



Oregon

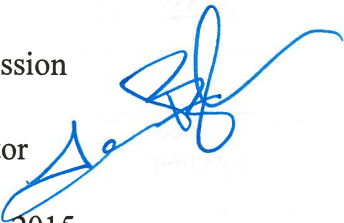
Kate Brown, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director 

SUBJECT: Agenda Item M, June 19, 2015
Water Resources Commission Meeting

Request for Adoption of Rules – OAR Chapter 690, Division 93, Rules Governing Grants and Loans for Water Supply Development

I. Introduction

In 2013, the Oregon Legislature approved Senate Bill 839, establishing a Water Supply Development Account to provide loans and grants for water supply development projects that have economic, environmental and social/cultural benefits. Staff will provide an overview of the rule-making process and present the rules to the Commission for consideration of adoption. The proposed Division 93 rules are included in Attachment 1.

II. Background

Since Senate Bill 839 passed in 2013, the Water Resources Department in conjunction with stakeholders and the Governor's office have been actively working towards carrying out the provisions of the bill. Subgroup and task force meetings required by the bill were conducted between late 2013 through early 2015. While wrapping up the work of the Governance Task Force, the Department also began the rulemaking process. The resulting rules will establish procedures and requirements for water resource projects to receive funding from the Water Supply Development Account.

III. Discussion

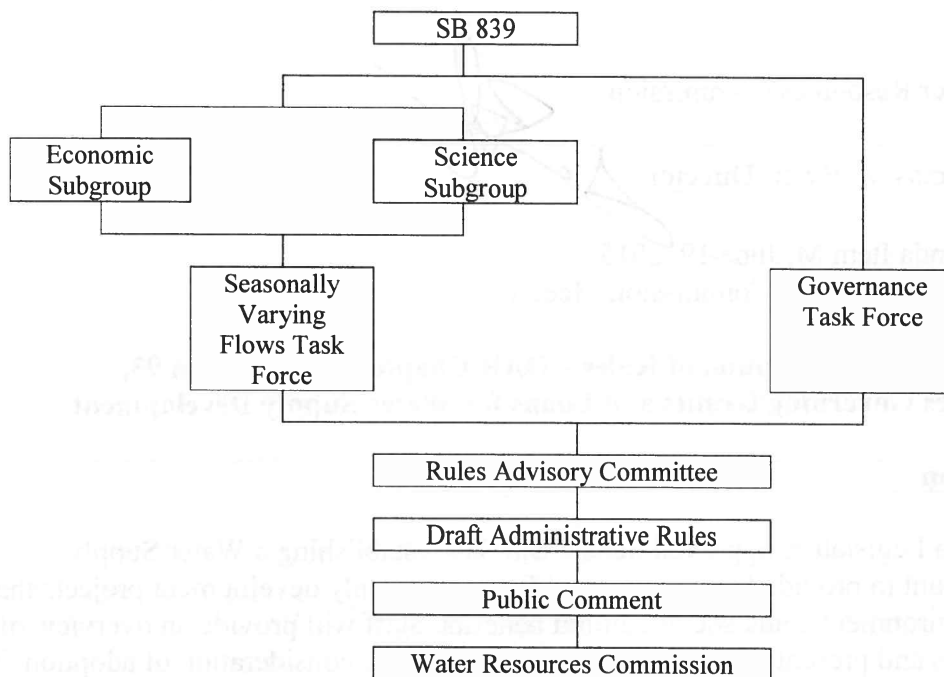
A. Draft Rule Development

Beginning in February 2015, a Rules Advisory Committee (RAC) was convened that included representation from a diverse set of stakeholder groups (see list of invitees in Attachment 2). Six meetings were held in Salem between the dates of February 27 and April 10, 2015.

As outlined in Figure 1 below, Senate Bill 839 required the convening of a number of subgroups and task forces prior to rule development. As directed to by SB 839, the RAC considered the work of the previously convened subgroups and task forces. Reports from these groups, the

original bill, and discussion among Rules Advisory Committee members served as inputs into the proposed rules.

Figure 1. Inputs and Workflow from Statute to Rule for SB 839



The public comment period was conducted from May 1 to May 22, 2015. Notice of the public comment period and hearings were provided in the *Oregon Bulletin* on May 1, and also made available on the Department's website and emailed to interested parties and local officials. During this period, five public hearings were held in Pendleton, Ontario, Bend, Grants Pass and Salem to take testimony on the draft rules. Two people provided verbal testimony at the five public hearings. There were five written comments on the rules provided to the Department during the public comment period. The summaries of the comments and the Department responses are provided in Attachment 3. Copies of written comments received are provided in Attachment 4. A recording of the verbal testimony is available upon request.

During this time, General Counsel was also asked to review the Division 93 draft rules. After considering all of the public comments, and advice from General Counsel, a few changes were made. These changes are shown in Attachment 5. Most of these changes reflected the advice of Counsel, providing greater clarity in regards to implementing the passage of House Bill 2400A, which occurred on May 26, 2015. HB 2400 extended dates for completion of task force reports, extended the deadline for rules for determining seasonally varying flows, and closes a loophole on seasonally varying flows applicably for certain projects constructed under existing permit or limited license.

B. Summary of Proposed Division 93 Rules

The proposed rules, if adopted, will be placed within OAR Chapter 690, Division 93 to govern grants and loans from the SB 839 Water Supply Development Account.

The proposed rules provide a description of the grant and loan program, including:

- Allowable projects and applicant eligibility;
- A description of the process that will be used to:
 - solicit and accept applications;
 - review, score, and rank projects;
 - provide for public process;
 - ensure a transparent selection process;
 - administer awards and contracts; and
- Instructions to Department staff for the review of the program on a biennial basis, and submittal of the results to the Water Resources Commission for potential action.

C. Implementation

The Water Resources Commission Chair asked staff to report to the Commission on the Department's plan to coordinate its funding activities with the Oregon Watershed Enhancement Board (OWEB). Specifically, the Chair asked staff to confirm whether or not match requirements from one agency could be met by grants from the sister agency. He encouraged staff to design an application form that asks applicants to identify any additional state monies they are requesting for the project. Finally, he requested that staff schedule meetings with OWEB so the two agencies could identify and coordinate on common projects prior to awarding any funding. Staff will report on these actions at the next Commission meeting.

The Department plans to move quickly to begin soliciting applications for the grant and loan program. By August, the Department will have a finalized application and will begin soliciting applications. The deadline for applying for the first grant cycle is tentatively planned to be in November. Thereafter, staff will complete the initial review of applications for completeness and eligibility, post and solicit public comments on applications for a 60-day period, score and rank the projects with the technical review team, and then prepare the final recommendations for consideration by the Commission. Prior to the Commission's decision, one more opportunity for public comment will be provided at the time of the Commission meeting. The Department believes that this decision will be before the Commission in March of 2016.

IV. **Summary**

Since passage of SB 839, staff and stakeholders have spent countless hours working to carry out the provisions of the bill and implement the grant and loan program. The rules are a product of hours of compromise between stakeholders and reflect a commitment to implement a program that will allow the state to support Oregonians in meeting their water resources needs. Adoption of these rules is the next step in moving the program forward.

V. Alternatives

The Commission may consider the following alternatives:

1. Adopt the proposed final OAR 690, Division 93 rules governing grants and loans for water supply development as provided to the Commission in Attachment 1.
2. Adopt final OAR 690, Division 93 rules, as modified by the Commission.
3. Not adopt the rules and direct staff to reassess proposed final rules for OAR Chapter 690, Division 93.

VI. Recommendation

The Director recommends Alternative 1, to adopt the proposed final rules in OAR 690, Division 93.

