

UMATILLA BASIN WATER COMMISSION

September 28, 2010

Oregon Water Resources Department
Attn: Ruben Ochoa
725 Summer Street N.E., Suite A
Salem, OR 97301-1271

Re: OAR Chapter 690 Division 95 (Comments on Draft Rules)

Dear Mr. Ochoa:

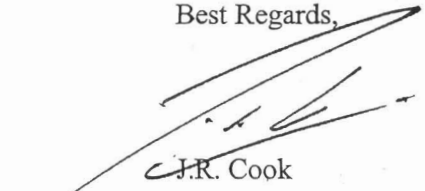
The Umatilla Basin Water Commission (Commission) has reviewed the draft Rules under OAR Chapter 690, Division 95 which set standards for borrowers and the legal parameters for issuance of loan funds under the Columbia Basin Water Development Loan Program (Program). The Commission offers the following recommendation and comment:

690-095-0020 (7): The Commission recommends amending with the following: "Costs incurred up to and including water right certification."

The Commission's recommendation is due to the fact that some, if not many, proposed water development projects within the Columbia River Basin are innovative and complex. Our recharge project, for example, involves complex permit and monitoring requirements that will need to be met prior to the Commission delivering water to the consumptive uses necessary to cover debt service. Our concern is that, under the current language, we would be limited to items such as final proof survey, etc. only rather than the components necessary (pumping, monitoring costs, etc) to acquire a certificated right, a long-term project and repayment of the loan.

We appreciate the hard work of the Oregon Water Resources Department and the Rules Advisory Committee to develop these rules within a very aggressive timeline and for the opportunity to comment. Please contact me at 541.969.8026 should you have questions regarding our comments.

Best Regards,



J.R. Cook
Executive Director

Umatilla County
Morrow County

P.O. Box 944
Hermiston, OR 97838
541.667.2030

Confederated Tribes of the
Umatilla Indian Reservation
Westland Irrigation District

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WATER RESOURCES DEPT
SALEM, OREGON

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September 29, 2010

VIA FACSIMILE 503-986-0903
AND VIA EMAIL at Ruben.E.Ochoa@state.or.us

Oregon Water Resources Department
ATTN: Ruben E. Ochoa
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Proposed Rules relating to HB 3369 (2009)

To Whom It May Concern:

This office represents the Umatilla Electric Cooperative, one of the chief proponents of House Bill 3369 enacted during the 2009 session of the Oregon Legislature.

My client serves the electrical needs of much of northeastern Oregon and, in particular, Umatilla County, where groundwater levels have declined and severe restrictions have been implemented by the state including curtailed water use which have been economically devastating to the region. Umatilla Electric Cooperative is committed to the economic well-being of the community and recognizes that agriculture is a major economic driver in the Umatilla basin. Water is the fuel for the economic engine that will provide stability and growth for that region. For that reason, the Legislature adopted House Bill 3369 in an effort to balance the interests of those who advocated no further withdrawals from the Columbia with those who recognized that a vibrant agricultural economy in the region needs but one thing – water.

We applaud the Department for its work in beginning the implementation of House Bill 3369 (Chapter 907, Oregon Laws 2009). We understand that the Department has recently promulgated proposed rules for implementation of that legislation and has provided interested parties until 5:00pm on Thursday, September 30, 2010, in which to submit written comments. Please consider these our written comments to the proposed rules:

1. Proposed Rule 690-095-0035 provides for a Loan Advisory Board which the Director may appoint. House Bill 3369 does not require such an advisory board, but it is our understanding that the Department would like the flexibility to do so in order to conform this program to others which it administers. The language suggests that the Loan Advisory Board might advise the Director in writing whether the loan application project complies with the rules in general. We suggest that the task assigned to the Loan

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Advisory Board, if one is appointed, should be limited to advice concerning the adequacy of security, the potential for repayment, and economic feasibility of the project without regard to considerations which do not bear on the State's financial security.

2. Proposed Rule 690-095-0050 provides for criteria for granting of a loan. Subsection (1)(b) of the rule provides for the Director determining whether the applicant meets certain standards which may include a number of specified standards. We read Section 2 of House Bill 3369 to require the Commission to adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund. We also believe that the statute requires the Commission to design the standards to ensure that all loans have a high probability of repayment and that all loans are adequately secured in the event of default.

We therefore recommend that specific standards relating to the probability of repayment be actually included within the proposed rule.

3. Proposed Rule 690-095-0055 concerns the appeal process. Subsection 1 of the Proposed Rule concerns an appeal from the decision of the Director directly to the Commission. However, Proposed Rule 690-095-0030(2) only gives the Director authority to approve loans under \$3,000,000.00. Subsection (1) of that proposed rule requires that it shall be the Commission that shall approve loans over \$3,000,000.00. The appellate process should specify what happens if an applicant wishes to appeal the decision of the Commission in the first instance or the decision of the Commission on an appeal directly from an application rejected by the Director.

We believe that the Administrative Procedures Act would consider such an agency decision an "order in other than a contested case" and therefore suggest that a subsection (3) be added to the rule which provides that appeals of the decisions of the Commission under subsections (1) and (2) of this rule and appeals of decisions of the Commission with respect to loans in excess of \$3,000,000.00 be conducted pursuant to ORS 183.480 relating to judicial review of agency orders and ORS 183.484 relating to jurisdiction for review of orders in other than contested cases.

4. Proposed Rule 690-095-0080 Relates to Fees and Charges. Subsection (4) of that proposed rule provides that the "Director shall charge the following fees to borrowers..." However, no fees are specified thereafter. We believe that the particular fees which are referred to by subsection (4) of the proposed rule should be specified in the rule.

5. Typographical Errors. In proposed rule 690-095-0095 there is a reference to OAR 690-95-0055. That reference should be OAR 690-090-0095. Also at proposed rule

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690-095-0100, there is a reference to OAR 690-095-0060. We believe that cross-reference should be to OAR 690-090-0060.

Thank you for providing us this opportunity to comment.

Very truly yours,

Davis/Wright Tremaine LLP


John DiLorenzo, Jr.

JAD:rmp

Cc: Cindy Finlayson
Steve Eldrige

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WATER RESOURCES DEPT
SALEM, OREGON



September 30, 2010

Ruben Ochoa
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Comments, Draft OAR Chapter 690, Division 95 Rules (HB 3369)

Dear Mr. Ochoa,

Thank you for the opportunity to comment on the WRD's draft rules to implement provisions of HB 3369 (2009) related to standards for borrowers seeking loans issued from the Water Development Loan Fund for construction of water development projects in the Columbia River Basin. WaterWatch was one of the key negotiators of HB 3369, and thus are intimately familiar with the statute. It is our understanding from the August 27 WRD Staff Report to the WRC that this rulemaking is one of three to implement HB 3369. The current rulemaking is specific to creating fiscal and administrative rules for the Water Development Loan Fund loans in the Columbia River Basin. The remaining two rulemaking exercises will 1) create fiscal and administrative rules to administer the new Water Investment Grant Fund and 2) create rules for the assessment of net environmental public benefits which includes protection of peak and ecological flows.

As a general matter, we think the rules need to be reworked to better reflect the many intricacies of the statute. As they stand, they not only omit many key provisions of the statute but also, importantly, appear to try to limit the statutory directives via the rulemaking. For instance, while we understand that the WRD is going to conduct another rulemaking to address "how" the WRD will conduct the assessment of net environmental benefits, as a procedural matter the rules governing the administration of the fund need to clearly lay out the requirement that there be an assessment and that the applicant is required to provide a number of documents/studies up front to help in that assessment. No where is this set forth in the rules. Without this level of specificity, the applicant will be sorely misled as to what types of projects qualify, what they need to provide to the WRD, and what the WRD's decision process is. We will provide more detail on this, and other points, as we comment on the specifics of the rules below (note: the numerical references in the comments follow those of the draft rules)

Notice of Open Comment Period and Rulemaking Hearing: The notice of the rulemaking should have indicated that this was one of three rulemakings to implement HB 3369, and that, specifically there would be an additional rulemaking to create rules for the assessment of net environmental public benefits under this loan program (in addition to the grant program). As is, the notice indicates that "[t]he proposed rules provide procedures and establish standards for administration of a Columbia River Basin Water Development Program....." This notice is inadequate as it leads to the interpretation that these are the rules, in their entirety, that will govern the Columbia River Loan program under HB 3369.

690-095-0050, Purpose, Statutory Authorization, Policy:

(1) Under ORS 541.700(6)(e) (§ 3 of HB 3369), in addition to fish protection, the statute allows loans for projects for the "purpose of enhancing watershed health or improving fish habitat". This distinction is important because the statutory language regarding fish protection is focused on screening/bypass/fishways, while the statutory language explaining "enhancing watershed health or improving fish habitat" contemplates "methods and materials

to restore, maintain and enhance water quality, streamflows.....” This rule section should be amended to include those statutory categories.

As to the “purpose” set forth in Section 1, the proposed language indicates that these rules will govern the whole of the Columbia River Loan Program. This ignores the fact that there is going to be a subsequent rulemaking to govern the WRD’s assessment of public benefit, which is required under both the loan and grant programs. This distinction needs to be made clear.

Along the same lines, while the draft rules state that these rules are intended to operate in “conjunction” with the Division 90 rules, the structure of the rules makes it a bit unclear how this will work. Some sections incorporate Division 90 language, some sections incorporate Division 90 headings (i.e. loan advisory committee) but then veer substantially in content, some sections simply refer to Division 90 and other sections are devised to address only HB 3369. If these rules are intended to be supplemental, this should be made clear, and provisions within these rules that are not mentioned in HB 3369, but are part of the Division 90 rules (i.e. loan advisory committee), should remain separate but applicable.

(2) Policy: This section should be struck. The statute does not lay forth a “policy” behind the Columbia River Loan Fund. There was no agreement among stakeholders as to the “policy” behind the loan program. If anything, WaterWatch would argue that any “policy” would reflect the many conditions of loan approval laid forth in § 25 of HB 3369, namely that the project will deliver instream benefits, that the project will deliver measurable net public benefits, etc. That said, as there would likely not be any agreement among the various stakeholders as to the policy, we suggest that this “policy” statement be struck. It should be noted that the existing Water Development Loan Fund rules in Division 90 do not state a “policy”

(3) The appropriate statutory cites should be included here. As written, this sentence could be read to narrow the scope of the statute to the directives found in the rule. This is not appropriate, nor legally defensible. Thus, the sentence should be amended to read:

Applications for loans to fund water development projects in the Columbia River Basin shall be filed under these rules and pursuant to ORS 541.600-700.

690-095-0010, Definitions:

(3) The definition of “Application” should be redrafted to make clear that an application must conform to the content and form set by statute, rule and WRD. As written, the rule definition infers that any documents submitted by an applicant are considered an “application”. We’d suggest something like the following:

“Application” includes all documents and forms required by WRD, that include, as a minimum, all provisions required by HB 3369 § 20, ORS 541.600-700 and these rules.

(18) The definition of “Person” should be amended to reflect the definition used by the Oregon Administrative Procedures Act (ORS 183.310(8)), namely:

“Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(New Definition): Construction: Given the variety of projects that can qualify for loans under this program, we would suggest a broad definition of the word construction that makes clear that the statutory allowed projects under ORS 541.700(6), including the “methods” to restore streamflows under subsection (e), fall under this.

(New Definition): Complete application: The rules should clearly lay out that the definition “complete application”, including a clear statement that all the requirements of HB 3369 §20 must be met for an application to be complete.

690-095-0015, Eligibility and Project

This section should add an eligibility provision that requires submission of a completed application, that contains, at a minimum, all the requirements of HB3369 §20. If applicants are unwilling or unable to submit the required information than arguably they are not eligible for a loan.

690-095-0030, Authority of the Director

(1) Commission approval of loans over three million dollars: If read literally, the rule would require that the commission approve any and all applications for loans for over three million dollars period, without regards to the statutory requirements of HB 3369, as well as the existing loan requirements of ORS 541.700 et al. While we understand that this likely is not the intent, the rules should be reworked to clearly tie WRC approval of projects over three million dollars to the provisions required by HB 3369, ORS 541.700, and these rules.

(2) WRD discretion: This, also, needs to be tied to the standards set forth by HB 3369, ORS 541.700, and these rules. Notably, § 25 of HB 3369 sets forth an entire section that lays out the conditions upon which the WRD can act as the WRC’s agent. A reference to this should be noted here.

(3)(c): This section says that the WRD shall notify and/or consult with any other state agencies, Indian tribes, or other parties as deemed appropriate, as part of the department’s evaluation and processing of the application. This falls far short of the statutory requirements for loan approval. Section 21(5) of HB 3369 (which applies to both loans and grants) states:

The Department shall assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and affected tribal governments, and with other interested parties as appropriate. If the project may affect agricultural use, the Water Resources Department shall also assess the project in consultation with the State Department of Agriculture (emphasis added).

The construction of this paragraph requires consultation with ODFW, Parks, DEQ and affected tribal governments. Consultation with “other interested parties”, on the other hand, is optional and applies “when appropriate”. The WRD has erred in asserting that consultation with agencies and tribes is optional. Moreover, this requirement applies to all loans, not just those under three million dollars. This requirement needs to be called out in the in the notice and review section—OAR 690-095-0045.

(3)(b)(c)(d): In addition to our comments on (3)(c) above, these sections seems to be mixing apples and oranges. We understand the WRD wants to set forth in rule WRC delegation to the WRD. This is different, however, than setting forth tasks laid out in (c) and (d), which we presume will apply to all grants, and which more appropriately belong in substantive sections. Moreover, section (b) demands of the WRD tasks that should be discretionary, not mandatory as proposed. This section should be reworded to say something to the effect that per, ORS 536.025, the WRC delegates to the WRD the authority to carry out the functions required under HB 3369 and ORS 541.600/700.

