parallel the Corps effort, agree with and understand the information produced, develop additional information needed to make decisions at the state and local level and take steps to implement desired future steps. Key elements of this work program are as follows:

- Facilitation through Oregon Solutions of the state and local evaluation and decision-making process.
- Expanded economic benefit study to account for economic benefits of state and local significance using \$100,000 of funds appropriated by the 2016 Legislature.
- Pursue implementation of Interim repair using \$400,000 of funds appropriated by the 2016 Legislature. This would allow interim operations enabling “pilot projects” for using the Locks as a means of demonstrating the potential for future uses (such as shipping of gravel and paper products, kayaking and boating, wine and farm tours from Portland to the Willamette Valley, support for redevelopment plans on the Legacy site, etc.).
- Evaluation of the Corps engineering assessment and development of a cost-effective short and long-term repair program.
- Evaluation of alternative state and local entities for ownership and operation and determination of the preferred approach.
- Evaluation of alternative state and local approaches to finance needed capital repairs, on-going repair and maintenance and annual operations and determination of the preferred approach.
- Consultation with the public, interested stakeholders, interested Legislators and the Governor, state agencies and local governments.
- Negotiation with the Corps on the final disposition and an appropriate contribution from the Corps towards implementation.
- Legal support to pursue Congressional and Legislative implementation actions.
- Legal support for the formation of any new entity or an added function of an existing entity, including establishment of governance structure, financing mechanisms, hiring and contracting practices, establishment of operating policies and practices.
- Advocacy with the federal, state and local governments in support of evaluation process and ultimate implementation.
- Compliance with state and federal meeting and notice requirements, contracting requirements and personnel requirements.

Willamette Falls Locks "Commission" Draft Budget

Core Budget

		2017	2018	2-Year Total
Senior Project Manager	1.0	\$85,000		
Administrative Assistant	1.0	\$45,000		
Fringe	37%	\$48,100		
Salary Total		\$178,100		
Overhead (rent, utilities, computers, copiers, etc.)	56%	\$99,736		
Subtotal Personnel		\$280,000	\$290,000	\$570,000
Oregon Solutions facilitation		\$65,000	\$70,000	
Engineering Consultant		\$75,000		
Legal Support:				
	Evaluation of options		\$50,000	
	Implementation of options			
Public Outreach		\$50,000	\$50,000	
Advocacy Support		\$145,000	\$150,000	
Materials, Supplies, Travel		\$25,000	\$27,500	
Subtotal M&S		\$360,000	\$347,500	\$707,500
EXPENSE TOTAL		\$640,000	\$637,500	\$1,277,500
State Funding:				
2017 Legislative Request on behalf of State Agencies		\$340,000	\$337,500	\$677,500
Non-State Funding:				
The Confederated Tribe of the Grand Ronde		\$60,000	\$60,000	\$120,000
Business/Economic Development/Tourism/River Users		\$60,000	\$60,000	\$120,000
Local Agencies:				
	Metro	\$60,000	\$60,000	\$120,000
	Clackamas County	\$60,000	\$60,000	\$120,000
	Cities	\$60,000	\$60,000	\$120,000
GRAND TOTAL Non-State Funding		\$300,000	\$300,000	\$600,000
REVENUE TOTAL		\$640,000	\$637,500	\$1,277,500

Recommendation to implement interim repairs for interim operations during the Final Disposition Study time period to pilot alternative uses of the Locks

The Willamette Falls Locks have been closed since 2011 and subject to periodic closures since 2002. Because of this unreliable level of service, potential commercial operations have migrated to other destinations via other modes of transport. The best way to test the market for the possibility of transport is to actually repair and reopen the Locks for pilot projects. If interim repairs can be economically implemented, these pilot projects could establish the viability of an economic business model for continued operations for the Locks and provide greater confidence to potential organization and governments to justify needed expenditures for the Locks. In addition, actual use of the Locks provides an excellent vehicle for public education on the history, cultural importance and potential future of the Locks.

Potential shippers/users of the Locks could include the following:

- Reestablishment of traditional movement of bulk commodities, including gravel and pulp and paper products;
- Reopening to traditional recreation users including motorized and non-motorized kayaks and pleasure craft and fishermen;
- Establishment of new river-based services associated with the redevelopment of the Blue Heron Legacy Project (on the Oregon City side of Willamette Falls) and in support of the newly created Willamette Falls State and National Heritage Area.

The 2015 Legislature provided an appropriation of \$400,000 toward an interim repair strategy.