- Attachment 1: Proposed Final Rules - OAR Chapter 690, Division 93
- Attachment 2: Rules Advisory Committee
- Attachment 3: Summary of Public Comments and Department Responses
- Attachment 4: Copies of Written Comments Received
- Attachment 5: Changes made as a result of discussions with General Counsel

Tracy Loudon
503-986-0920

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 93
WATER SUPPLY DEVELOPMENT GRANT AND LOAN PROGRAM**

690-093-0010

Purpose

The purpose of OAR 690-093 is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits. The rules establish procedures and requirements for the funding of water resources projects from the Water Supply Development Account established in ORS 541.656.

690-093-0020

Definitions

The following definitions apply to this division of the rules:

- (1) "Collateral" means the security pledged for the payment of a loan.
- (2) "Commission" means the Water Resources Commission.
- (3) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:
 - (a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
 - (b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.
- (4) "Director" means the director of the Oregon Water Resources Department or the director's designee.
- (5) "Expanded Storage" means the quantity of water authorized by a new water storage permit that adds to the capacity of an already-existing storage facility.
- (6) "Indian Tribe" as defined by ORS 391.802 means a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.
- (7) "Instream Use" means water that remains in or is released into the natural stream channel or lake bed or where water naturally flows or occurs that provides a benefit including but not limited to recreation, conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, pollution abatement or navigation.
- (8) "Newly Developed Water" means the new increment of water:
 - (a) Stored for a project providing new or expanded storage;
 - (b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or
 - (c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.
- (9) "Non-Profit Organizations" means an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends.
- (10) "Perennial Stream" means a continuous stream flow year around.
- (11) "Persons" as defined by ORS 536.007 means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political

subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

- (12) **“Project Materials”** means documents or media materials that are published or produced to describe or market the project.
- (13) **“Protected Instream”** means water that remains in or is released into the natural channel and is legally protected by the state.
- (14) **“Seasonally Varying Flows”** means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes.
- (15) **“Secondary Water Right”** as used in OAR 690-093-0020 (10)(b) means a water right permit issued for the beneficial use of stored water.
- (16) **“Technical Review Team”** means the group consisting of representatives from Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.
- (17) **“Water Supply Development Account”** is the account established in the State Treasury under ORS 541.656.

690-093-0030

Authorized Use of Funds

- (1) The Department may expend moneys from the Water Supply Development Account for:
 - (a) Subject to subsection (3) of this section, making loans and grants to evaluate, plan and develop instream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:
 - (A) Repair or replace infrastructure to increase the efficiency of water use;
 - (B) Provide new or expanded water storage;
 - (C) Improve or alter operations of existing water storage facilities in connection with newly developed water;
 - (D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;
 - (E) Allocate federally stored water;
 - (F) Promote water reuse;
 - (G) Promote water conservation;
 - (H) Provide streamflow protection or restoration;
 - (I) Provide for water management or measurement in connection with newly developed water; and
 - (J) Determine seasonally varying flows in connection with newly developed water.
 - (b) Paying the necessary administrative and technical costs of the Department in carrying out OAR 690-093.
- (2) (a) In addition to any other permissible uses of moneys in the account, the Department may expend moneys from the account to support:
 - (A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and
 - (B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.

- (b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under this administrative rule.
- (3) The Department may expend account moneys under subsection (1) of this section for loans and grants to develop instream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.
- (4) The Commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

690-093-0040

Loan and Grant Applicant Eligibility

- (1) Parties eligible for a loan or grant under these rules include persons, Indian tribes, and non-profit organizations.
- (2) If an applicant is required to have a water management and conservation plan as prescribed by a condition of a water use permit; a permit extension; or another order or rule of the Commission, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account.

690-093-0050

Pre-Application Conferences

- (1) A pre-application conference may be requested by prospective applicants.
- (2) The Department may request, and the applicant must provide 14 days prior to the conference, adequate project information to prepare for the pre-application conference.
- (3) At the pre-application conference, the Department shall inform the prospective applicant of:
 - (a) The procedural and substantive requirements of a loan or grant application;
 - (b) The scoring system used to evaluate loan and grant requests; and
 - (c) Any known issues associated with project eligibility for a loan or grant from the account.
- (4) The prospective applicant may request additional pre-application consultation with the Department.

690-093-0060

Application Submission Periods

- (1) The Department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.
- (2) The Department will conduct a preliminary review of the application for completeness, eligibility and for sufficiency of information to determine benefits and outcomes as listed in OAR 690-093-0090 Scoring and Ranking and OAR 690-093-0100 Project Selection.
- (3) Applications not funded during one annual period may be resubmitted in a future period.

690-093-0070

Application Requirements

- (1) Applications for a loan or grant from the Water Supply Development Account must be in a

form prescribed by the Water Resources Department and must include the following:

- (a) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed;
 - (b) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project;
 - (c) Current contact information for the principal contact, fiscal officer and involved landowners;
 - (d) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record;
 - (e) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate;
 - (f) An itemized budget for the project, including fiscal and administrative costs;
 - (g) A description of funds, services or materials available to the project;
 - (h) A project schedule, including beginning and completion dates;
 - (i) Any conditions that may affect the completion of the project;
 - (j) A completed feasibility analysis if appropriate;
 - (k) Suggestions for interim and long-term project performance benchmarks;
 - (L) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account;
 - (m) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral;
 - (n) Letters of support for the proposed project;
 - (o) If required by the Department, a description of consultations with affected Indian tribes regarding the project; and
 - (p) Any other information required by the Department.
- (2) Applications determined to be ineligible, incomplete or that provide insufficient information shall be returned to the applicant.

690-093-0080

Public Comment

- (1) The Department shall provide public notice and a 60-day period for public comment prior to initial scoring by the Technical Review Team by posting applications passing an initial review on the Department's website.
- (2) Additional public comment will be sought by the Commission after rankings are published and prior to a final decision on an application.

690-093-0090

Scoring and Ranking; Funding Decisions

- (1) The primary elements in the process of scoring and ranking of applications include the following:
 - (a) Initial review for completeness by the Department;
 - (b) Public comment;
 - (c) The Technical Review Team conducts the initial scoring and ranking for the projects, considers comments from applicants and the public and makes loan and grant funding recommendations to the Commission; and

- (d) The Commission determines the final scoring and ranking of projects, provides for additional public comment, and makes the final decision regarding which projects are awarded loans or grants from the account.
- (2) The Technical Review Team scoring methodology shall rank applications based upon the public benefits of the project and additional considerations set forth in ORS 541.677 subsection (1)(b), (1)(d) and (1)(e). The Technical Review Team shall use a score sheet provided by the Department. Each of the three public benefit categories shall be given equal importance in the evaluation and will have scoring sublevels including but not limited to the following:
- (a) The evaluation of economic benefits for a project based on the changes in economic conditions expected to result from the project related to:
- (A) Job creation or retention;
 - (B) Increases in economic activity;
 - (C) Increases in efficiency or innovation;
 - (D) Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses;
 - (E) Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and
 - (F) Increases in irrigated land for agriculture.
- (b) The evaluation of environmental benefits for a project based on the changes in environmental conditions expected to result from the project related to:
- (A) A measurable improvement in protected streamflows that:
 - (i) Supports the natural hydrograph;
 - (ii) Improves floodplain function;
 - (iii) Supports state or federally listed sensitive, threatened or endangered fish species;
 - (iv) Supports native fish species of cultural importance to Indian tribes; or
 - (v) Supports riparian habitat important for wildlife;
 - (B) A measurable improvement in groundwater levels that enhances environmental conditions in groundwater restricted areas or other areas;
 - (C) A measurable improvement in the quality of surface water or groundwater;
 - (D) Water conservation;
 - (E) Increased ecosystem resiliency to climate change impacts; and
 - (F) Improvements that address one or more limiting ecological factors in the project watershed.
- (c) The evaluation of the social or cultural benefits for a project based on the changes in social or cultural conditions expected to result from the project related to:
- (A) The promotion of public health and safety and of local food systems;
 - (B) A measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes;
 - (C) The promotion of recreation and scenic values;
 - (D) Contribution to the body of scientific data publicly available in this state;
 - (E) The promotion of state or local priorities, including but not limited to the restoration and protection of native fish species of cultural significance to Indian tribes; and
 - (F) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state Integrated Water Resources Strategy.