OAR 690-095-0035, Loan Advisory Board

(1) A loan advisory board is not contemplated in the HB 3369 Amendments. That said, there does exist a provision for a loan advisory board under the Division 90 rules. However, the provisions of the Division 90 differ significantly from those proposed here. Importantly, the Division 90 rules set forth the make up the board and

require “[t]he board shall be composed of individual with expertise in and representing interests of one or more of the following: instream flow and watershed enhancement, finance or banking, project development, agriculture, and local government operations.” OAR 690-90-0192. Moreover, importantly, the Division 90 rules set forth a number of procedures for public notice of these meetings. OAR 690-90-019 (8)-(11). And finally, the Division 90 rules that provide the board will hear all comments on any matter before them. OAR 690-90-019(11). If there is going to be a loan advisory board, it should, at a minimum conform to the standards in the Division 90 rules.

(2) This section, which gives the loan advisory board the power to “recommend guidelines for receipt of comments”, should be struck as a whole. The committee, especially since it is of undermined make-up, should not be allowed to dictate who and how public comment can be accepted.

All in all, we suggest that this entire section be struck. It is not only prejudicial to public input and would allow for biased representation of interests, but for the Columbia Loan Program is unnecessary. HB 3369 very clearly requires the WRD to consult with ODFW, Parks, DEQ, affected tribes and, when dealing with farm projects, DOA. Moreover, the statute calls for consultation with other stakeholders when appropriate. It is unclear what added value a loan advisory committee would add to this agency/tribal/stakeholder review.

OAR 690-095-0040, Application

This section needs to set forth all the application requirements set forth by statute, namely § 20 of HB 3369 and any other applicable sections of ORS 541.600/700. Section 20 requires (underlined language straight from statute):

(2) An application filed under this section must be in a form prescribed by the Water Resources Commission and include the following:

- (a) A description of the nature and the primary and secondary purposes of the project.
 - (b) An analysis of the need for the project and for the water that the project is intended to deliver.
 - (c) Identification and description of the project components sufficient to meet the conditions for project funding approval under section 25 of this 2009 Act.
 - (d) A description of the economic feasibility of the project, including but not limited to:
 - (A) The costs of the project; and
 - (B) Information about the financial and other aspects of the operation and maintenance plans for the project.
 - (e) Suggestions for interim and long-term project performance benchmarks.
 - (f) An analysis of the project impacts including, but not limited to, the:
 - (A) Expected economic public benefits.
 - (B) Expected social and cultural public benefits.
 - (C) Expected net environmental public benefits.
 - (g) An evaluation of the potential impact on water quality, based upon water quality standards.
 - (h) Proof that the applicant has acquired at least a final order or limited license for necessary water permits from the department.
 - (i) Letters of support for the proposed water resource development project.
 - (j) If the project has not previously received state funding, a statement regarding whether other moneys are available or have been sought or received for the implementation of the water resource development project.
 - (k) A description of a loan repayment plan.
 - (L) Any other information required by the department.
- (3) Any relevant information described in ORS 541.705 (2)(c) or (e) or (3).
- (4) If the project will receive surface water impounded from a perennial stream, water diverted from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of diverted surface water annually, in addition to the other information required under this section the application shall include the following completed studies:

(a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected stream and of the impact of the project on those flows, that conforms to standards set by the department in consultation with the State Department of Fish and Wildlife and other relevant agencies;

(b) An independent comparative analysis of alternative means of supplying the water intended to be generated by the project, including but not limited to the costs and benefits of conservation, reuse and alternatives and the extent to which long-term water supply needs may be met using those alternatives; and

(c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.

(5) If the applicant is an agricultural water supplier, the applicant must have an approved agriculture water management and conservation plan, have submitted a completed agricultural water management and conservation plan to the Water Resources Department for approval or be in the process of completing or updating a water management and conservation plan.

(6) An application under this section is subject to application fees and additional processing costs as described in ORS 541.710 and loan processing fees under ORS 541.730.

(7) An analysis and evaluation conducted as part of a study performed pursuant to chapter 13, Oregon Laws 2008, is deemed to satisfy the requirements of subsection (4) of this section.

(3) This section needs to include a statutory cite to ORS 541.600/700.

Suggested New Section—Completeness Review: The rules should contain provisions regarding a “completeness review”, similar to what is set forth in the permitting statutes (see OAR 690-310-0070). The governing statute is very clear that only upon the receipt of a “completed” application does the notice/review process start. HB 3369§21(2). And while the statute is quite clear exactly what must be included in a completed application, the draft rules appear to give the director wide latitude in determining what it means to be complete (see comments to OAR 690-095-0045 below). To ensure the letter and intent of HB 3369 is upheld, the rules should include a subsection on “completeness review” that lays out, at a minimum, standards of the fashion suggested below:

- (1) Within XX days after receiving an application, the Department shall determine whether the application contains all the information required under §20 of HB 3369, and otherwise requested by the WRD. If all the required information is included in the application, the WRD may deem it complete.
- (2) If an application lacks any required information, the WRD may either reject the application or require the applicant to submit the additional required information.

OAR 690-095-0045, Notice and Review

(1) Currently this section opens with the following words “Upon receipt of an application that the director determines is complete.....” As noted above, there is currently no guidance as to how this determination is made in the draft rules. As written, this appears to give wide latitude to the director to determine what a complete application is. The statute is very clear what is required in an application. The rules need to be just as clear. In addition to the completeness review suggested above, we propose that this opening language be amended to state:

“Upon the receipt of a completed application which meet all the requirements of §20 of this 2009 Act and any additional information required by these rules and the WRD, the director will provide public notice of the application by posting it on the department website for 60 days from the date the Department determines the application is complete (amendments in underline).

In addition to this, we suggest that this section follow the Division 90 rules detail on the notice, namely that;

The notice shall include a summary of the application including the names of the applicants, the location, nature and any new water appropriations required by the proposed project (amendments in underline)

Moreover, given the consultation requirement (discussed below), the rules should also clearly lay out that notice will be given to ODFW, Parks, DEQ, affected Indian tribes and other parties and DOA as appropriate.

Agency Review: We suggest that the WRD break out the provisions about Agency review into its own separate section. There are number statutory requirements that are missing from the proposed rule language:

First, importantly, the agency review section of the rule needs to clearly state the consultation requirements of the governing statute namely that:

The department shall assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and affected tribal governments, and with other parties as appropriate. If a project may affect agricultural use, the Water Resources Department shall also assess the project in consultation with the State Department of Agriculture. HB 3369§21(5).

This language (direct from the statute) requires three things:

1. Mandatory consultation with ODFW, DEQ, Parks and affected Indian Tribes
2. Consultation with other parties “as appropriate”.
3. Mandatory consultation with DOA when the project might affect agricultural use.

Currently the rules are devoid of any of these statutory requirements. This is a significant omission that needs to be rectified to ensure that the rules comply with the governing law. The rules must be amended to include language that spells these consultation requirements out clearly. Moreover, we suggest that the WRD add language to clarify when consultation with other parties would be “appropriate” (i.e. when their interests will be affected?).

Currently the rules do not include this consultation as part of the process. The rules need not only to lay forth these consultation requirements, but also should clarify where in the timeline this will take place. The WRD cannot take final action without this consultation.

Second, in assessing the application, the statutes require that the director review the application information required under §20 of HB 3369. The rules need to state that the WRD will review/assess all the information submitted per §20 of HB 3369, these rules and any other request by the agency. The draft rules omit this requirement.

And lastly, while we understand that there is going to be an entire rulemaking to address the requirement of §21 of HB 3369 which states “[i]n assessing the net environmental public benefit of the project, the Water Resources Department shall weigh the project’s various environmental impacts on, and enhancements to, all of the forms of environmental benefit described in section 18(2) of this 2009 Act”, the rules should be clear that the WRD must do this review (it is only the “how” that is the subject of the upcoming rulemaking). The rules omit any reference to this.

OAR 690-095-0050, Criteria for Granting a Loan:

(1) Currently this section states that Loans shall not be approved unless:

- (a) The applicant demonstrates that the loan will comply with the requirements of Article XI-I(1) of the Oregon Constitution, ORS 541.600 to 541.855, and any applicable federal and state requirement.

The statute requires that the WRD make a finding of sufficiency. See §25(1) HB 3369. The rule language, on the other hand, shifts the burden to the applicant to “prove” it will comply. The draft rules are not consistent with

statutory direction. Moreover, the draft language noted above fails to include the statutory mandate that the loans also must comply with, Section 26 of HB 3369, Water Resources Commission Rules and bondholder agreements. Id. at (1)(a).

Moreover, no where in this section are the statutory directives regarding fish screens, measurements, certainty the project will result in a net environmental benefit, a finding that the project is designed to deliver instream benefits, etc. See §25 (1)(b)-(g).

To rectify these two failings, we suggest that the language straight from the statute (underlined below) be inserted here, namely:

The Water Resources Department, acting as agent for the Water Resources Commission, may approve a loan for which an application is filed under section 20 of this 2009 Act, if the department finds that:

(a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the Oregon Constitution, ORS 541.700 to 541.855, section 26 of this 2009 Act, Water Resources Commission rules and bondholder agreements;

(b) The plan for the construction of the proposed project complies with all applicable provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

(c) Planned diversions of surface water include provision for fish screens and, if applicable, volitional fish passage;

(d) The use of surface water or ground water from the project will be measured and reported;

(e) The applicant or beneficiaries of water from the project measure and report, or have scheduled and financed the measurement of, all existing water use at the point of diversion;

(f) There is a reasonable certainty that the project will deliver a measurable net environmental public benefit; and

(g) The project is designed to deliver in-stream benefits.

(2) The department may require that a project protect peak and ecological flows to the extent determined by the State Department of Fish and Wildlife to be necessary.

(3) This section and sections 20 and 26 of this 2009 Act do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

In addition to the above omissions, this section fails to lay forth the provisions of §26(3) of HB 3369 (underlined below) which requires:

(3) The department may issue a loan only if the applicant agrees to periodic review of the project, including but not limited to:

(a) Review of interim and long-term performance benchmarks set by the department; and

(b) Program and fiscal audits to ensure that performance benchmarks are achieved on project development, project benefits and return on investment.

(4) The department may issue a loan only if the applicant agrees to report to the department no later than two years after receiving the loan moneys regarding the progress of the project and the economic public benefit, social and cultural public benefit and net environmental public benefit realized from the project. The department shall provide copies of the applicant reports received by the department during the biennium to an interim committee of the Legislative Assembly dealing with natural resources.

(5) The commission may establish reasonable fees for management, oversight or review services that the department provides for a water development project. The fees shall be deposited to the Water Development Administration and Bond Sinking Fund.

Moreover, §6 of HB 3699 (underlined below) requires the WRC to make the following findings prior to approval of financing:

(1)(a) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

(b) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

(c) The plan for the construction and operation will provide multipurpose facilities, to the extent practicable;

(d) The applicant is a qualified, credit-worthy and responsible water developer that meets the standards established by commission rule and is willing and able to enter into a contract with the commission for the construction and repayment as provided in ORS 541.730;

(e) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

(f) There is a need for the proposed water development project, the proposed project is in the public interest and the applicant's financial resources are adequate to provide the working capital needed to operation and maintain the project; and

(g) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project.

The above requirements should all be set forth in the rules.

OAR 690-095-0050(3): This section grants the director the ability to issue an initial non-binding letter of intent to grant a loan. This is not contemplated by the governing statutes, but if the WRC wants to retain it this section needs to be strengthened to ensure that this letter cannot be granted until after the close of the comment period, after the multi-agency assessment, and only if all the application/rule requirements are met. In other words, the full review (except the review of the additional information the WRD requests) has been made. As it, the rules would allow this letter at any point of the process.

OAR 690-095-0050(4) states that “[f]or any water development project requiring the filing of a water right application, the director shall make any loan approval conditioned upon receipt of the water right application in accordance with ORS Chapter 536, 537, and 540.” This provision is inconsistent with the statutory directive that the applicant provide in their application: “proof that the applicant has acquired at least a final order or a limited license for necessary water permits from the WRD” up front, in the application. § 20(2)(h) HB 3369.

OAR 690-095-0050(5): The statute requires that WRD “ensure that any necessary federal and state environmental impact approval processes have been completed, and that agencies have issued any relevant approvals and approvals” before advancement of any loan. HB 3369 §26(1). These requirements need to be added to this subsection, which currently only focuses on federal funding and construction, not environmental approvals.

Public notice: The WRD should provide public notice of their decision to grant or deny a loan application.

690-095-0055, Appeal Process:

The statute does **not** contemplate an appeal process for the applicant. That said, WaterWatch would not object to an appeal process if third parties were also granted the ability to appeal an agency approval of a loan. If the WRD is not going to grant third parties the ability to appeal, we object to any appeal rights.

That said, there are fatal flaws in the language as proposed. The draft rules currently grant the Commission the authority to reverse a WRD decision based only upon the finding that “sufficient collateral and resources to repay the loan in full exists”. This language completely strips the many findings and/or requirements of a loan and

allows a project to move forward simply because there is “sufficient collateral and resources to repay the loan.” There are many reasons why the WRD might deny a loan. This proposed language completely removes all the requirements and/or sideboards of HB 3369 and ORS 541.600/700. This is not legally defensible and must be struck.

If an appeal section is going to be retained, it needs to allow for appeals by any party for the granting/modifying/denial of an application, and, importantly, WRC review of the appeal must be clearly tied to all the requirements of HB 3369 and ORS 541.600/700.

This section also leaves open the question of what body appeals of loans of three million or more, which per these rules are granted/denied by the WRC not the WRD, go to.

690-095-0060, Loan Security

This section should note that all the requirements of ORS 541.600/700 apply as well as the provisions of this rule. The statute gets into details on foreclosure. It also grants the WRC the authority “to take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state’s interest.” ORS 541.740(7). See HB 3369 (attached) for details.

OAR 690-095-0070, Loan Contract:

The statutes require that the applicant provide periodic review of the project, including by not limited to: a) review of interim and long-term performance benchmarks set by the WRD and b) program and fiscal audits to ensure that performance benchmarks are achieved on project development, project benefits and return on investment. HB 3369 §26(3). Applicants are also required to report to the WRD within two years regarding the progress of the project and the economic public benefit, social and cultural public benefit and net environmental benefit realized from the project. Id. at §26(4). While referenced, these statutory requirements should be laid forth in the rules.