- (3) Scoring sublevels shall have a numeric point scale that accounts for positive and negative effects of the project. Sublevel scores shall be summed to a public benefit category level. The Department shall set a minimum score for the application to proceed.**
- (4) The Technical Review Team will use the total score from the score sheet provided by the Department to rank all applications and make loan and grant funding recommendations to the Commission.**
- (5) The Commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account based on criteria in OAR 690-093-0100.**
- (6) The Department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the Commission have been published.**

690-093-0100

Project Selection

- (1) The Commission shall select projects for funding which have the greatest public benefit and will achieve the outcomes listed in subsection (3) of this section.**
- (2) Project evaluation shall include:**
 - (a) The public benefit in three categories:**
 - (i) Economic;**
 - (ii) Environmental; and**
 - (iii) Social or cultural.**
 - (b) Equal importance of each of the three categories of public benefit; and**
 - (c) Consideration of both positive and negative effects of the projects.**
- (3) The Commission will consider the following in its determination of eligible projects that will receive funding:**
 - (a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in (1)(a) of this section;**
 - (b) Preference for partnerships and collaborative projects;**
 - (c) The funding of projects of diverse sizes, types and geographic locations;**
 - (d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows; and**
 - (e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use.**

690-093-0110

Water Dedicated Instream for Certain Above-Ground Storage Facilities

- (1) For the purposes of this section “dedicated instream” has the same meaning as “protected instream” as defined in OAR 690-093-0020(13).**
- (2) The recipient of a grant for the development of a new or expanded above-ground storage facility (reservoir) that impounds surface water on a perennial stream; diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or diverts more than 500 acre-feet of water annually must dedicate 25% of the newly developed water to instream use.**
- (3) To meet the requirements of subsection (2) of this section, dedicated water from projects may come from any combination of newly developed water and other sources and may be released or transferred instream at other locations in the tributary if the Department determines as**

provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize instream benefits in a manner consistent with public health and safety.

- (a) Other sources of water as identified in this subsection include but are not limited to water released from another reservoir and protected under a secondary water right for instream use or a water right transferred instream under OAR chapter 690 Division 77 through a permanent instream transfer or a time limited instream transfer that has a term that is consistent with subsection 3(c) of this section.
 - (b) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.
 - (c) Other sources of water to meet the requirement of subsection (2) of this section shall be legally protected instream for the life of the project for which grant funds were used.
 - (d) The Department shall protect water dedicated to instream use under this subsection consistent with the priority of the dedicated water source.
- (4) A storage water right that is using stored water releases to meet the requirement of subsection (2) of this section, shall be conditioned to achieve the following:
- (a) Meet the dedication requirement with stored water releases that are protected under a separate secondary water right;
 - (b) Annually report, on a schedule determined by the Department, the maximum volume of newly developed water stored in the funded reservoir, including newly developed water present in the reservoir during the immediate past storage season. Twenty-five percent of this volume equals the dedication requirement;
 - (c) If the dedication requirement is not fully met from other sources, the funded reservoir shall release and the Department shall protect the balance of the water necessary to meet the dedication requirement; and
 - (d) Demonstrate that the dedication requirement has been met.
- (5) For an existing storage permit subject to the requirements of subsection (2) of this section, the grant agreement shall be conditioned to meet the requirements of subsections (3) and (4) of this section.

690-093-0120

Demonstration of Public Benefits of Project

- (1) A project that receives a loan or grant from the Water Supply Development Account must:
 - (a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in OAR 690-093-0090; and
 - (b) Except as otherwise provided in ORS 541.681, demonstrate environmental benefits:
 - (A) By dedicating 25 percent of conserved water or newly developed water, that will be protected by the Department, to instream use; or
 - (B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in OAR 690-093-0090.
- (2) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.

690-093-0130

Seasonally Varying Flows

- (1) For the purposes of this section “sufficient” information means enough scientific information collected using standard biological, hydrologic, or hydraulic methods to develop the recommended flow prescription.**
- (2) The Department shall make a determination as provided under subsection (3) of this section if an application for a loan or grant is for a project that requires a water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:**
 - (a) Impounds surface water on a perennial stream;**
 - (b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or**
 - (c) Diverts more than 500 acre-feet of surface water from October 1 through September 30 of a given year.**
- (3) The Department shall review a completed application to determine whether the applicable seasonally varying flows have been established for the stream of interest. If the Department determines that the applicable seasonally varying flows have not been established, the Department shall establish the seasonally varying flows before issuing a loan or grant. The establishment of the seasonally varying flows by the Department shall occur after an application has been selected for funding based on the criteria of OAR 690-093-0100. The Department may use Water Supply Development Account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.**
- (4) The Department shall establish any seasonally varying flows under subsection (3) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Department shall determine the method for development of a seasonally varying flow prescription using the matrix provided in Appendix OAR 690-093.**
- (5) If the Department establishes applicable seasonally varying flows for the stream of interest, the Department shall make the seasonally varying flows a condition of:**
 - (a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (2) of this section that receives a loan or grant from the account; and**
 - (b) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any subsequent project that:**
 - (A) Receives a loan or grant from the account;**
 - (B) Is for the storage of water outside of the official irrigation season; and**
 - (C) Has a diversion point that is subject to seasonally varying flows.**
- (6) The applicant for a permit or license described in subsection (5)(b) of this section may request that seasonally varying flows established under subsection (3) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by Commission rules.**
- (7) The Department shall condition a water storage permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (5) of this section to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.**

- (8) For purposes of any project that receives a loan or grant and meets the other conditions described in subsection (5) of this section, the Department shall use the matrix provided in Appendix OAR 690-093 for determining the seasonally varying flow prescription.**
- (9) The matrix in Appendix OAR 690-093 contains the following considerations:**
 - (a) The level of ecological impact of the proposed project including:**
 - (A) Whether the project is diverting water from a stream supporting sensitive, threatened, or endangered species;**
 - (B) Whether the impoundment is located in-channel;**
 - (C) Whether the impoundment or proposed project has an impact on sensitive habitat/process;**
 - (D) Whether the project is proposing to divert more than half of the remaining available water in the basin;**
 - (E) Whether the majority of water is already developed in the basin.**
 - (b) The type of information already available including:**
 - (A) Whether there is sufficient long-term data to understand the natural hydrograph;**
 - (B) Whether there is sufficient information to understand climate driven shifts to the flow regime;**
 - (C) Whether there is sufficient information about water availability;**
 - (D) Whether there is sufficient information about all species present at/below the point of diversion and their lifecycle needs;**
 - (E) Whether there are habitat studies that provide sufficient information to understand the relationship between selected habitat features and streamflow;**
 - (F) Whether there are geomorphological studies or data that provide sufficient information to understand the relationship between sediment transport and streamflow;**
 - (G) Whether there is sufficient stream data available to describe stream complexity and floodplain connectivity; and**
 - (H) Whether there is sufficient water quality data available, particularly related to temperature.**
- (10) Subsections (1) through (10) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.**

690-093-0150

Agreements and Conditions

- (1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits.**
- (2) Project materials must include a notation indicating that Water Resources Department funding was used for the project.**
- (3) The loans or grants may be conditioned to require that the recipient complete and operate the funded project as described in the loan or grant application. The Department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.**

- (3) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the Department that describe the completed work, the public benefits achieved and project expenditures.**
- (4) The recipient must regularly measure and report the water diverted and used from the project. The Department shall make the final determination regarding the method, timing, frequency and location of measurement.**
- (5) The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the Department.**
- (6) The Department may impose other project specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.**
- (7) The Department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (6) of this section.**

690-093-0160

Authority of the Director

- (1) The Director is authorized by the Commission to enter into agreements with applicants who have been awarded a grant or loan by the Commission.**
- (2) The Director may:**
 - (a) Contract with regulated lenders, state or federal agencies or others to provide services to the program.**
 - (b) Take such steps as are needed to:**
 - (i) Ensure repayment or recovery of loan funds; and**
 - (ii) Prevent project funds from being diverted from the originally approved purpose.**
 - (c) Delegate to staff, in writing, authority to approve, deny, or amend agreements consistent with these rules.**
- (3) The Director or the Director's designee may conduct periodic inspections of water projects with reasonable notice.**

690-093-0170

Loan Interest Rates and Terms

- (1) Interest on loans shall be at reasonable rates as determined by the Commission.**
- (2) Loan repayment terms shall be for no more than 50 years and shall not exceed the estimated lifespan of the project.**

690-093-0180

Loan Closing

- (1) If the Commission approves a loan, the Department and the applicant or applicants shall enter into an agreement for repayment; arrangements for repayment shall be made by the applicant and the Director.**
- (2) The loan agreement shall set forth the repayment schedule. The repayment schedule shall:**
 - (a) Include the amortization of the principal plus interest and provide for full repayment of the loan within 50 years or the life of the project, from the date of the first payment, whichever occurs first; and**

- (b) Provide for commencement of repayment by the applicant 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 Director may provide.
- (3) The loan agreement shall be a binding legal document between the applicant and the Director stating the terms of the loan, including but not limited to:
 - (a) The purpose of the loan describing the project and location;
 - (b) The amount of the loan and payment schedule;
 - (c) The description of good and sufficient collateral for the loan; and
 - (d) A statement allowing the Director to inspect the project to ensure that the developer complies with conditions for which the money was loaned. This shall remain in effect for the length of the agreement.
- (4) The loan agreement shall include provisions for early prepayment of the loan.
- (5) The ownership of a project shall not be assigned or transferred during the term of the loan without the prior written approval of the Director; such approval shall not be unreasonably withheld.

690-093-0190

Standards for Security of Loans

Loans shall not be approved unless:

- (1) The applicant demonstrates and the Department finds that the loan will comply with all requirements of the Department and any applicable federal and state requirements.
- (2) The Director determines that the applicant meets the following standards:
 - (a) Demonstrated revenues or other resources available to:
 - (A) Repay the loan in accordance with its terms; and
 - (B) Provide for the continued operation and maintenance of the project.
 - (b) The applicant is qualified, credit-worthy and responsible as demonstrated by a satisfactory credit history or rating from a rating agency; or
 - (c) A first lien or other good and sufficient collateral is available to secure and provide repayment of the loan; and
 - (d) The project plan assures timely completion and includes schedules with measurable performance benchmarks.
- (3) The application requirements and qualifications are met.
- (4) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints.

690-093-0200

Program Review

- (1) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in ORS 541.677 are being achieved, and shall report the review findings to the Water Resources Commission.
- (2) The Commission shall modify the project selection process as necessary to better achieve the outcomes described in ORS 541.677.

Rules Advisory Committee

Members of the Rules Advisory Committee included*:

Leslie Bach	The Nature Conservancy
JR Cook	Northeast Oregon Water Association
Katie Fast	Oregon Farm Bureau
Tim Hardin	Oregon Dept. of Fish and Wildlife
Teresa Huntsinger	Oregon Environmental Council
Rob Kirchner	The Fresh Water Trust
Mark Landauer	Special Districts of Oregon
Margaret Matter	Oregon Department of Agriculture
Wade Peerman	Department of Environmental Quality
Kimberley Priestley	WaterWatch of Oregon
Eric Quaempts	Confederated Tribes of the Umatilla Indian Reservation
Amanda Rich	The Nature Conservancy
Gil Riddell	Association of Oregon Counties
Tracy Rutten	League of Oregon Cities
April Snell	Oregon Water Resources Congress
Jeff Stone	Oregon Association of Nurseries
Adam Sussman	GSI Water Solutions on behalf of the City of Bend

* Several additional invitees did not participate in the Rules Advisory Committee, including representatives from the Confederated Tribes of the Umatilla Indian Reservation, the Oregon Cattlemen, Oregon State University, Tualatin Valley Water District, U.S. Bureau of Reclamation, U.S. Geologic Survey, and Water for Life. These individuals had participated in earlier Task Forces that prepared background materials for the Rules Advisory Committee's use; they were invited to continue their participation.

Summary of Public Comments and Department Responses

Verbal Comments

The Department held five public hearings during the week of May 18. Five members of the public attended. Two people provided verbal comments, both generally in support of the rules and the process.

During verbal testimony, Marc Thalacker from Three Sisters Irrigation District in Central Oregon complimented the Department, the Commission, the Rules Advisory Committee, and related Task Forces on the work required to bring these rules forward. While not suggesting specific language changes, he did make two observations for the Commission to consider for the future. First, he noted that the requirement to release 25 percent of newly developed, stored water would likely pose a cost prohibitive obstacle to project developers. He noted that projects were likely to not "pencil out," without a third-party partner willing to pay for the increment of water released instream. Secondly, he noted that the Department may need to revamp its water availability model, adjusting it for a shifting hydrograph that results from climate change. Jim Powell, an interested citizen, commented that this bill offers wonderful opportunities for districts and believes there is a greater degree of cooperation now.

Department's Response: These comments do not suggest changes to the draft administrative rules.

Written Comments

The Department also accepted public comment from May 1 to May 22, and received five sets of written comments. These comments were supportive of state funding for water resource projects in general, but requested specific additions to the rules. See Attachment 4 for a copy of these letters.

Comments from Mosier Watershed Council, City of Mosier, and Wasco County

Three similar letters came from the Mosier Watershed Council, City of Mosier, and Wasco County. They asked the Commission to add a specific line to the rules to clarify the eligibility of certain projects. Specifically, they suggested adding the phrase "including abandonment, repair or replacement of private irrigation and domestic wells" to OAR 690-093-0030(1)(a)(A).

Department's Response: The Rules Advisory Committee did discuss this very situation, and concluded that the current phrase, "including but not limited to" would allow a broad array of projects to apply, such as this one. The primary limiting factor for project eligibility will be whether projects can score and rank well. The current list of 10 project types in statute is not intended to be all inclusive and the Department encourages a broad and diverse application pool. Adding additional specific project types will mean that other project types not listed will need to be added to attempt to define a more exhaustive list. Therefore, no changes to the draft rules were made.

Summary of Public Comments and Department Responses

Comments from Janet Neuman, Senior Counsel, Tonkin Torp, on behalf of a group of clients

A fourth letter came from an attorney at Tonkin Torp who noted that her clients are "generally supportive of state funding for water development projects. However, they are vehemently opposed to the use of public funding to plan or develop projects that will involve acquisition of farmland from unwilling sellers through the use of eminent domain. They strongly urge that language be added to these proposed rules to prohibit use of Water Supply Development Grant and Loan moneys to acquire property through condemnation." She notes that statutes used by the Oregon Watershed Enhancement Board (ORS 541.932(9) and ORS 541.956), allow for use of grant funds only if there are willing sellers/owners.