Moreover, ORS 541.730 (§7 HB 3369) sets forth a number of loan contract requirements that apply to Columbia River under the Water Development Loan Development Funds (underlined below), that should be set forth here namely:

(1) If the Water Resources Commission approves the financing for the construction of a water development project, the commission, on behalf of the state, and the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient collateral in the manner provided in ORS 541.740. The loan contract shall set forth, among other matters:

(a) That the commission, on behalf of the state, must approve the arrangements made by the applicant for the construction, operation and maintenance of the water development project, using moneys in the Water Development Fund for the construction.

(b) A plan for the repayment of moneys borrowed from the Water Development Fund and interest on those moneys as described in subsection (3) of this section.

(c) Provisions satisfactory to the commission for field engineering and inspection, the commission to be the final judge of completion of the contract.

(d) That the liability of the state under the contract is contingent upon the availability of moneys in the Water Development Fund for use in the construction, operation and maintenance of the water development project.

(e) Such further provisions as the commission considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(f) That the commission may institute an appropriate action or suit to prevent use of the facilities of a water development project financed by the Water Development Fund by any person who is delinquent in the repayment of any moneys due the Water Development Administration and Bond Sinking Fund.

- (g) A loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission.
- (2) The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700(7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state.
- (3) The commission, in consultation with the State Treasurer, shall set the interest rate in an amount the commission determines to be sufficient to cover, to the extent practicable:
- (a) The interest rate to be paid to bondholders on the underlying bonds;
 - (b) The administrative expenses incurred by the commission, the Water Resources Department and the State Treasurer in connection with the loan program;
 - (c) All bond-related costs;
 - (d) The establishment of Water Development Administration and Bond Sinking Fund reserves; and
 - (e) An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.
- (4) In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.
- (5) The repayment plan:
- (a) Shall provide for commencement of repayment by the water developer of moneys used for project construction and interest on those moneys not later than two years after the date of the loan contract or at such other time as the commission may provide.
 - (b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission.
 - (c) Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission.
 - (d) Shall set forth a schedule of payments and the period of loan. The period of the loan may not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less.
 - (e) Shall set forth the manner of determining when loan payments are delinquent.
 - (f) Shall include repayment of interest that accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and may require payments of varying amounts for collection of that accrued interest.
 - (g) May include provisions in addition to the provisions described in paragraphs (a) to (f) of this subsection.

And finally, the Division 90 rules set forth a number of provisions to be in a loan contract that are not found in these draft rules that should apply here (i.e. A statement allowing the director to inspect the property to ensure that the developer complies with conditions for which the money was loaned, 690-90-040(3)(d)). We suggest that the rules be amended to include all relevant provisions regarding loan contracts, and/or incorporate by reference the standards of OAR 690-90-40.

OAR 690-095-0075, Conditions to Disbursement of Loan Funds:

- (1) The statute requires that all federal and state environmental impact statements be complete and that agencies have issued and relevant approval and permits before loan disbursement. This rule, on the other hand, grants the WRD the discretion to withhold payment until these environmental reviews are complete (via a "may"). The "may" in the rules needs to be changed to a "shall" to be in compliance with HB 3369 §26(1).
- (2) There is no statutory authority for the broad discretion the WRD grants itself in this section to negotiate solutions regarding loan default. ORS 541.730(7)(5)(b) allows the Commission to "provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission." The statutes do not, on the other hand, grant carte blanche authority to the WRC/WRD to agree to "any other solution jointly agreed to by the water developer and the director" as is put forth in subsection (2).

This section needs to be reworked to follow the sideboards set forth in statute. Additionally, as the statute only allows for delay of payment because of “hardship” or “emergency circumstances”, the rules should add a definition of these terms, which clearly outline what qualifies as well as appropriate sideboards (i.e. the proposed language that includes any “economic stress due to factors beyond individual control” is too broad). The WRD should be required to make a finding of “hardship” or “emergency circumstances” as part of any discussions on extensions.

OAR 690-095-0080, Fees and Charges

(4) has a typo—“the following” should be struck.

OAR 690-095-0095, Collection of Delinquencies

The rule reference is incorrect. It should read:

The provisions of OAR-690-90-055 apply to loans and loan contracts entered into under the loan program and these rules.

Or, in the alternative, list out the provisions of OAR 690-90-055 here.

OAR 690-095-001, Property Management

The rule reference is incorrect. It should read:

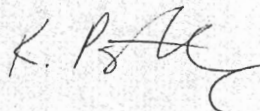
The provisions of OAR 690-90-060 apply to loans and loan contracts entered into under the loan program and these rules.

Or, in the alternative, list out the provisions of OAR 690-90-060 here.

Conclusion: The rules, as currently drafted, do not include the many requirements of HB 3369, and in some cases propose standards that are inconsistent with statutory directive. We recommend that the rules be reworked to better reflect the statutory mandates, many of which are referenced in these comments. We would further recommend that the amended rules be re-noticed, so that the public will have an opportunity to comment on the full spectrum of the reworked rules. We would be happy to further discuss our concerns/comments with the WRD.

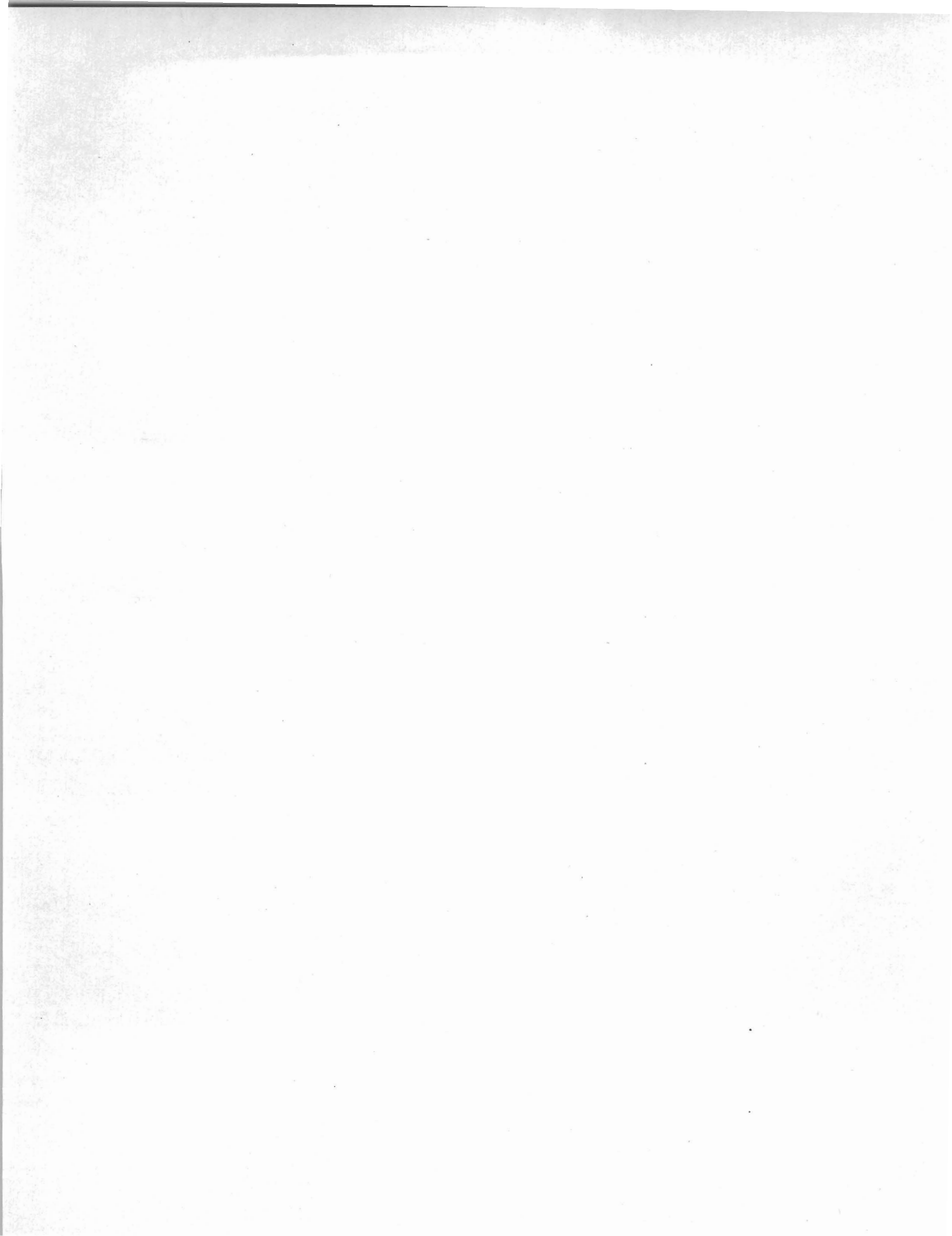
Thank you for this opportunity to comment.

Sincerely,



Kimberley Priestley
Senior Policy Analyst

Attachment



Enrolled
House Bill 3369

Sponsored by Representatives JENSON, J SMITH; Representatives BOONE, CANNON, CLEM, D EDWARDS, SCHAUFLEER, G SMITH, WITT, Senator MORRISSETTE

CHAPTER

AN ACT

Relating to water supply management; creating new provisions; amending ORS 536.220, 541.700, 541.705, 541.710, 541.720, 541.730, 541.740, 541.765, 541.770, 541.785, 541.830, 541.845 and 541.850; repealing ORS 541.755; appropriating money; and declaring an emergency.

Whereas the western United States is projected to experience substantial population growth this century, including an additional one million people in Oregon before 2030; and

Whereas climate change is expected to alter the timing and form of precipitation in Oregon; and

Whereas surface water is almost completely allocated across Oregon during summer months, ground water levels have declined precipitously in several areas and the hydrological connection between surface water and ground water levels is significant; and

Whereas Oregon needs to develop an integrated statewide water management plan to address existing and likely future in-stream and out-of-stream demands on Oregon's water supplies; and

Whereas having coordinated plans and programs to address in-stream and out-of-stream water needs will make Oregon a more likely recipient of federal investments and give Oregon stronger standing in interstate water disputes; and

Whereas water is a valuable economic commodity; and

Whereas water development projects can be designed to simultaneously benefit commercial development, the natural environment and the fiscal responsibilities of the state; and

Whereas it is the policy of the Water Resources Department to directly address Oregon's water supply needs and to restore and protect stream flows and watersheds; and

Whereas it is desirable that the Water Resources Department and the Water Resources Commission have greater authority to issue loans and grants to public and private bodies, Indian tribes and others for the purpose of developing projects that will ensure the availability of a sufficient and sustainable water supply to meet Oregon's current and future water needs; and

Whereas loan and grant moneys for developing projects that ensure a sufficient and sustainable water supply must be administered in a prudent and fiscally sound manner and used expeditiously; and

Whereas water development projects that deliver mutual benefits for water users, the environment and the fiscal condition of this state should be funded or financed with public dollars; and

Whereas all water within Oregon belongs to the public pursuant to law; now, therefore,

Be It Enacted by the People of the State of Oregon:

ADDING

SECTION 1. (1) Section 2 of this 2009 Act is added to and made a part of ORS 541.700 to 541.855.

(2) Sections 16 and 18 to 27 of this 2009 Act are added to and made a part of ORS chapter 541.

WATER DEVELOPMENT FUND

SECTION 2. The Water Resources Commission shall adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund. The commission shall design the standards to ensure that all loans have a high probability of repayment and that all loans are adequately secured in the event of a default. The commission shall solicit comments from the Oregon Department of Administrative Services and the State Treasurer when designing the standards. The standards may include, but need not be limited to, standards that give preference to entities with ad valorem taxing authority.

SECTION 3. ORS 541.700 is amended to read:

541.700. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

(1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

(2) "Construction" means the construction, or improvement or rehabilitation, in whole or in part, of a water development project, including planning and engineering work, purchasing or refinancing directly related to such construction or improvement or rehabilitation, or any combination of such construction or improvement or rehabilitation. As used in this subsection:

(a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to complete a water development project.

(b) "Refinancing" includes refinancing existing debt of a water developer, as defined in subsection (7)(f) to (m) and (o) of this section, in order to complete a water development project or to provide adequate security for a water development loan, but does not include refinancing existing debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

(3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

(4) "Federal water development project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

(5)(a) "Secondary use" means:

(A) Any water-related recreational use.

(B) Any flood control use.

(C) Any power generation use.

(D) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.

(b) "Secondary use" does not include any use that is incompatible with a water development project.

(6) "Water development project" means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including structures for the application of water for agricultural harvest activities, dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems used for the purpose of agricultural temperature control and any other structure, facility and property necessary or convenient for supplying lands with water for irrigation purposes.

(b) An undertaking, in whole or in part, in this state for the purpose of drainage, including ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods of land drainage that will increase soil versatility and productivity.

(c) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water. An undertaking may provide water to two or more communities with

a combined population of more than 30,000. An undertaking may be part of a project that provides water to a community with a population of more than 30,000, but loans of moneys from the Water Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served by the project that have a population of less than 30,000.

(d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways and all other structures and facilities necessary or convenient for providing fish protection.

(e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed health or improving fish habitat, including methods and materials to restore, maintain and enhance **water quality, streamflows and** the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems and recommended by the Oregon Watershed Enhancement Board established under ORS 541.360.

(f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this subsection.

(7) "Water developer" means:

(a) Any individual resident of this state;

(b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal income is from farming in Oregon;

(c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal income is from farming in Oregon;

(d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal income is from farming in Oregon;

(e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from farming in Oregon;

(f) Any irrigation district organized under or subject to ORS chapter 545;

(g) Any water improvement district organized under ORS chapter 552;

(h) Any water control district organized under ORS chapter 553;

(i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;

(j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS chapter 545;

(k) Any corporation, cooperative, company or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;

(l) Any port district organized under ORS 777.005 to 777.725, 777.915 to 777.953 and 777.990;

(m) Any city or county;

(n) Any organization formed for the purpose of distributing water for community water supply;

or

(o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

SECTION 4. ORS 541.705 is amended to read:

541.705. (1) **Except as provided in section 20 of this 2009 Act for a water development project in the Columbia River Basin,** any water developer may file with the Water Resources Commission an application to enable the construction of a water development project as provided in ORS 541.700 to 541.855. The application shall be filed in the manner, be in the form and contain or be accompanied by any information prescribed by the commission. The commission, in considering applications, shall encourage the largest number of users of the Water Development Fund and shall consider the impact on the family farm units of the state.