Department's Response: The draft administrative rules (690-093-0070 Application Requirements) require that applications involving physical changes on private land provide "evidence that landowners are aware of and agree to the proposal". Without this evidence, the application will be determined to be ineligible or incomplete and will be returned to the applicant. The draft administrative rules require that applications include current contact information of involved landowners, location of the proposed project, and any conditions that may affect the completion of the project, thereby allowing ample opportunity during the Department's review process and public comment period for validation of agreement by landowners. This portion of the draft administrative rules is directly from statute at ORS 541.666. The Department believes that no changes to the draft rules are necessary. Retaining the current language provides for a broader application of the law.

Comments from Deschutes River Conservancy

The fifth letter came from the Deschutes River Conservancy, who suggested that the Department add language about instream protections to ensure consistency with the statute (ORS 541.686). The Conservancy suggested revising OAR 690-093-0110(3), "Water Dedicated Instream for Certain Above-Ground Storage Facilities" by adding: "The Water Resources Department shall protect the dedicated water instream consistent with the priority date of the dedicated water source."

Department's Response: This is consistent with advice received from General Counsel and the rule has been changed.

Mosier Watershed Council

Mosier Watershed Council
c/o Wasco County Soil and Water Conservation District
2325 River Road, Suite 3
The Dalles OR 97058

May 20, 2015

Dear Rules Coordinator and Oregon Water Resources Commission,

The Mosier Watershed Council (MWC) is very interested in the Water Supply Development Loan and Grant Program. One of the driving forces for forming the MWC was to work on the problem of declining well levels in the Mosier area. Groundwater is the lifeblood of our community; most of our water storage and infrastructure is in our aquifers and wells. However, well levels have declined 150-200 feet over the past 40 years. Starting with seed money from local growers, the MWC worked with the Soil and Water Conservation District and others to instigate a USGS study that determined that the primary cause of our water level declines is improperly constructed wells that allow commingling between aquifers.

We continue to work with the SWCD to find commingling wells and to repair or replace the worst of them. However, the SWCD is only able to provide approximately \$120,000 to \$150,000 per year. We estimate that it will take approximately \$2.5 million to evaluate and fix a sufficient number of key commingling wells to arrest declining water levels and preserve this critical resource.

One of our challenges has been convincing landowners to allow access even to evaluate wells. Landowners are afraid of the expense of fixing a well that quite likely was drilled long before they bought their property. In order to gain landowner cooperation, it is imperative that we have the ability to help pay to fix the wells that are draining the water supply of the entire community. We believe it is critical to the economic future of the Mosier area community, and to other areas of the state afflicted by similar water level declines due to commingling wells, that groundwater projects are eligible for funding.

We propose adding the following language: **"including abandonment, repair or replacement of private irrigation and domestic wells"** to OAR 690-093-0030(1)(a)(A) as follows: **"The Department may expend moneys from the Water Supply Development Account for...including but not limited to projects that (A) Repair or replace infrastructure to increase the efficiency of water use, including abandonment, repair or replacement of private irrigation and domestic wells."**

Mosier Watershed Council, c/o Wasco County Soil and Water Conservation District, 2325 River
Road, Suite 3, The Dalles OR 97058
541-296-6178 x119 www.wascoswcd.org

Mosier Watershed Council

Thank you for the opportunity to comment on these rules. Fixing our wells is essential to the life of our community. Without water Mosier will dry up and blow away.

Regards,

Kristen McNall

Bryce Molesworth

Mosier Watershed Council CoChairs



Oregon Water Resources Department
Joshua Spansail
Rules Coordinator
725 Summer St. NE, Suite A
Salem, OR 97301
Joshua.a.spansail@wrd.state.or.us

Re: Comments for SB 839, proposed OAR 690-093

Mr. Spansail,

Deschutes River Conservancy appreciates the opportunity to comment on proposed OAR 690-093. The Rules Advisory Committee has done a thorough job of ensuring that public benefits and stream flows are an integral component or product of these public funds, as consistent with the authorizing statutes.

The Deschutes River Conservancy recommends that the Oregon Water Resources Department make one of the following two changes to the OARs to ensure consistency with ORS 541.686:

1. Revise section (3) of 690-093-0110 Water Dedicated to Instream for Certain Above Ground Storage Facilities

(3) At the end of this paragraph add: *The Water Resources Department shall protect the dedicated water instream consistent with the priority date of the dedicated water source (as provided in ORS 541.686, as described in ORS 541.681 and as allowed under ORS 541.683).*

OR

2. Add a section (3) to 690-093-0120 Demonstration of Public Benefits

(3) *The Water Resources Department shall protect the dedicated water instream consistent with the priority date of the dedicated water source (as provided in ORS 541.686, as described in ORS 541.681 and as allowed under ORS 541.683).*

Sincerely,

Genevieve Hubert - via email

Genevieve Hubert
Program Manager

Deschutes River Conservancy
700 NW Hill Street
Bend, OR 97701
gen@deschutesriver.org

CITY OF MOSIER

small enough to make a difference

PO Box 456 | 208 Washington Street, Mosier, OR 97040
Phone: 541.478.3505 | www.CityofMosier.com

Mayor Arlene Burns
Councilor Bill Akin
Councilor Emily Reed
Councilor Jackie Sterner
Councilor Penny Wallace
City Manager Kathy Fitzpatrick
Finance Director Angie Wilson

May 21, 2015

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

Dear Rules Coordinator and Oregon Water Resources Commission,

The City of Mosier appreciates the opportunity to comment on the draft Division 93 rules for the Water Supply Development Loan and Grant Program.

Groundwater provides most of the infrastructure and storage for the water used in Mosier; groundwater systems should be eligible for funding under the rules. Groundwater levels in Mosier Valley wells have declined 150-200' in the past 40 years despite implementing a number of activities such as drip irrigation to conserve water. Mosier Growers, the Soil and Water Conservation District (SWCD), and others worked with the USGS to perform a study that showed that the principle cause of these precipitous declines has been improper well construction that allows commingling of water between aquifers. Commingling depressurizes artesian aquifers, lowers water levels, and potentially disrupts groundwater to surface water hydrology. The potential for these impacts was not well understood at the time the wells were constructed or modified.

Recently, the Mosier Watershed Council worked with OWRD to petition for special well construction rules for our area. These rules are designed to proactively confirm that wells are constructed properly. However, we have to fix the existing commingling wells in order to fix the failure of our water infrastructure and storage, and that will be very expensive. For instance, the City of Mosier Well #3 was estimated to be commingling over 100 gallons per minute (gpm). The City has spent well over \$150,000 repairing and finally abandoning this well. To date, the only other source of funding for well repair has been the SWCD which has provided \$120,000 - \$150,000 per year for assessment and now repair.

Meanwhile, sales of homes both within and outside of city limits have been affected by concerns about the water situation. Wells continue to go dry as water levels decline.

Thus, the City of Mosier strongly urges the OWRD to include groundwater system repair as eligible projects under the Water Supply Development Loan and Grant Program. We believe that this type of project is implicitly authorized in OAR 690-093-0030; however, the eligibility of this type of project is

subject to the vagaries of interpretation of current draft rule language. We believe it is critical to the economic future of the Mosier area community and other areas of the state afflicted by similar water level declines due to commingling wells to ensure explicit eligibility of this type of project for funding. To this end, we support the draft rules with the addition of the phrase:

"including abandonment, repair or replacement of private irrigation and domestic wells"
to OAR 690-093-0030(1)(a)(A) **"The Department may expend moneys from the Water Supply Development Account for...including but not limited to projects that (A) Repair or replace infrastructure to increase the efficiency of water use, including repair or replacement of private irrigation and domestic wells."**

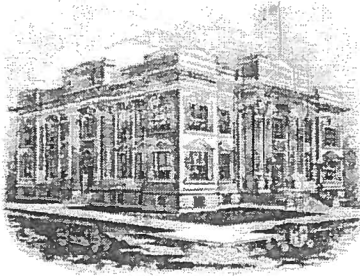
It is essential that we identify additional sources of funding to assist landowners in abandoning, repairing or replacing commingling wells, many of which were drilled long before the current owner bought the property. Repairing Mosier's commingling wells is a critical undertaking for our community as a whole. Without water Mosier will dry up and blow away. Thank you for your efforts on this issue.