(2) In addition to other requirements prescribed by the commission, an application filed under subsection (1) of this section shall:

(a) Describe the nature and purposes of the proposed water development project, including the need for the project and reason why the project would be in the public interest.

(b) State whether any purposes other than improvement of a drinking water system, irrigation, drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will be served by the proposed water development project, and the nature of the other purposes, if any.

(c) Set forth or be accompanied by a feasibility study for the construction, operation and maintenance of the proposed water development project, an estimate of the costs of construction and if the project includes as a primary purpose irrigation or drainage, an evaluation of the agricultural potential of the land from any competent public agency.

(d) State whether any moneys other than those in the Water Development Fund are proposed to be used for the construction of the proposed water development project, and whether any other moneys are available or have been sought for the construction.

(e) Show that the applicant holds or can acquire all lands, other than public lands, and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.

(3) If the application is for a safe drinking water project, the applicant also shall demonstrate that:

(a) The applicant is a city, county, district, water authority or other political subdivision of the state or an organization operated on a not-for-profit basis that makes drinking water available to members of the general public;

(b) The primary use of the loan will be to improve a drinking water system for the purpose of complying with applicable state or federal drinking water quality regulations; and

(c) The applicant has:

(A) Developed a water system master plan; and

(B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712 or can demonstrate that options to find a coordinated solution to the system's drinking water problems have been fully explored.

SECTION 5. ORS 541.710 is amended to read:

541.710. (1) Upon receipt of an application filed as provided in ORS 541.705, the Water Resources Commission shall determine whether the feasibility study described in ORS 541.705 for the water development project set forth in or accompanying the application is satisfactory and if the commission determines that it is not satisfactory, the commission may:

(a) Reject the application;

(b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or

(c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

(2) Except as provided in subsection (3) of this section, **for a loan application filed under ORS 541.705 or section 20 of this 2009 Act**, the commission shall charge and collect from the applicant at the time the application is filed *[a fee of \$100. In addition, the commission shall charge the applicant the amount required to reimburse the commission for costs that exceed the application fee incurred in connection with the application.]* **an application fee equal to the lesser of 0.10 percent of the loan applied for or \$2,500. In addition, the commission may require the applicant to pay for costs that exceed the application fee if the Water Resources Director determines that the costs are incurred solely in connection with processing the application. Before incurring the additional costs, the commission shall advise the applicant of the additional costs to be paid by the applicant.** Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

(3) The commission may establish **a reduced application fee** by rule *[an application fee of less than \$100]* for a water development project that is for fish protection or for watershed enhancement.

SECTION 6. ORS 541.720 is amended to read:

541.720. (1) The Water Resources Commission may approve the financing for the construction of a water development project described in an application filed *[as provided in]* **under ORS 541.705, or subject to section 25 of this 2009 Act in an application filed under section 20 of this**

2009 Act, using moneys in the Water Development Fund[,] secured by a first[, *parity or second*] lien **or by other good and sufficient collateral** in the manner provided in ORS 541.740 if, after investigation, the commission finds that:

[(1)] (a) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

[(2)] (b) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

[(3)] (c) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

[(4)] (d) The applicant is a qualified, credit-worthy and responsible water developer **that meets the standards established by commission rule** and is willing and able to enter into a contract with the commission for construction and repayment as provided in ORS 541.730;

[(5)] (e) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

[(6)] (f) There is a need for the proposed water development project, the proposed project is in the public interest and the applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project; and

[(7)] (g) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project.

(2) ORS 541.700 to 541.855 do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 7. ORS 541.730 is amended to read:

541.730. (1) If the Water Resources Commission approves the financing for the construction of a water development project, the commission, on behalf of the state, and the applicant may enter into a loan contract, secured by a first[, *parity or second*] lien **or by other good and sufficient collateral** in the manner provided in ORS 541.740[, *which*]. **The loan contract** shall set forth, among other matters:

[(1)] (a) That the commission, on behalf of the state, must approve the arrangements made by the applicant for the construction, operation and maintenance of the water development project, using moneys in the Water Development Fund for the construction.

[(2) *A plan for repayment by the applicant to the Water Development Administration and Bond Sinking Fund of moneys borrowed from the Water Development Fund used for the construction, operation and maintenance of the water development project and interest on such moneys used at such rate of interest as the commission determines is necessary to provide adequate funds to recover administrative expenses incurred under ORS 541.700 to 541.855. The repayment plan, among other matters:*]

[(a) *Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the commission may provide;*]

[(b) *May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission;*]

[(c) *Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission; and*]

[(d) *Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of such accrued interest.*]

(b) A plan for the repayment of moneys borrowed from the Water Development Fund and interest on those moneys as described in subsection (3) of this section.

[(3)] (c) Provisions satisfactory to the commission for field engineering and inspection, the commission to be the final judge of completion of the contract.

[(4)] (d) That the liability of the state under the contract is contingent upon the availability of moneys in the Water Development Fund for use in the construction, operation and maintenance of the water development project.

[(5)] (e) Such further provisions as the commission considers necessary to [*insure*] **ensure** expenditure of the funds for the purposes set forth in the approved application.

[(6)] (f) That the commission may institute an appropriate action or suit to prevent use of the facilities of a water development project financed by the Water Development Fund by any person who is delinquent in the repayment of any moneys due the Water Development Administration and Bond Sinking Fund.

[(7)] (g) That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission.

(2) The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state.

(3) The commission, in consultation with the State Treasurer, shall set the interest rate in an amount the commission determines to be sufficient to cover, to the extent practicable:

(a) The interest rate to be paid to bondholders on the underlying bonds;

(b) The administrative expenses incurred by the commission, the Water Resources Department and the State Treasurer in connection with the loan program;

(c) All bond-related costs;

(d) The establishment of Water Development Administration and Bond Sinking Fund reserves; and

(e) An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.

(4) In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.

(5) The repayment plan:

(a) Shall provide for commencement of repayment by the water developer of moneys used for project construction and interest on those moneys not later than two years after the date of the loan contract or at such other time as the commission may provide.

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission.

(c) Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission.

(d) Shall set forth a schedule of payments and the period of loan. The period of the loan may not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less.

(e) Shall set forth the manner of determining when loan payments are delinquent.

(f) Shall include repayment of interest that accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and may require payments of varying amounts for collection of that accrued interest.

(g) May include provisions in addition to the provisions described in paragraphs (a) to (f) of this subsection.

SECTION 8. ORS 541.740 is amended to read:

541.740. (1)(a) **Except as provided in paragraph (b) of this subsection**, when a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property held in fee simple of the water developer or to the user charges, in-

cluding interest, owed to or received by the water developer. The lien created by this subsection does not attach to a leasehold. At the discretion of the Water Resources Commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the affected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges. *[However, the Water Resources Commission may elect to accept a second or parity lien position against the real property or user charges encumbered by this section, if the commission determines the lien position would provide adequate security for the water development loan, as set forth in rules adopted by the commission.]* **The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.**

(c) The existence or foreclosure of the lien created by this subsection shall not cause the acceleration of payment of user charges or other payments on affected real property. Such payments shall continue to be made as they become due.

(2) **Except as provided in this subsection**, when a loan is made under ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (7)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien, *or a parity or second lien if the commission determines it would provide adequate security,* upon such real property of the water developer as the commission shall require for adequate security. **The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.**

(3) When a lien created by subsection (1) of this section is foreclosed, a person whose real property is subject to the lien solely because that real property is irrigated or drained by reason of a water development project or because the real property is served by a water source improved by a water development project for watershed enhancement, shall only have that portion of real property subjected to foreclosure that represents that person's pro rata share of the indebtedness.

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission shall file notice of the loan with the recording officer of each county in which is situated real property of the water developer or real property to which the lien created by subsection (1) or (2) of this section may attach. The notice shall contain a description of the real property of the water developer, a description of any other real property that will be served by the water development project and to which the lien is to attach, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

(5) Upon payment of all amounts loaned to a water developer pursuant to ORS 541.700 to 541.855, the commission shall file with each recording officer referred to in subsection (4) of this section a satisfaction notice that indicates repayment of the loan.

(6) The commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred in foreclosing, into the Water Development Administration and Bond Sinking Fund. In a foreclosure proceeding, the commission may bid on property offered for sale in the proceeding and may acquire title to the property on behalf of the state.

(7) The commission may take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state's interest.

(8) Notwithstanding ORS 293.240, the commission may compromise, release, discharge, waive, cancel or settle a claim against a water developer if such action:

- (a) Is consistent with the purposes of ORS 541.700 to 541.855;
- (b) Does not impair the ability to pay the administrative expenses of the commission or the obligations of any bonds outstanding; and
- (c) Is, under the circumstances, the means most likely to preserve the claim or to recover the greatest part of the amount claimed.

(9) The commission, by rule, may set out procedures to be used when a water developer is unable to make required loan payments because of illness, injury, death, involuntary job loss or economic stress due to factors beyond individual control. The rules shall be effective to the extent permitted by the terms of the contracts associated with affected loans. The rules:

(a) May provide for a temporary reduction of loan payment;

(b) May provide for any other solution jointly agreed to by the water developer and the commission;

(c) Shall provide for repayment of the amount of any loan payments reduced under the rules in accordance with terms and conditions agreed upon by the borrower and the commission; and

(d) Shall require the commission to consider the effect of any payment reduction or delay on the solvency of the program as a whole, on estimates of the most probable financial position of the program in the future and on other borrowers in the program.

(10)(a) Upon application by a water developer, the commission may grant a partial release of security when the commission determines that granting the requested release will not jeopardize the water development loan program's security position.

(b) The remaining property must qualify as security for the loan balance under the applicable law.

(c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may require that the loan balance be reduced as consideration for granting the requested release.

SECTION 9. ORS 541.765 is amended to read:

541.765. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855 or **section 25 of this 2009 Act**, the Water Resources Commission may authorize loans of such moneys to those persons to whom approval has been granted by the federal government or any agency or instrumentality of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate.

SECTION 10. ORS 541.770 is amended to read:

541.770. If the Water Resources Commission approves an application for the loan of moneys authorized by ORS 541.765, the commission shall enter into a loan contract with the borrower that provides, among other matters:

(1) That the loan be secured by a first lien[, or parity or second lien if appropriate,] or by **other good and sufficient collateral** in the same manner as provided in ORS 541.740.

(2) That the loan bear interest at the same rate of interest as provided in ORS 541.730.

(3) That the loan becomes due and payable to the Water Development Administration and Bond Sinking Fund not later than 60 days after the date that federal funds for the acquisition of easements and rights of way for the project are paid to the borrower or 30 years from the date of the loan, whichever is earlier.

(4) Such provisions as the commission considers necessary to [insure] **ensure** expenditure of the moneys loaned for the purposes provided in ORS 541.765.

(5) That the commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund.

SECTION 11. ORS 541.785 is amended to read:

541.785. Except for the proceeds of refunding bonds, all moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.700, 541.705 to 541.770 and 541.835 **and sections 25 and 26 of this 2009 Act**. If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments set forth in ORS 541.830, moneys in the Water Development Fund may be transferred to the Water Development Administration and Bond Sinking Fund. Pending the use of

moneys in the Water Development Fund for the proper purposes, such moneys may be invested in the manner provided by law.

SECTION 12. ORS 541.830 is amended to read:

541.830. (1) There hereby is created the Water Development Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the Water Resources Commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855 **or section 25 of this 2009 Act**, if the expense is not paid directly by the applicant, including principal and interest due on bonds outstanding. These administrative expenses also may include all costs associated with the issuance of bonds and the funding of any credit enhancements or reserves determined to be necessary or advantageous in connection with the bonds.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to 541.815.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees [*required by ORS 541.710*] **and additional processing costs paid under ORS 541.710 and loan processing fees under ORS 541.730.**

(b) Repayments of moneys loaned to water developers from the Water Development Fund, including interest on such moneys.

(c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal water development projects, including interest on such moneys.

(d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including appropriations dedicated to the partial payment for or repayment of projects affording public benefits.

(e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(g) Interest earned on cash balances invested by the State Treasurer.

(h) Any revenues received by the commission under the provisions of ORS 541.745.

(i) Moneys transferred from the Water Development Fund.

(3) The moneys referred to in subsection (2) of this section are continuously appropriated to the commission for the purposes provided in subsection (1) of this section.

(4) The commission, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 [*which*] **or section 25 of this 2009 Act that** offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

(5) The commission, with the approval of the State Treasurer, may transfer moneys from the fund created under subsection (1) of this section to the Water Development Fund if:

(a) A cash flow projection shows that the transfer will not have any negative impact on the commission's ability to pay bond principal, interest and administration costs;

(b) The transfer will not create the need for issuance of any bonds; and

(c) The transfer, together with loans outstanding from prior transfers and not refinanced by funds derived directly from a bond sale, [*shall*] **does** not exceed \$1.

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board.

SECTION 13. ORS 541.845 is amended to read:

541.845. (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855.

(2) In adopting rules establishing guidelines or criteria for awarding loans or grants for drinking water projects, the commission shall coordinate the Water Resources Department's rulemaking

process with the Economic and Community Development Department and the Department of Human Services in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 431.120. The rules adopted under this subsection shall:

(a) Require the installation of meters on all new active service connections from any municipal drinking water distribution lines funded under ORS 285B.560 to 285B.599, 431.120, 541.700, 541.705, [541.755,] 541.765, 541.830 and 541.845; and

(b) Require a plan, to be adopted by the municipality, for installation of meters on all service connections throughout the drinking water system.

(3) As used in this section, "service connection" does not include fire hydrants, fire sprinkler system connections, line blow-offs and drains, standby emergency interties, valve controlled drinking fountains and other similar intermittently used connections.

SECTION 14. ORS 541.850 is amended to read:

541.850. The Water Resources Commission may accept gifts of money or other property from any source, given for the purposes of ORS 541.700 and 541.705 to 541.770 or section 25 of this 2009 Act. Money so received shall be paid into the Water Development Fund. Money or other property so received shall be used for the purposes for which received.

SECTION 15. ORS 541.755 is repealed.

WATER INVESTMENT GRANT FUND

SECTION 16. (1) The Water Investment Grant Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Investment Grant Fund shall be credited to the Water Investment Grant Fund. Moneys in the Water Investment Grant Fund are continuously appropriated to the Water Resources Department to fund grants under section 23 of this 2009 Act and to pay the administrative costs of the department in operating a grant program under sections 18 to 27 of this 2009 Act.

(2) The Water Investment Grant Fund consists of the following:

(a) Moneys appropriated to the fund by the Legislative Assembly.

(b) Any moneys that may be transferred to the fund by the federal government, a state agency or a local government.

(c) Any bond proceeds authorized for deposit to the fund.

(d) Proceeds from grant application fees described in section 19 of this 2009 Act.

(e) Gifts, grants or donations to the fund. Notwithstanding subsection (1) of this section, the department may use moneys received under this paragraph according to any terms and conditions of the gift, grant or donation.

(3)(a) Except as provided in paragraph (b) of this subsection, the department may make a grant for a qualifying project from the fund to:

(A) An Indian tribe as defined in ORS 391.802;

(B) A person as defined in ORS 536.007; or

(C) A for-profit or nonprofit cooperative.

(b) The department may not issue a grant from the fund to a municipality or a provider of water for municipal purposes.

UMATILLA BASIN PROJECTS

SECTION 17. (1) As used in this section, "critical ground water storage project" means an underground or below-ground storage of river water in a critical ground water area designated under ORS 537.730 for use in:

(a) Aquifer storage and recovery as described in ORS 537.534 and streamflow augmentation and restoration; or

(b) Recharging ground water basins and reservoirs as described in ORS 537.135 and streamflow augmentation and restoration.

(2) The Water Resources Department may issue a grant under this section only for a critical ground water storage project that is located in the Umatilla Basin and that meets the conditions described in this section.

(3) Except as provided in subsection (4) of this section, notwithstanding ORS 537.534, if the project uses artificial recharge to recharge an alluvial aquifer that is not confined, the project must be designed:

(a) To provide for no more than 75 percent of new stored water to be withdrawn and for not less than 25 percent of the new water to be dedicated for the purpose of providing net environmental public benefits or in-stream benefits; and

(b) To the extent practicable, to return dedicated new stored water for stream augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(4) If more than 25 percent of the funding for an aquifer storage and recovery project is from grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of providing net environmental public benefit or in-stream benefit a percentage of the new stored water created by the project that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the dedicated increment of new stored water for net environmental public benefit and in-stream benefit.

(5) On or before the earlier of six years after the issuance of the ground water recharge permit or the date the water right certificate is issued, the department shall quantify and legally protect in-stream the increment of new water returned in stream from a project described in this section.

(6) The department shall require as a contractual condition for issuing the grant, and as a condition of any new groundwater recharge permit or water right certificate issued for the project, that if the project receives grants or loans from state moneys other than a grant issued under this section, the project must be operated in a manner that actually dedicates the percentage of new stored water for net environmental public benefit or in-stream benefit that the project was designed to dedicate for those purposes.

(7) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

(8) This section is repealed January 2, 2030.

DEFINITIONS

SECTION 18. As used in sections 18 to 27 of this 2009 Act:

(1) "Economic public benefit" means the improvement of economic conditions that relate to one or more of the following:

- (a) Job creation;
- (b) Encouragement of economic investments;
- (c) Increases in state revenues;
- (d) Protection of public resource lands;
- (e) Increases in the efficiency of state spending; and
- (f) Other activities that enhance economic activity within the state.

(2) "Net environmental public benefit" means the improvement of ecological conditions, compared with a preproject baseline, that relate to one or more of the following:

(a) Water, velocity, temperature, stream flow levels and other stream flow conditions that provide for critical life history needs of state or federally listed sensitive, threatened or endangered fish species and that maintain or enhance population viability of those species.

(b) Stream flow conditions that support the life stages of native fish species or that will allow for the reintroduction of native fish species.

(c) Return flows to surface water bodies from aquifer recharge projects or from other underground water storage projects, and the in-stream protection for those return flows designed to have in-stream benefits.

(d) Protection of peak flows at above-ground and underground storage projects.

(e) Protection of ecological flows at above-ground and underground storage projects.

(f) Water temperature, dissolved oxygen content and other water quality conditions, and progress towards the attainment of water standards that are not being met in the relevant water body.

(g) Ground water quality or quantity.

(h) Aquatic or riparian habitat restoration or enhancement.

(i) Eliminating nonpoint source pollutant transport.

(3) "Secondary use" has the meaning given that term in ORS 541.700.

(4) "Social and cultural public benefit" means the improvement of conditions that relate to one or more of the following:

(a) Promoting public health and welfare;

(b) Recreational use;

(c) Outdoor schools; and

(d) Hunting and fishing.

(5) "Water conservation" means an undertaking that results in:

(a) A decrease in the consumptive use of water;

(b) An increase in water use efficiency; or

(c) An increase in water available to meet in-stream needs.

(6) "Water development project" means:

(a) A water development project as defined in ORS 541.700.

(b) All or part of an undertaking in this state for the purpose of:

(A) Water management, measurement, conservation, efficiency, reuse or storage;

(B) Streamflow restoration; or

(C) Benefitting multiple purposes, such as agricultural, domestic, commercial, recreational, municipal or in-stream purposes.

(c) Secondary uses in conjunction with projects described in paragraph (b) of this subsection.

APPLICATIONS

SECTION 19. (1) Any person or entity described in section 16 of this 2009 Act may file an application with the Water Resources Department for a grant from the Water Investment Grant Fund to enable the construction of a water development project located in the Columbia River Basin.

(2) An application filed under this section must be in a form prescribed by the Water Resources Commission and include the following:

(a) A description of the nature and the primary and secondary purposes of the project.

(b) An analysis of the need for the project and for the water that the project is intended to deliver.

(c) Identification and description of the project components sufficient to meet the conditions for project funding approval under section 23 of this 2009 Act.

(d) A description of the economic feasibility of the project, including but not limited to:

(A) The costs of the project; and

(B) Information about the financial and other aspects of the operation and maintenance plans for the project.

(e) Suggestions for interim and long-term project performance benchmarks.

(f) An analysis of the project impacts including, but not limited to, the:

(A) Expected economic public benefits.

- (B) Expected social and cultural public benefits.
 - (C) Expected net environmental public benefits.
 - (g) An evaluation of the potential impact on water quality, based upon water quality standards.
 - (h) Proof that the applicant has acquired at least a final order or limited license for necessary water permits from the department.
 - (i) Letters of support for the proposed water resource development project.
 - (j) If the project has not previously received state funding, a statement regarding whether other moneys are available or have been sought or received for the implementation of the project.
 - (k) Information sufficient to demonstrate that the amount of the requested funding will be matched by the funding from another source that is not less than a dollar-for-dollar match.
 - (L) Any other information required by the department.
 - (3) If the project will receive surface water impounded from a perennial stream, water diverted from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of diverted surface water annually, in addition to the other information required under this section the application shall include the following completed studies:
 - (a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected stream and of the impact of the project on those flows, that conforms to standards set by the department in consultation with the State Department of Fish and Wildlife and other relevant agencies;
 - (b) An independent comparative analysis of alternative means of supplying the water intended to be generated by the project, including but not limited to the costs and benefits of conservation, reuse and alternatives and the extent to which long-term water supply needs may be met using those alternatives; and
 - (c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.
 - (4) If the applicant is an agricultural water supplier, the applicant must have an approved agriculture water management and conservation plan, have submitted a completed agricultural water management and conservation plan to the Water Resources Department for approval or be in the process of completing or updating a water management and conservation plan.
 - (5) The commission may establish fees for filing applications for a grant under this section. Moneys from the application fees established by the commission shall be deposited to the Water Investment Grant Fund.
 - (6) An analysis and evaluation conducted as part of a study performed pursuant to chapter 13, Oregon Laws 2008, is deemed to satisfy the requirements of subsection (3) of this section.
- SECTION 20.** (1) A water developer, as defined in ORS 541.700, shall file an application for a loan from the Water Development Fund as provided in this section instead of under ORS 541.705 if:
- (a) The applicant is not a municipality or a provider of water for municipal purposes;
 - (b) The loan is for the purpose of enabling the construction of a water development project in the Columbia River Basin; and
 - (c) The moneys from which the loan is to be funded were provided under an appropriation that dedicates the moneys for use under this section or for loans of a type described in this subsection made to applicants of a type described in this subsection.
- (2) An application filed under this section must be in a form prescribed by the Water Resources Commission and include the following:
- (a) A description of the nature and the primary and secondary purposes of the project.

(b) An analysis of the need for the project and for the water that the project is intended to deliver.

(c) Identification and description of the project components sufficient to meet the conditions for project funding approval under section 25 of this 2009 Act.

(d) A description of the economic feasibility of the project, including but not limited to:

(A) The costs of the project; and

(B) Information about the financial and other aspects of the operation and maintenance plans for the project.

(e) Suggestions for interim and long-term project performance benchmarks.

(f) An analysis of the project impacts including, but not limited to, the:

(A) Expected economic public benefits.

(B) Expected social and cultural public benefits.

(C) Expected net environmental public benefits.

(g) An evaluation of the potential impact on water quality, based upon water quality standards.

(h) Proof that the applicant has acquired at least a final order or limited license for necessary water permits from the department.

(i) Letters of support for the proposed water resource development project.

(j) If the project has not previously received state funding, a statement regarding whether other moneys are available or have been sought or received for the implementation of the water resource development project.

(k) A description of a loan repayment plan.

(L) Any other information required by the department.

(3) Any relevant information described in ORS 541.705 (2)(c) or (e) or (3).

(4) If the project will receive surface water impounded from a perennial stream, water diverted from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of diverted surface water annually, in addition to the other information required under this section the application shall include the following completed studies:

(a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected stream and of the impact of the project on those flows, that conforms to standards set by the department in consultation with the State Department of Fish and Wildlife and other relevant agencies;

(b) An independent comparative analysis of alternative means of supplying the water intended to be generated by the project, including but not limited to the costs and benefits of conservation, reuse and alternatives and the extent to which long-term water supply needs may be met using those alternatives; and

(c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.

(5) If the applicant is an agricultural water supplier, the applicant must have an approved agriculture water management and conservation plan, have submitted a completed agricultural water management and conservation plan to the Water Resources Department for approval or be in the process of completing or updating a water management and conservation plan.

(6) An application under this section is subject to application fees and additional processing costs as described in ORS 541.710 and loan processing fees under ORS 541.730.

(7) An analysis and evaluation conducted as part of a study performed pursuant to chapter 13, Oregon Laws 2008, is deemed to satisfy the requirements of subsection (4) of this section.

SECTION 21. (1) If an application filed under section 19 or 20 of this 2009 Act lacks any required information, the Water Resources Department may reject the application or require the applicant to submit additional information.

(2) Upon receipt of a completed application filed under section 19 or 20 of this 2009 Act, the department shall provide public notice by posting the application on the department's website for a 60-day period prior to issuing a loan or grant to the applicant.

(3) The department shall provide for the receipt of public comment on the application during the 60-day period that the application is posted on the department website, as specified by the Water Resources Commission by rule.

(4) The department shall review the application information filed under section 19 or 20 of this 2009 Act. The department shall commence the assessment no later than 60 days after receiving the application.

(5) The department shall assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department the Department of Environmental Quality and affected tribal governments, and with other interested parties as appropriate. If a project may affect agricultural use, the Water Resources Department shall also assess the project in consultation with the State Department of Agriculture.

(6) In assessing the net environmental public benefit of the project, the Water Resources Department shall weigh the project's various environmental impacts on, and enhancements to, all of the forms of environmental benefit described in section 18 (2) of this 2009 Act.

SECTION 22. (1) The Water Resources Commission shall adopt rules establishing guidelines for the Water Resources Department's review of applications for a grant filed under section 19 of this 2009 Act and for the assessment of projects for which grants are sought. The guidelines shall include:

(a) Evaluation of the awarding of grants as a financial incentive to accomplish the goals of the grant program;

(b) Consideration of the financial needs of applicants and other special circumstances; and

(c) Consideration of the economic public benefit, social and cultural public benefit and net environmental public benefit of the project.

(2) The guidelines shall give priority to projects that:

(a) Recharge aquifers in limited and critical ground water areas;

(b) Are designed to deliver the greatest net environmental public benefit;

(c) Include in-stream flow restoration components;

(d) Conserve water; or

(e) Are water storage projects that provide for stored water to be used for restoring or augmenting streamflows in a manner that conserves, maintains and enhances water quality, aquatic life, fish life or other ecological values.

(3) The guidelines shall require that the department consider the following:

(a) Local support for the project;

(b) Oregon's in-stream and out-of-stream water needs as influenced by existing and anticipated climate change;

(c) The project's potential to facilitate economic development;

(d) The projected impact of the project on public health matters relating to water; and

(e) Statewide water needs.

(4) The commission shall adopt rules for use by the Water Resources Department in assessing the net environmental public benefits of a project under section 21 of this 2009 Act. The commission must consult with, and provide a 60-day period for the receipt of comment from, the State Department of Fish and Wildlife, the State Parks and Recreation Department, the State Department of Agriculture and the Department of Environmental Quality before the commission adopts a rule described in this subsection.

LOANS AND GRANTS

SECTION 23. (1) Subject to any additional qualifications or restrictions under sections 21, 22 or 24 of this 2009 Act or Water Resources Commission rules, the Water Resources Department may approve a grant application filed under section 19 of this 2009 Act if the department finds that:

(a) The plan for the construction of the proposed project complies with all applicable provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

(b) Planned diversions of surface water include provision for fish screens and, if applicable, volitional fish passage;

(c) The use of surface water or ground water from the project will be measured and reported;

(d) The applicant or beneficiaries of water from the project measure and report, or have scheduled and financed the measurement of, all existing water use at the point of diversion;

(e) There is a reasonable certainty that the project, considered in total, will deliver a measurable net environmental public benefit; and

(f) To the extent applicable, the project complies with subsection (2) or (3) of this section.