Sincerely,

Arlene Burns

Arlene Burns
Mayor, City of Mosier

Cc: Ivan Gall - Manager
Groundwater Section
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
[503.986.0847](tel:503.986.0847)
ivan.k.gall@wrdd.state.or.us



WASCO COUNTY

Board of County Commissioners

511 Washington Street, Suite 302
The Dalles, Oregon 97058-2237
(541) 506-2520
Fax: (541) 506-2521

Scott Hege, *Chair of the Board*
Rod Runyon, *County Commissioner*
Steve Kramer, *County Commissioner*

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

May 20, 2015

Re: OAR Comments

In March of this year, we contacted OWRD endorsing the Proposed Special Area Standards for the Mosier Area to support their efforts to address the serious issue of declining groundwater levels - a result of poorly constructed wells that enable aquifers to commingle. While those new standards will help prevent future poor construction, they do not address the existing wells which continue to negatively impact the water levels in Mosier. Those levels have declined 150-200 feet over the past 40 years.

The Wasco County Soil and Water Conservation District is working to locate commingling wells and repair or replace those that are most seriously impacting groundwater levels. The SWCD is able to provide a generous \$150,000 per year but it is not nearly enough; it is estimated it will cost approximately \$2.5 million to evaluate and repair/replace the wells.

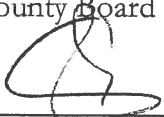
SWCD faces a significant challenge convincing landowners to allow access for evaluation; landowners are apprehensive that they will be required to bear what could be a crushing expense to repair or replace a well that was drilled long before they acquired their property. To gain landowner cooperation, they need to be confident that there is financial assistance available to defray those costs. Toward that end, we encourage you to include repairing or replacing private wells as eligible projects in the Water Supply Development Loan and Grant Program.

We propose the following language be added:

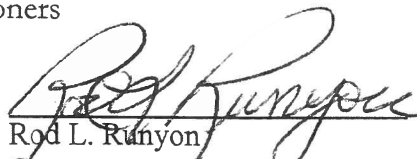
“including repair or replacement of private irrigation and domestic wells” to OAR 690-093-0030(1)(a)(A) “The Department may expend moneys from the Water Supply Development Account for . . . including but not limited to projects that (A) Repair or replace infrastructure to increase the efficiency of water use, including repair or replacement of private irrigation and domestic wells.”

Repairing these wells is essential to the viability of the water conservation in Wasco County. Thank you for the opportunity to comment on these rules.

Wasco County Board of Commissioners



Scott C. Hege
Commission Chair



Rod L. Runyon
County Commissioner



Steven D. Kramer
County Commissioner

MEMORANDUM

To: Water Resources Department Rules Coordinator
VIA EMAIL: rule-coordinator@wrд.state.or.us

From: Janet E. Neuman, Senior Counsel

Date: May 21, 2015

Subject: Comments on Proposed Rules Governing Grants and Loans for Water Supply Development: OAR Chapter 690, Division 93.

These comments are submitted on behalf of a group of clients.¹ The clients include: Bruce Jaquet, Robert Qualey, Kathleen Jaquet, Cheri Perry-Harbour, Norbert Dominick, Joel Rue, Steve Lierman, Tom and Karen Fox, John and Sharon Fox, IOKA Farms, and Taylor Farms, Inc., all of whom are landowners or lessees of agricultural land along Drift Creek in Marion County, near Silverton.

My clients are generally supportive of state funding for water development projects. However, they are vehemently opposed to the use of public funding to plan or develop projects that will involve acquisition of farmland from unwilling sellers through the use of eminent domain. They strongly urge that language be added to these proposed rules to prohibit use of Water Supply Development Grant and Loan moneys to acquire property through condemnation.

My clients have a very personal interest in this matter. Their land is the proposed site of the Drift Creek Dam and Reservoir—a project proposed by the East Valley Water District, an irrigation district formed to seek a future water supply for other agricultural landowners in Marion County, near Mt. Angel, several miles away from the proposed dam site. The Drift Creek landowners are not members of EVWD, nor do they want to be, and they would not receive any water from the project. They are dryland farmers who are in fact competitors of some of the EVWD farmers. The Drift Creek farmers are opposed to the Drift Creek Dam

¹ I served on the Governance Task Force formed to discuss implementation of SB 839 (2013 Session), now codified at ORS 541.656, under which these Division 93 rules are promulgated. My participation on the Task Force was as an individual, not on behalf of any clients. I did not serve on the Rules Advisory Committee that assisted in the development of these proposed rules, following upon the efforts of the Governance Task Force and its companion Seasonally Varying Flows Task Force. These comments are submitted on behalf of my clients listed above, not as a member of the Task Force.

Project and they do not want to sell their property to the District. However, the District intends to use eminent domain to acquire some of their lands for the project.²

The EVWD has already received nearly a million dollars in public funding for planning and feasibility studies in conjunction with the Drift Creek Dam project, including three grants from the Water Resources Department's Water Conservation, Reuse, and Storage Grant Program (also known as HB 1069 funding). Some of these funds are for "public outreach" to counter the Drift Creek farmers' opposition to the project, and some of them fund tests and surveys on their lands, after an unsuccessful attempt to block the District's access for those purposes. The District has the ability to assess its members to support the cost of its efforts, and is also seeking additional public funding, while the Drift Creek farmers must personally finance their resistance to the project.

Public funds should not be used to support projects whereby farmers will condemn the land of other competing farmers. Language should be added to these proposed rules to disallow grants and loans made under this program from being used to acquire land or water rights through condemnation. Several possible ways to accomplish this goal follow:

1. Add language to 690-093-0030(3) that the Department may expend account moneys only if any land or water acquisition in support of the project will be from willing sellers.
2. Add language to 690-093-0070(1)(d) clarifying that the prior agreement of private landowners is required not just for monitoring but for the location and construction of projects.
3. Add language to 690-093-0090 requiring the application to disclose whether private farmlands will be taken out of production by the project.
4. Add language to 690-093-0150 stating explicitly that Water Supply Development Account moneys may only be used for acquisition of interests in land and water from willing sellers.

Similar language is found in the statutes pertaining to state grants awarded by the Oregon Watershed Enhancement Board. For example, ORS 541.932(9) provides that OWEB "may fund projects involving the acquisition of lands and waters, or interests therein[,] from *willing sellers*." Similarly, ORS 541.956 says that moneys in the Watershed Conservation Grant Fund "shall be used only for the following activities: (1)Acquiring from *willing owners* interests in land or water....." (Emphasis added.)

² The controversy was described in some detail in a recent news article: Molly Harbarger, *Farmer vs. farmer: Future of Oregon water at center of fight over new dam in Silverton* (THE OREGONIAN, May 16, 2015), available at http://www.oregonlive.com/business/index.ssf/2015/05/farmer_v_farmer_future_of_oreg.html#incart_m-rpt-1

Memorandum
May 21, 2015
Page 3

On behalf of my clients, I urge the Department to revise the proposed Division 93 Rules to prohibit the Water Supply Development Grant and Loan Program from funding condemnation of farmland.

copies: Clients
 Racquel Rancier, Water Resources Department

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OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 93
WATER SUPPLY DEVELOPMENT GRANT AND LOAN PROGRAM

690-093-0010

Purpose

The purpose of OAR 690-093 is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits. The rules establish procedures and requirements for the funding of water resources projects from the Water Supply Development Account established in ORS 541.656.