(2) A water storage project must be designed:

(a) To provide for no more than 75 percent of new stored water in the aquifer or above-ground storage location of the project to be withdrawn for agricultural purposes and for not less than 25 percent of the new water to be dedicated for the purpose of providing net environmental public benefits or in-stream benefits; and

(b) To the extent practicable, to return dedicated new stored water for stream augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(3) If more than 25 percent of the funding for a water storage project is from grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of providing net environmental public benefit or in-stream benefit a percentage of the new stored water created by the project that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the dedicated increment of new stored water for net environmental public benefit or in-stream benefit.

(4) On or before the earlier of six years after the issuance of the ground water recharge permit or the date the water right certificate is issued, the department shall quantify and legally protect the increment of new water returned in stream from a project described in this section.

(5) The department shall require as a contractual condition for issuing the grant, and as a condition of any new water permit or water right certificate, that the project be operated in a manner that actually dedicates the percentage of new stored water for net environmental public benefit or in-stream benefit that the project was designed to dedicate for those purposes.

(6) The department may require that a project protect peak and ecological flows to the extent determined by the State Department of Fish and Wildlife to be necessary.

(7) The commission, by rule, may allow the Water Resources Department to waive any requirement of this section for the issuance of a grant, other than the requirement of a measurable net environmental public benefit, if:

(a) The grant application requests less than \$20,000; or

(b) The project is a conservation, efficiency, restoration or reuse project that can be shown to the satisfaction of the department to cause no harm to the source, any receiving stream, fish or wildlife or existing water rights.

(8) This section and sections 19, 21, 22, 24 and 27 of this 2009 Act do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 24. (1) The Water Resources Department shall ensure that any necessary federal and state environmental impact approval processes have been completed, and that agencies have issued any relevant approvals and permits, before the advancement of any grant moneys for a project described in section 23 of this 2009 Act. The department shall determine the amount of a grant from the Water Investment Grant Fund on a case-by-case basis. The department may not issue a grant under section 23 of this 2009 Act to provide assistance for operational or maintenance expenses of a water development project other than project startup costs.

(2) The department may issue a grant from the fund only if the applicant agrees to periodic review of the project, including but not limited to:

(a) Review of interim and long-term performance benchmarks set by the department; and
(b) Program and fiscal audits to ensure that performance benchmarks are achieved on project development, project benefits and return on investment.

(3) The department may issue a grant from the fund only if the applicant agrees to report to the department no later than two years after receiving the grant moneys regarding the progress of the project and the economic public benefit, social and cultural public benefit and net environmental public benefit realized from the project. The department shall provide copies of the applicant reports received by the department during the biennium to an interim committee of the Legislative Assembly dealing with natural resources.

(4) The Water Resources Commission may establish reasonable fees for management, oversight or review services that the department provides for a water development project. The fees shall be deposited to the Water Investment Grant Fund.

(5) For a project described in section 23 (2) of this 2009 Act, the commission may require compliance with the conditions described in section 23 (2) of this 2009 Act as a condition of any new water permits issued for the project and may monitor operation of the project to ensure compliance.

SECTION 25. (1) The Water Resources Department, acting as agent for the Water Resources Commission, may approve a loan for which an application is filed under section 20 of this 2009 Act, if the department finds that:

(a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the Oregon Constitution, ORS 541.700 to 541.855, section 26 of this 2009 Act, Water Resources Commission rules and bondholder agreements;

(b) The plan for the construction of the proposed project complies with all applicable provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

(c) Planned diversions of surface water include provision for fish screens and, if applicable, volitional fish passage;

(d) The use of surface water or ground water from the project will be measured and reported;

(e) The applicant or beneficiaries of water from the project measure and report, or have scheduled and financed the measurement of, all existing water use at the point of diversion;

(f) There is a reasonable certainty that the project will deliver a measurable net environmental public benefit; and

(g) The project is designed to deliver in-stream benefits.

(2) The department may require that a project protect peak and ecological flows to the extent determined by the State Department of Fish and Wildlife to be necessary.

(3) This section and sections 20 and 26 of this 2009 Act do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 26. (1) The Water Resources Department shall ensure that any necessary federal and state environmental impact approval processes have been completed, and that agencies have issued any relevant approvals and permits, before the advancement of any loan moneys for a project described in section 25 of this 2009 Act. The department shall determine the amount of a loan for a project described in section 25 of this 2009 Act on a case-by-case basis. The department shall determine the maximum amount of a loan based in part upon a reasonable and prudent expectation of the ability of the borrower to repay the loan. The department may not issue a loan to provide assistance for operational or maintenance expenses of a water development project other than project startup costs.

(2) Notwithstanding ORS 541.730, if the Water Resources Commission, in consultation with the State Treasurer, believes that the project is unlikely to produce a net profit for the borrower or for any for-profit entity, the commission may set the loan interest rate at a level that reduces or waives the amount of the interest rate set under ORS 541.730 that is in excess of the interest to be paid to bondholders on the underlying bonds.

(3) The department may issue a loan only if the applicant agrees to periodic review of the project, including but not limited to:

- (a) Review of interim and long-term performance benchmarks set by the department; and
- (b) Program and fiscal audits to ensure that performance benchmarks are achieved on project development, project benefits and return on investment.

(4) The department may issue a loan only if the applicant agrees to report to the department no later than two years after receiving the loan moneys regarding the progress of the project and the economic public benefit, social and cultural public benefit and net environmental public benefit realized from the project. The department shall provide copies of the applicant reports received by the department during the biennium to an interim committee of the Legislative Assembly dealing with natural resources.

(5) The commission may establish reasonable fees for management, oversight or review services that the department provides for a water development project. The fees shall be deposited to the Water Development Administration and Bond Sinking Fund.

SECTION 27. Notwithstanding sections 23 and 25 of this 2009 Act, the Water Resources Department may issue a grant under section 23 of this 2009 Act or a loan under section 25 of this 2009 Act to an agricultural water supplier that fails to adequately demonstrate water measurement if:

(1) The water development project otherwise qualifies for that grant or loan as provided under section 23 or 25 of this 2009 Act; and

(2) The department finds that:

(a) The applicant is seeking the grant or loan for the purpose of implementing water measurement and the department has approved an implementation plan to ensure that the water measurement requirement is met; or

(b) The applicant has secured funding from a source other than the state that will ensure implementation of water measurement.

SECTION 28. The Water Resources Commission may adopt rules the commission considers reasonable for the administration and enforcement of sections 18 to 27 of this 2009 Act.

SECTION 29. The Water Resources Department shall report to the Seventy-sixth Legislative Assembly in the manner provided by ORS 192.245 no later than October 1, 2012, regarding the operation of the loan and grant programs described in sections 18 to 27 of this 2009 Act, including but not limited to:

(1) The number and types of jobs created by water development projects receiving loans or grants from the department;

- (2) Any studies conducted by the department or loan or grant recipients during the 2009-2011 biennium regarding peak and ecological flows in streams;
- (3) Any recommendations by the department for legislative changes to improve the operation of the loan and grant programs;
- (4) Any recommendations for changes to Article XI-I(1) of the Oregon Constitution to be referred to the people;
- (5) The total economic public benefit, social and cultural public benefit and net environmental public benefit created as a result of loans and grants issued under sections 23 and 25 of this 2009 Act;
- (6) An analysis of the effect of the requirement imposed under section 23 (2) of this 2009 Act;
- (7) Estimated increases in state tax revenues generated by projects receiving grants or loans;
- (8) The gross dollar value of issued loans, the amount of loan reserves and the increase the Water Development Fund attributable to the interest rate amount described in ORS 541.730 (3)(e); and
- (9) Moneys generated from fees under sections 19, 20, 24 and 26 of this 2009 Act.

TRANSITIONAL PROVISIONS

SECTION 30. Section 23 of this 2009 Act is amended to read:

Sec. 23. (1) Subject to any additional qualifications or restrictions under sections 21, 22 or 24 of this 2009 Act or Water Resources Commission rules, the Water Resources Department may approve a grant application filed under section 19 of this 2009 Act if the department finds that:

- (a) The plan for the construction of the proposed project complies with all applicable provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;
- (b) Planned diversions of surface water include provision for fish screens and, if applicable, volitional fish passage;
- (c) The use of surface water or ground water from the project will be measured and reported;
- (d) The applicant or beneficiaries of water from the project measure and report, or have scheduled and financed the measurement of, all existing water use at the point of diversion;
- (e) There is a reasonable certainty that the project, considered in total, will deliver a measurable net environmental public benefit; and
- (f) To the extent applicable, the project complies with subsection (2) or (3) of this section.

(2) A water storage project must be designed:

(a) To provide for no more than 75 percent of new stored water in the aquifer or above-ground storage location of the project to be withdrawn for agricultural purposes and for not less than 25 percent of the new water to be dedicated for the purpose of providing net environmental public benefits or in-stream benefits; and

(b) To the extent practicable, to return dedicated new stored water for stream augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(3) If more than 25 percent of the funding for a water storage project is from grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of providing net environmental public benefit or in-stream benefit a percentage of the new stored water created by the project that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the dedicated increment of new stored water for net environmental public benefit or in-stream benefit.

(4) On or before the earlier of six years after the issuance of the ground water recharge permit or the date the water right certificate is issued, the department shall quantify and legally protect the increment of new water returned in stream from a project described in this section.

(5) The department shall require as a contractual condition for issuing the grant, and as a condition of any new water permit or water right certificate, that if the project receives grants or loans from state moneys other than a grant issued under this section, the project must be operated in a manner that actually dedicates the percentage of new stored water for net environmental public benefit or in-stream benefit that the project was designed to dedicate for those purposes.

(6) The department *[may]* **shall** require that a project protect peak and ecological flows to the extent determined by the State Department of Fish and Wildlife to be necessary.

(7) The commission, by rule, may allow the Water Resources Department to waive any requirement of this section for the issuance of a grant, other than the requirement of a measurable net environmental public benefit, if:

(a) The grant application requests less than \$20,000; or

(b) The project is a conservation, efficiency, restoration or reuse project that can be shown to the satisfaction of the department to cause no harm to the source, any receiving stream, fish or wildlife or existing water rights.

(8) This section and sections 19, 21, 22, 24 and 27 of this 2009 Act do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 31. Section 25 of this 2009 Act is amended to read:

Sec. 25. (1) The Water Resources Department, acting as agent for the Water Resources Commission, may approve a loan for which an application is filed under section 20 of this 2009 Act, if the department finds that:

(a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the Oregon Constitution, ORS 541.700 to 541.855, section 26 of this 2009 Act, Water Resources Commission rules and bondholder agreements;

(b) The plan for the construction of the proposed project complies with all applicable provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

(c) Planned diversions of surface water include provision for fish screens and, if applicable, volitional fish passage;

(d) The use of surface water or ground water from the project will be measured and reported;

(e) The applicant or beneficiaries of water from the project measure and report, or have scheduled and financed the measurement of, all existing water use at the point of diversion;

(f) There is a reasonable certainty that the project will deliver a measurable net environmental public benefit; and

(g) The project is designed to deliver in-stream benefits.

(2) The department *[may]* **shall** require that a project protect peak and ecological flows to the extent determined by the State Department of Fish and Wildlife to be necessary.

(3) This section and sections 20 and 26 of this 2009 Act do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 32. The amendments to sections 23 and 25 of this 2009 Act by sections 30 and 31 of this 2009 Act become operative January 2, 2012.

SECTION 33. (1) Notwithstanding sections 19 and 21 to 23 of this 2009 Act, but subject to section 24 of this 2009 Act, the Water Resources Department shall waive the grant application process described in sections 19 and 21 to 23 of this 2009 Act when issuing a grant for water development projects that:

(a) Are located in an area of the Umatilla Basin for which an assessment has been performed under chapter 13, Oregon Laws 2008; and

(b) Except as provided in subsection (2) of this section, are designed:

(A) To provide for no more than 75 percent of new stored water to be withdrawn and for not less than 25 percent of the new water to be dedicated for the purpose of providing net environmental public benefits or in-stream benefits; and

(B) To the extent practicable, to return dedicated new stored water for stream augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(2) If more than 25 percent of the funding for an aquifer storage and recovery project is from grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of providing net environmental public benefit or in-stream benefit a percentage of the new stored water created by the project that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the dedicated increment of new stored water for net environmental public benefit and in-stream benefit.

(3) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

(4) This section is repealed January 2, 2030.

SECTION 34. Sections 20, 25 and 26 of this 2009 Act are repealed January 2, 2024. The repeal of sections 20, 25 and 26 of this 2009 Act by this section does not alter the terms of any loan, contract or other agreement issued under section 20, 25 or 26 of this 2009 Act or alter the conditions of any water permit or water right certificate that contains conditions that are based upon sections 20, 25 or 26 of this 2009 Act.

SECTION 35. ORS 541.705, as amended by section 4 of this 2009 Act, is amended to read:

541.705. (1) *[Except as provided in section 20 of this 2009 Act for a water development project in the Columbia River Basin,]* Any water developer may file with the Water Resources Commission an application to enable the construction of a water development project as provided in ORS 541.700 to 541.855. The application shall be filed in the manner, be in the form and contain or be accompanied by any information prescribed by the commission. The commission, in considering applications, shall encourage the largest number of users of the Water Development Fund and shall consider the impact on the family farm units of the state.

(2) In addition to other requirements prescribed by the commission, an application filed under subsection (1) of this section shall:

(a) Describe the nature and purposes of the proposed water development project, including the need for the project and reason why the project would be in the public interest.

(b) State whether any purposes other than improvement of a drinking water system, irrigation, drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will be served by the proposed water development project, and the nature of the other purposes, if any.

(c) Set forth or be accompanied by a feasibility study for the construction, operation and maintenance of the proposed water development project, an estimate of the costs of construction and if the project includes as a primary purpose irrigation or drainage, an evaluation of the agricultural potential of the land from any competent public agency.