690-093-0020

Definitions

The following definitions apply to this division of the rules:

- (1) "Collateral" means the security pledged for the payment of a loan.
- (2) "Commission" means the Water Resources Commission.
- (3) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:
 - (a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
 - (b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.
- (4) "Director" means the director of the Oregon Water Resources Department or the director's designee.
- (5) "Expanded Storage" means the quantity of water authorized by a new water storage permit that adds to the capacity of an already-existing storage facility.
- (6) "Indian Tribe" as defined by ORS 391.802 means a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.
- (7) "Instream Use" means water that remains in or is released into the natural stream channel or lake bed or where water naturally flows or occurs that provides a benefit including but not limited to recreation, conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, pollution abatement or navigation.
- (8) "Newly Developed Water" means the new increment of water:
 - (a) Stored for a project providing new or expanded storage;
 - (b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or
 - (c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.
- (9) "Non-Profit Organizations" means an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends.
- (10) "Perennial Stream" means a continuous stream flow year around.

- (11) "Persons" as defined by ORS 536.007 means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.
- (12) "Project Materials" means documents or media materials that are published or produced to describe or market the project.
- (13) "Protected Instream" means water that remains in or is released into the natural channel and is legally protected by the state.
- (14) "Seasonally Varying Flows" means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes.
- (15) "Secondary Water Right" as used in OAR 690-093-0020 (10)(b) means a water right permit issued for the beneficial use of stored water.
- (16) "Technical Review Team" means the group consisting of representatives from Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.
- (17) "Water Supply Development Account" is the account established in the State Treasury under ORS 541.656.

690-093-0030

Authorized Use of Funds

- (1) The Department may expend moneys from the Water Supply Development Account for:
 - (a) Subject to subsection (3) of this section, making loans and grants to evaluate, plan and develop instream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:
 - (A) Repair or replace infrastructure to increase the efficiency of water use;
 - (B) Provide new or expanded water storage;
 - (C) Improve or alter operations of existing water storage facilities in connection with newly developed water;
 - (D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;
 - (E) Allocate federally stored water;
 - (F) Promote water reuse;
 - (G) Promote water conservation;
 - (H) Provide streamflow protection or restoration;
 - (I) Provide for water management or measurement in connection with newly developed water; and
 - (J) Determine seasonally varying flows in connection with newly developed water.
 - (b) Paying the necessary administrative and technical costs of the Department in carrying out OAR 690-093.
- (2) (a) In addition to any other permissible uses of moneys in the account, the Department may expend moneys from the account to support:
 - (A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate

stored water; and

(B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.

- (b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under this administrative rule.
- (3) The Department may expend account moneys under subsection (1) of this section for loans and grants to develop instream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.
- (4) The Commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

690-093-0040

Loan and Grant Applicant Eligibility

- (1) Parties eligible for a loan or grant under these rules include persons, Indian tribes, and non-profit organizations.
- (2) If an applicant is required to have a water management and conservation plan as prescribed by a condition of a water use permit; a permit extension; or another order or rule of the Commission, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account.

690-093-0050

Pre-Application Conferences

- (1) A pre-application conference may be requested by prospective applicants.
- (2) The Department may request, and the applicant must provide 14 days prior to the conference, adequate project information to prepare for the pre-application conference.
- (3) At the pre-application conference, the Department shall inform the prospective applicant of:
 - (a) The procedural and substantive requirements of a loan or grant application;
 - (b) The scoring system used to evaluate loan and grant requests; and
 - (c) Any known issues associated with project eligibility for a loan or grant from the account.
- (4) The prospective applicant may request additional pre-application consultation with the Department.

690-093-0060

Application Submission Periods

- (1) The Department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.
- (2) The Department will conduct a preliminary review of the application for completeness, eligibility and for sufficiency of information to determine benefits and outcomes as listed in OAR 690-093-0090 Scoring and Ranking and OAR 690-093-0100 Project Selection.
- (3) Applications not funded during one annual period may be resubmitted in a future period.

690-093-0070

Application Requirements

- (1) Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:**
 - (a) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed;**
 - (b) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project;**
 - (c) Current contact information for the principal contact, fiscal officer and involved landowners;**
 - (d) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record;**
 - (e) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate;**
 - (f) An itemized budget for the project, including fiscal and administrative costs;**
 - (g) A description of funds, services or materials available to the project;**
 - (h) A project schedule, including beginning and completion dates;**
 - (i) Any conditions that may affect the completion of the project;**
 - (j) A completed feasibility analysis if appropriate;**
 - (k) Suggestions for interim and long-term project performance benchmarks;**
 - (L) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account;**
 - (m) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral;**
 - (n) Letters of support for the proposed project;**
 - (o) If required by the Department, a description of consultations with affected Indian tribes regarding the project; and**
 - (p) Any other information required by the Department.**
- (2) Applications determined to be ineligible, incomplete or that provide insufficient information shall be returned to the applicant.**

690-093-0080

Public Comment

- (1) The Department shall provide public notice and a 60-day period for public comment prior to initial scoring by the Technical Review Team by posting applications passing an initial review on the Department's website.**
- (2) Additional public comment will be sought by the Commission after rankings are published and prior to a final decision on an application.**

690-093-0090

Scoring and Ranking; Funding Decisions

- (1) The primary elements in the process of scoring and ranking of applications include the following:**
 - (a) Initial review for completeness by the Department;**
 - (b) Public comment;**

- (c) **The Technical Review Team conducts the initial scoring and ranking for the projects, considers comments from applicants and the public and makes loan and grant funding recommendations to the Commission; and**
 - (d) **The Commission determines the final scoring and ranking of projects, provides for additional public comment, and makes the final decision regarding which projects are awarded loans or grants from the account.**
- (2) The Technical Review Team scoring methodology shall rank applications based upon the public benefits of the project and additional considerations set forth in ORS 541.677 subsection (1)(b), (1)(d) and (1)(e). The Technical Review Team shall use a score sheet provided by the Department. Each of the three public benefit categories shall be given equal importance in the evaluation and will have scoring sublevels including but not limited to the following:**
- (a) **The evaluation of economic benefits for a project based on the changes in economic conditions expected to result from the project related to:**
 - (A) **Job creation or retention;**
 - (B) **Increases in economic activity;**
 - (C) **Increases in efficiency or innovation;**
 - (D) **Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses;**
 - (E) **Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and**
 - (F) **Increases in irrigated land for agriculture.**
 - (b) **The evaluation of environmental benefits for a project based on the changes in environmental conditions expected to result from the project related to:**
 - (A) **A measurable improvement in protected streamflows that:**
 - (i) **Supports the natural hydrograph;**
 - (ii) **Improves floodplain function;**
 - (iii) **Supports state or federally listed sensitive, threatened or endangered fish species;**
 - (iv) **Supports native fish species of cultural importance to Indian tribes; or**
 - (v) **Supports riparian habitat important for wildlife;**
 - (B) **A measurable improvement in groundwater levels that enhances environmental conditions in groundwater restricted areas or other areas;**
 - (C) **A measurable improvement in the quality of surface water or groundwater;**
 - (D) **Water conservation;**
 - (E) **Increased ecosystem resiliency to climate change impacts; and**
 - (F) **Improvements that address one or more limiting ecological factors in the project watershed.**
 - (c) **The evaluation of the social or cultural benefits for a project based on the changes in social or cultural conditions expected to result from the project related to:**
 - (A) **The promotion of public health and safety and of local food systems;**
 - (B) **A measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes;**
 - (C) **The promotion of recreation and scenic values;**
 - (D) **Contribution to the body of scientific data publicly available in this state;**
 - (E) **The promotion of state or local priorities, including but not limited to the restoration and protection of native fish species of cultural significance to Indian tribes; and**

- (F) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state Integrated Water Resources Strategy.
- (3) Scoring sublevels shall have a numeric point scale that accounts for positive and negative effects of the project. Sublevel scores shall be summed to a public benefit category level. The Department shall set a minimum score for the application to proceed.
 - (4) The Technical Review Team will use the total score from the score sheet provided by the Department to rank all applications and make loan and grant funding recommendations to the Commission.
 - (5) The Commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account based on criteria in OAR 690-093-0100.
 - (6) The Department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the Commission have been published.