(d) State whether any moneys other than those in the Water Development Fund are proposed to be used for the construction of the proposed water development project, and whether any other moneys are available or have been sought for the construction.

(e) Show that the applicant holds or can acquire all lands, other than public lands, and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.

(3) If the application is for a safe drinking water project, the applicant also shall demonstrate that:

(a) The applicant is a city, county, district, water authority or other political subdivision of the state or an organization operated on a not-for-profit basis that makes drinking water available to members of the general public;

(b) The primary use of the loan will be to improve a drinking water system for the purpose of complying with applicable state or federal drinking water quality regulations; and

(c) The applicant has:

(A) Developed a water system master plan; and

(B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712 or can demonstrate that options to find a coordinated solution to the system's drinking water problems have been fully explored.

SECTION 36. ORS 541.710, as amended by section 5 of this 2009 Act, is amended to read:

541.710. (1) Upon receipt of an application filed as provided in ORS 541.705, the Water Resources Commission shall determine whether the feasibility study described in ORS 541.705 for the water development project set forth in or accompanying the application is satisfactory and if the commission determines that it is not satisfactory, the commission may:

(a) Reject the application;

(b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or

(c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

(2) Except as provided in subsection (3) of this section, [*for a loan application filed under ORS 541.705 or section 20 of this 2009 Act,*] the commission shall charge and collect from the applicant at the time the application is filed an application fee equal to the lesser of 0.10 percent of the loan applied for or \$2,500. In addition, the commission may require the applicant to pay for costs that exceed the application fee if the Water Resources Director determines that the costs are incurred solely in connection with processing the application. Before incurring the additional costs, the commission shall advise the applicant of the additional costs to be paid by the applicant. Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

(3) The commission may establish a reduced application fee by rule for a water development project that is for fish protection or for watershed enhancement.

SECTION 37. ORS 541.720, as amended by section 6 of this 2009 Act, is amended to read:

541.720. (1) The Water Resources Commission may approve the financing for the construction of a water development project described in an application filed under ORS 541.705, [*or subject to section 25 of this 2009 Act in an application filed under section 20 of this 2009 Act,*] using moneys in the Water Development Fund secured by a first lien or by other good and sufficient collateral in the manner provided in ORS 541.740 if, after investigation, the commission finds that:

(a) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

(b) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

(c) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

(d) The applicant is a qualified, credit-worthy and responsible water developer that meets the standards established by commission rule and is willing and able to enter into a contract with the commission for construction and repayment as provided in ORS 541.730;

(e) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

(f) There is a need for the proposed water development project, the proposed project is in the public interest and the applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project; and

(g) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project.

(2) ORS 541.700 to 541.855 do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 38. ORS 541.765, as amended by section 9 of this 2009 Act, is amended to read:

541.765. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855 [or section 25 of this 2009 Act], the Water Resources Commission may authorize loans of such moneys to those persons to whom approval has been granted by the federal government or any agency or instrumentality of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate.

SECTION 39. ORS 541.785, as amended by section 11 of this 2009 Act, is amended to read:

541.785. Except for the proceeds of refunding bonds, all moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.700, 541.705 to 541.770 and 541.835 [and sections 25 and 26 of this 2009 Act]. If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments set forth in ORS 541.830, moneys in the Water Development Fund may be transferred to the Water Development Administration and Bond Sinking Fund. Pending the use of moneys in the Water Development Fund for the proper purposes, such moneys may be invested in the manner provided by law.

SECTION 40. ORS 541.830, as amended by section 12 of this 2009 Act, is amended to read:

541.830. (1) There hereby is created the Water Development Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the Water Resources Commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855 [or section 25 of this 2009 Act], if the expense is not paid directly by the applicant, including principal and interest due on bonds outstanding. These administrative expenses also may include all costs associated with the issuance of bonds and the funding of any credit enhancements or reserves determined to be necessary or advantageous in connection with the bonds.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to 541.815.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees and additional processing costs paid under ORS 541.710 and loan processing fees under ORS 541.730.

(b) Repayments of moneys loaned to water developers from the Water Development Fund, including interest on such moneys.

(c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal water development projects, including interest on such moneys.

(d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including appropriations dedicated to the partial payment for or repayment of projects affording public benefits.

(e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(g) Interest earned on cash balances invested by the State Treasurer.

(h) Any revenues received by the commission under the provisions of ORS 541.745.

(i) Moneys transferred from the Water Development Fund.

(3) The moneys referred to in subsection (2) of this section are continuously appropriated to the commission for the purposes provided in subsection (1) of this section.

(4) The commission, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 [or section 25 of this 2009 Act] that offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

(5) The commission, with the approval of the State Treasurer, may transfer moneys from the fund created under subsection (1) of this section to the Water Development Fund if:

(a) A cash flow projection shows that the transfer will not have any negative impact on the commission's ability to pay bond principal, interest and administration costs;

(b) The transfer will not create the need for issuance of any bonds; and

(c) The transfer, together with loans outstanding from prior transfers and not refinanced by funds derived directly from a bond sale, does not exceed \$1.

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board.

SECTION 41. ORS 541.850, as amended by section 14 of this 2009 Act, is amended to read:

541.850. The Water Resources Commission may accept gifts of money or other property from any source, given for the purposes of ORS 541.700 and 541.705 to 541.770 [or section 25 of this 2009 Act]. Money so received shall be paid into the Water Development Fund. Money or other property so received shall be used for the purposes for which received.

SECTION 42. Section 21 of this 2009 Act is amended to read:

Sec. 21. (1) If an application filed under section 19 [or 20] of this 2009 Act lacks any required information, the Water Resources Department may reject the application or require the applicant to submit additional information.

(2) Upon receipt of a completed application filed under section 19 [or 20] of this 2009 Act, the department shall provide public notice by posting the application on the department's website for a 60-day period prior to issuing a [loan or] grant to the applicant.

(3) The department shall provide for the receipt of public comment on the application during the 60-day period that the application is posted on the department website, as specified by the Water Resources Commission by rule.

(4) The department shall review the application information filed under section 19 [or 20] of this 2009 Act. The department shall commence the assessment no later than 60 days after receiving the application.

(5) The department shall assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department the Department of Environmental Quality and affected tribal governments, and with other interested parties as appropriate. If a project may affect agricultural use, the Water Resources Department shall also assess the project in consultation with the State Department of Agriculture.

(6) In assessing the net environmental public benefit of the project, the Water Resources Department shall weigh the project's various environmental impacts on, and enhancements to, all of the forms of environmental benefit described in section 18 (2) of this 2009 Act.

SECTION 43. Section 27 of this 2009 Act is amended to read:

Sec. 27. Notwithstanding [sections 23 and 25] **section 23** of this 2009 Act, the Water Resources Department may issue a grant under section 23 of this 2009 Act [or a loan under section 25 of this 2009 Act] to an agricultural water supplier that fails to adequately demonstrate water measurement if:

(1) The water development project otherwise qualifies for that grant [or loan] as provided under section 23 [or 25] of this 2009 Act; and

(2) The department finds that:

(a) The applicant is seeking the grant [or loan] for the purpose of implementing water measurement and the department has approved an implementation plan to ensure that the water measurement requirement is met; or

(b) The applicant has secured funding from a source other than the state that will ensure implementation of water measurement.

INTEGRATED WATER RESOURCES STRATEGY

SECTION 44. ORS 536.220 is amended to read:

536.220. (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155.

(3)(a) The Water Resources Department shall develop an integrated state water resources strategy to implement the state water resources policy specified in subsection (2) of this section. The department shall design the strategy to meet Oregon's in-stream and out-of-stream water needs.

(b) The Water Resources Department shall work in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife to develop the integrated state water resources strategy in consultation with other state, local and federal agencies, with other states, with Indian tribes, with stakeholders and with the public.

(c) The Water Resources Department, in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife, shall develop data on an ongoing basis to forecast Oregon's in-stream and out-of-stream water needs, including but not limited to in-stream, underground water, human consumption and water supply needs, for the purpose of developing and updating the integrated state water resources strategy.

(d) The integrated water resources strategy shall describe the following:

(A) Oregon's in-stream and out-of-stream water needs, including but not limited to ecosystem services, water quality and water supply needs.

(B) Objectives of the strategy.

(C) Actions that are designed to achieve the objectives of the strategy.

(D) Plans related to the challenges presented by climate change.

(E) Provisions to ensure communication and partnership with key stakeholders.

(F) Specific functions and roles to be played by state agencies, including but not limited to the State Department of Agriculture, the State Forestry Department, the Department of Human Services, the Economic and Community Development Department, the Department of Land Conservation and Development, the Oregon Watershed Enhancement Board, the State Parks and Recreation Department, the Department of State Lands and other relevant state agencies.

(G) Public policy options and recommendations.

(H) Relevant strategy factors, including but not limited to population growth and land use change.

(I) Recommendations of the Water Resources Department regarding the continuous monitoring of climate change effects on Oregon's water supply and regarding water user actions that are necessary to address climate change.

(e)(A) The Water Resources Commission shall give the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife notice of the integrated state water resources strategy prior to adoption of the strategy. The strategy shall take effect upon adoption by the Water Resources Commission.

(B) The Water Resources Commission shall review and update the integrated state water resources strategy every five years. The Water Resources Commission shall give notice to the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife prior to adopting any revisions of the strategy. Revisions of the strategy shall take effect upon the Water Resources Commission's adoption of the revised strategy by reference in rule.

(4) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

SECTION 45. (1) The Water Resources Department shall, working in close cooperation with the Department of Environmental Quality, the State Department of Agriculture and the State Department of Fish and Wildlife, submit a report by February 1, 2011, to the Seventy-sixth Legislative Assembly, in the manner provided in ORS 192.245, detailing benchmarks and progress toward the development of the integrated state water resources strategy. The report must include a discussion of whether the Water Resources Department expects to complete development of the strategy by December 31, 2012.

(2) As part of the report specified in subsection (1) of this section, the Water Resources Department, working in close cooperation with the Department of Environmental Quality, the State Department of Fish and Wildlife and other state agencies, may identify legislative amendments and submit budget recommendations, including but not limited to requests for a long-term, dedicated funding source to implement the integrated state water resources strategy.

APPLICABILITY

SECTION 46. (1) Sections 18 to 27 of this 2009 Act and the amendments to ORS 541.700, 541.705, 541.710, 541.720, 541.730, 541.740, 541.765, 541.770, 541.785, 541.830, 541.845 and 541.850 by sections 3 to 14 of this 2009 Act apply to loans from the Water Development Fund for which an application is filed on or after April 1, 2010.

(2) The repeal of ORS 541.755 by section 15 of this 2009 Act becomes operative April 1, 2010.

(3) The amendments to ORS 541.705, 541.710, 541.720, 541.765, 541.785, 541.830 and 541.850 and sections 21 and 27 of this 2009 Act by sections 35 to 43 of this 2009 Act become operative January 2, 2024.

CAPTIONS

SECTION 47. The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

EMERGENCY

SECTION 48. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect July 1, 2009.

Passed by House June 26, 2009

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 29, 2009

.....
President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

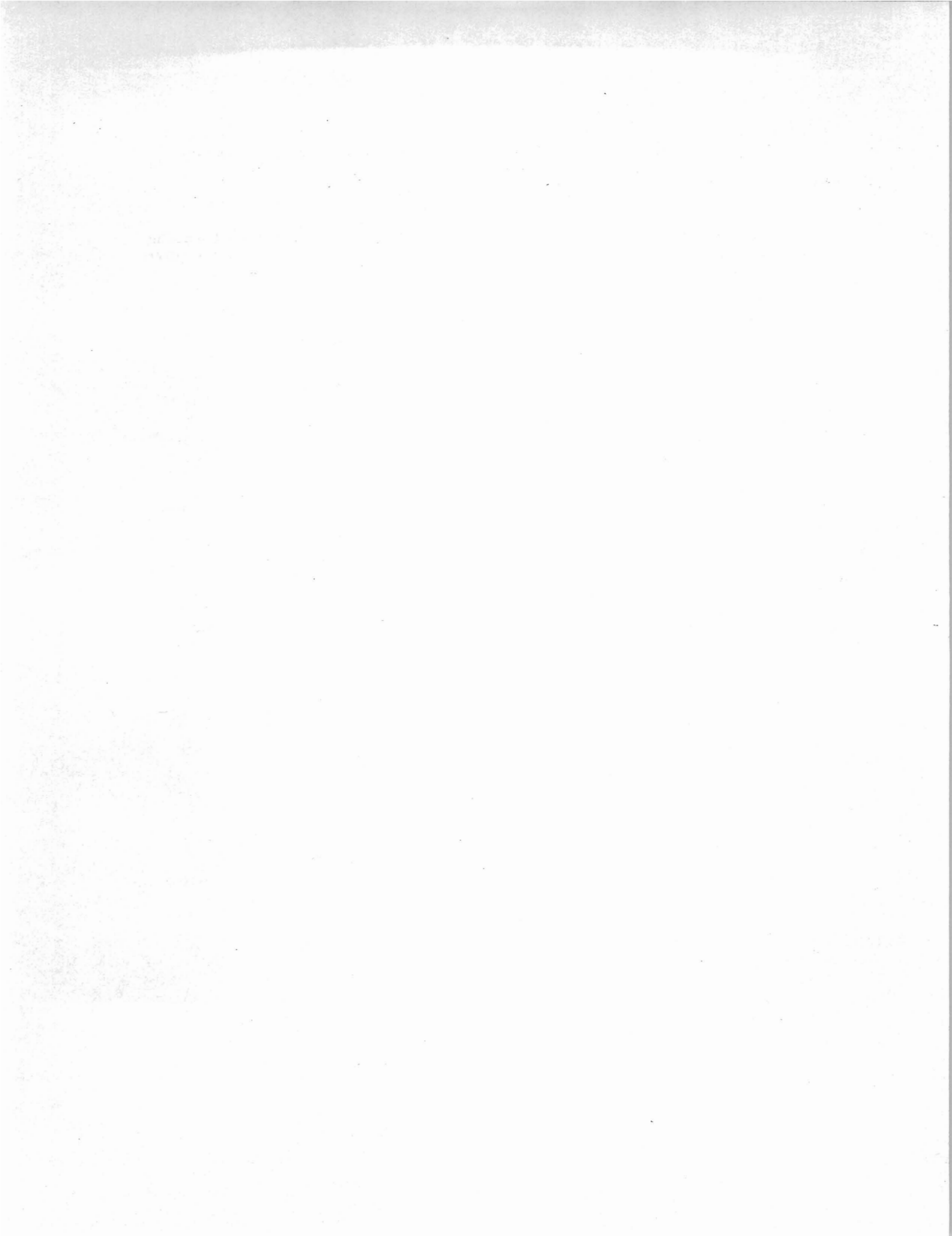
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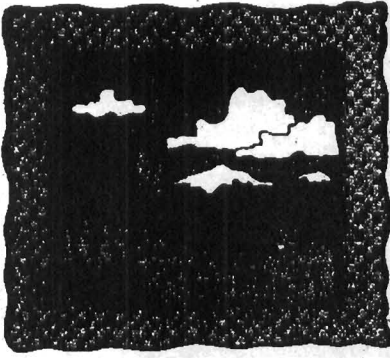
.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State





East Valley Water District

P.O. Box 1046 MT. ANGEL, OR. 97362

Oregon Water Resources Department
ATTN: Mr. Rubin Ochoa
725 Summer Street NE
Suite A
Salem, OR 97301-1271

September 30, 2010

ORIGINAL VIA EMAIL: Rubin.E.Ochoa@state.or.us

Dear Mr. Ochoa,

The following are comments on the Department's proposed administrative rules to implement provisions contained in HB 3369 relating to standards for borrowers seeking loans issued from the Water Development Fund for construction of water development projects in the Columbia River Basin.

These comments are respectfully submitted on behalf of the water users within the East Valley Water District in Silverton, Oregon. The district is actively pursuing development of an alternative water supply to relieve stressed ground water resources in both the Glad Tidings and Mount Angel Ground Water Limited Areas.

Page One

690-095-0005 Purpose, Statutory Authorization, Policy

(2) It is the policy of the department that these rules and the loan program:

(b) Provide preference to entities with ad valorem taxing authority;

The EVWD strongly urges the Commission to revisit and remove this policy statement, altogether. The policy has a history in the Department's precursor water development loan fund, which pre-dates passage of Ballot Measure 5 (1990). BM5 capped the total amount of property taxes dedicated to fund schools and other special districts, including irrigation, water control and other water delivery districts. Following passage of BM5, districts worked with the legislature to pass the "Alternative Method of Collecting Incurred Charges" (ORS 545.482-508) whereby districts directly collect incurred charges from their patrons, rather than utilizing the county property tax assessment. Under this method, a district would not be considered an "entity with ad valorem taxing authority."

The EVWD is not, and has never been, an ad valorem taxing authority. Maintaining the pre-BM5 policy preference in these rules would particularly disadvantage the EVWD, and likely most other water supply districts in Oregon, which generally utilize the Alternative Method of Collecting Incurred Charges. We do not believe this is the intent of the Commission.

Page Three

690-095-0010 Definitions

(19) "Qualified Water Developer" means an Indian tribe as defined in ORS 391.802 or a "water developer" as defined in ORS 541.700 that is not a municipality or provider of water for municipal purposes.

The specific reference to the definition of "water developer" under ORS 541.700 makes clear the intent of the Commission is to include irrigation districts, water improvement districts, water control districts, drainage districts, and other entities with the purpose of distributing water for irrigation purposes. These are the same entities that are disadvantaged in the ad valorem policy statement previously discussed.

Page Five

690-095-0035 Loan Advisory Board

(1) The director may appoint a loan advisory board to review applications made under the loan program and pursuant to these rules make recommendations thereon to the director. The members appointed to the board shall be subject to the approval of the commission.

Qualifications for members of the loan advisory board should be specified. The board should include members with experience in the public finance sector. Some considerations might include expertise in public finance and best management practices, government accounting, auditing and financial reporting, debt issuance, management and post issuance compliance.

The loan advisory board should include members with specific expertise in water development projects, including storage, conservation and reuse projects.

The loan advisory board should consist of members who geographically represent the whole state.

Page Eight

690-095-0060 Loan Security

(2) An applicant may demonstrate adequate security or good and sufficient collateral if:
(a) The applicant has ad valorem taxing power that it has exercised and pledged to secure the loan;

See previous comments regarding ad valorem taxing authority, page one. An alternative approach might be to include reference to both the pre-BM5 "charges and assessments" statutory authority and the post-BM5 "alternative method of collecting incurred charges" statutory authority, both contained in Oregon Revised Statutes Chapter 545.

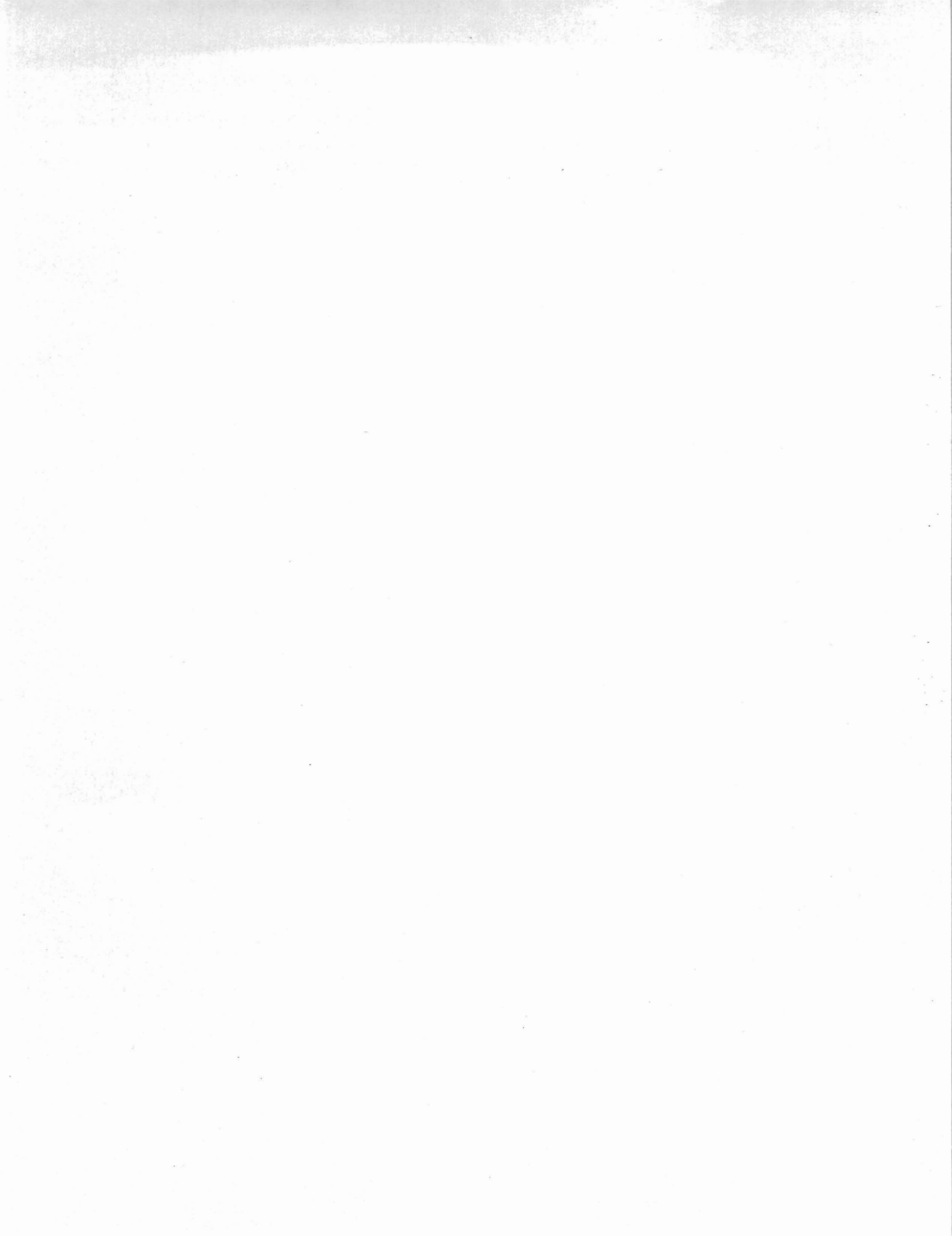
Thank you for consideration of these comments and concerns. The East Valley Water District looks forward to working further with the Commission through the complete implementation of HB 3369. Please know our members are available to participate in any process provided by the department and they remain eager to provide substantive direction and assistance.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line and a small flourish.

Kristina McNitt
EVWD Secretary

cc EVWD Board of Directors
Mark Dickman





Oregon Water Resources Congress

1201 Court St. NE, Suite 303 | Salem, OR 97301-4188 | 503-363-0121 | Fax: 503-371-4926 | www.owrc.org

September 30, 2010

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Attention: Ruben E. Ochoa

RE: RULEMAKING FOR HB 3369
WATER DEVELOPMENT IN COLUMBIA RIVER BASIN

The Oregon Water Resources respectfully submits the following comments on the Water Resources Departments proposed administrative rules to implement provision contained in HB 3369 (Chapter 907, Oregon Laws 2009) related to standards for borrowers seeking loans used from the Water Development Fund for construction of water development projects in the Columbia River Basin. (OAR Chapter 690 Division 95).

The Oregon Water Resources Congress (OWRC) represents irrigation districts, water control districts, and other local government irrigation water suppliers throughout the State of Oregon. Oregon districts operate and maintain water supply systems that include reservoirs, canals, pipelines, and hydropower generation facilities, delivering water to 1/3 of all irrigated land in Oregon. These districts are facing the need to secure funding to rehabilitate or replace aging infrastructure, to implement extensive water conservation programs, and for some, to secure a water supply and water storage as they face the impact of snow pack (a form of water storage for many districts) being replaced by rainfall.

OAR 690-095-0005 Purpose, Statutory Authorization Policy

Section 2, subsection (b) provides a preference for funding water development projects to "entities with an ad valorem taxing authority." Other references to ad valorem taxing authority appear throughout the rules document.

We expect that a successful program would qualify irrigation districts to apply for multi-purpose projects with both agriculture and environmental benefits as irrigation districts are included in the definition of "water developer" in the statute which is referenced in the definitions in this draft rule. Other language in HB 3369 also anticipated that irrigation projects be eligible for funding under the loan program that is the subject of this rulemaking. The preference given to "entities with ad valorem taxing authority" runs counter to the inclusion of irrigation district sponsored projects being successful in this program as the district sponsored projects would not qualify as preference projects under the proposed rules as the irrigation districts are not generally "ad valorem taxing" districts.

Irrigation districts base their billings to customers on "incurred charges" (ORS 545.482). The collection of incurred charges resulted from legislation that occurred as the result of Ballot Measure 5, limited property tax collections for schools and special districts. Ballot Measure 5 resulted in "compression" of assessments among local governments and the irrigation districts worked with other local governments and special districts to exempt themselves from compression and allow additional funding for other local governments in their regions by creating the ability to bill for "incurred charges" on a user fee basis. While the districts still have lien and foreclosure abilities, the districts are not ad valorem taxing authorities as described in ORS 568.806.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

We feel that irrigation districts will be able to provide the type of project that meets the intent of the statutes and the water development loan fund, but providing preference to ad valorem tax districts significantly minimizes the ability of irrigation districts to compete for future state funds.

The provisions in SECTION 2 of HB 3369 state "The Water Resources Commission *shall* adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund. ... The standards *may* include, but need not be limited to, standards that give preference to entities with ad valorem taxing authority (emphasis added)." There is always debate about the difference between the meanings of the words "shall" and "may" and when "may" means "must" in statute. While "may" is often interpreted to mean "must" when used to direct a state agency to take an action, it could be interpreted in this Section to have a meaning different than "must" since "shall" is used earlier in the Section. We ask that the Commission interpret the "may" in this section as permissive and not mandatory and that provisions giving preference to "entities with ad valorem taxing authority be deleted from the rules.

Alternatively, if the Commission determines it cannot treat "may" as permissive, we ask that the preference given to "entities with ad valorem taxing authority" be supplemented with additional and equal preference to irrigation districts (and other local governments that meet the definition of a "qualified water developer" in OAR 690-095 if they also lack ad valorem taxing authority) so long as such a district provide a financing plan that clearly supports its ability to repay the loan under the terms of the loan agreement. During the many meetings on the content of HB 3369, it was clear that the importance of ad valorem taxing authority was directly related to the ability of the project sponsor to repay the loan. Irrigation districts do have the ability to raise the funds for repayment through their incurred charges that equal the repayment ability that other government entities have through the levy of ad valorem taxes.

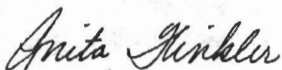
OAR 690-095-0035 Loan Advisory Board

The loan advisory board section of the rules lists no qualifications or requirements for the individuals appointed to the Board. In order for the Water Development Loan Fund to be successful, we feel that qualified, experienced advisers who have knowledge of finance, loan funding, water development projects and other key experiences should be prioritized as advisory board members. Further, the appointees should have no involvement in the projects for which applications have been submitted or be under contract with the Water Resources Department for services related to this loan program. Particularly in light of past experiences with the Water Development Loan Fund a couple decades ago, this is a critical piece we would like to see emphasized.

While we appreciate the work of the Rule Advisory Committee (RAC) in translating the provision of HB 3369 to rules, we are concerned that the membership of that Committee was relatively narrow in its composition. Committee members were largely from the Umatilla Basin with no representation from the water community outside that Basin or from potential project sponsors other than from that Basin. Whether or not these rules would be different had the RAC had broader participation cannot be determined and we certainly are not suggesting that the rulemaking be reopened or extended on this basis. Rather, we express our concern to encourage that membership on future Rule Advisory Committees on issues such as this one that apply to more than one Basin reflect that broader geographic interest and the broader interest of those persons and entities that will be affected by the rule.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,



Anita Winkler
Executive Director