690-093-0100

Project Selection

- (1) The Commission shall select projects for funding which have the greatest public benefit and will achieve the outcomes listed in subsection (3) of this section.
- (2) Project evaluation shall include:
 - (a) The public benefit in three categories:
 - (i) Economic;
 - (ii) Environmental; and
 - (iii) Social or cultural.
 - (b) Equal importance of each of the three categories of public benefit; and
 - (c) Consideration of both positive and negative effects of the projects.
- (3) The Commission will consider the following in its determination of eligible projects that will receive funding:
 - (a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in (1)(a) of this section;
 - (b) Preference for partnerships and collaborative projects;
 - (c) The funding of projects of diverse sizes, types and geographic locations;
 - (d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows; and
 - (e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use.

690-093-0110

Water Dedicated Instream for Certain Above-Ground Storage Facilities

- (1) For the purposes of this section “dedicated instream” has the same meaning as “protected instream” as defined in OAR 690-093-0020(13).
- (2) The recipient of a grant for the development of a new or expanded above-ground storage facility (reservoir) that impounds surface water on a perennial stream; diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or diverts more than 500 acre-feet of water annually must dedicate 25% of the newly developed water to instream use.

- (3) To meet the requirements of subsection (2) of this section, dedicated water from projects may come from any combination of newly developed water and other sources and may be released or transferred instream at other locations in the tributary if the Department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize instream benefits in a manner consistent with public health and safety.
- (a) Other sources of water as identified in this subsection include but are not limited to water released from another reservoir and protected under a secondary water right for instream use and/or a water right transferred instream under OAR chapter 690 Division 77 through a permanent instream transfer or a time limited instream transfer that has a term that is consistent with subsection 3(c) of this section.
 - (b) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.
 - (c) Other sources of water to meet the requirement of subsection (2) of this section shall be legally protected instream for the life of the project for which grant funds were used.
 - (d) The Department shall protect water dedicated to instream use under this subsection ~~consistent with the authorities of the Department~~ priority of the dedicated water source.
- (4) A storage water right that is using stored water releases to meet the requirement of subsection (2) of this section, shall be conditioned to achieve the following:
- (a) Meet the dedication requirement with stored water releases that are protected under a separate secondary water right;
 - (b) Annually report, on a schedule determined by the Department, the maximum volume of newly developed water stored in the funded reservoir, including newly developed water present in the reservoir during the immediate past storage season. Twenty-five percent of this volume equals the dedication requirement;
 - (c) If the dedication requirement is not fully met from other sources, the funded reservoir shall release and the Department shall protect the balance of the water necessary to meet the dedication requirement; and
 - (d) Demonstrate that the dedication requirement has been met.
- (5) For an existing storage permit subject to the requirements of subsection (2) of this section, ~~the permit holder shall enter into a stipulated agreement with the Department~~ the grant agreement shall be conditioned to meet the requirements of subsections (3) and (4) of this section.

690-093-0120

Demonstration of Public Benefits of Project

- (1) A project that receives a loan or grant from the Water Supply Development Account must:
- (a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in ~~ORS 541.669~~ OAR 690-093-0090; and
 - (b) Except as otherwise provided in ORS 541.681, demonstrate environmental benefits:
 - (A) By dedicating 25 percent of conserved water or newly developed water, that will be protected by the Department, to instream use; or
 - (B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in ~~ORS 541.669~~ OAR 690-093-0090.

- (2) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.

690-093-0130

Seasonally Varying Flows

- (1) For the purposes of this section “sufficient” information means enough scientific information collected using standard biological, hydrologic, or hydraulic methods to develop the recommended flow prescription.
- (2) The Department shall make a determination as provided under subsection (3) of this section if an application for a loan or grant is for a project that requires a water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:
 - (a) Impounds surface water on a perennial stream;
 - (b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or
 - (c) Diverts more than 500 acre-feet of surface water from October 1 through September 30 of a given year.
- (3) The Department shall review a completed application to determine whether the applicable seasonally varying flows have been established for the stream of interest. If the Department determines that the applicable seasonally varying flows have not been established, the Department shall establish the seasonally varying flows before issuing a loan or grant. The establishment of the seasonally varying flows by the Department shall occur after an application has been selected for funding based on the criteria of OAR 690-093-0100. The Department may use Water Supply Development Account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.
- (4) The Department shall establish any seasonally varying flows under subsection (3) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Department shall determine the method for development of a seasonally varying flow prescription using the matrix provided in Appendix OAR 690-093.
- (5) If the Department establishes applicable seasonally varying flows for the stream of interest, the Department shall make the seasonally varying flows a condition of:
 - (a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (2) of this section that receives a loan or grant from the account; and
 - (b) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any subsequent project that:
 - (A) Receives a loan or grant from the account;
 - (B) Is for the storage of water outside of the official irrigation season; and
 - (C) Has a diversion point that is subject to seasonally varying flows.
- (6) The applicant for a permit or license described in subsection (5)(b) of this section may request that seasonally varying flows established under subsection (3) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by Commission rules.
- (7) The Department shall condition a water storage permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (5) of this

section to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

- ~~(8) To condition an existing water storage or aquifer recharge permit or limited license for the storage of water to protect the applicable seasonally varying flow pursuant to subsection (7) of this section, the permit holder shall enter into a stipulated agreement with the Department to protect the applicable seasonally varying flows. The Department and the permit holder shall enter into the stipulated agreement prior to the permit holder receiving funding.~~
- (98) For purposes of any project that receives a loan or grant and meets the other conditions described in subsection (5) of this section, the Department shall use the matrix provided in Appendix OAR 690-093 for determining the seasonally varying flow prescription.
- (109) The matrix in Appendix OAR 690-093 contains the following considerations:
- (a) The level of ecological impact of the proposed project including:
 - (A) Whether the project is diverting water from a stream supporting sensitive, threatened, or endangered species;
 - (B) Whether the impoundment is located in-channel;
 - (C) Whether the impoundment or proposed project has an impact on sensitive habitat/process;
 - (D) Whether the project is proposing to divert more than half of the remaining available water in the basin;
 - (E) Whether the majority of water is already developed in the basin.
 - (b) The type of information already available including:
 - (A) Whether there is sufficient long-term data to understand the natural hydrograph;
 - (B) Whether there is sufficient information to understand climate driven shifts to the flow regime;
 - (C) Whether there is sufficient information about water availability;
 - (D) Whether there is sufficient information about all species present at/below the point of diversion and their lifecycle needs;
 - (E) Whether there are habitat studies that provide sufficient information to understand the relationship between selected habitat features and streamflow;
 - (F) Whether there are geomorphological studies or data that provide sufficient information to understand the relationship between sediment transport and streamflow;
 - (G) Whether there is sufficient stream data available to describe stream complexity and floodplain connectivity; and
 - (H) Whether there is sufficient water quality data available, particularly related to temperature.
- (110) Subsections (1) through (10) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.

690-093-0150

Agreements and Conditions

- (1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits.
- (2) Project materials must include a notation indicating that Water Resources Department funding was used for the project.

- (3) The loans or grants may be conditioned to require that the recipient complete and operate the funded project as described in the loan or grant application. The Department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.**
- (3) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the Department that describe the completed work, the public benefits achieved and project expenditures.**
- (4) The recipient must regularly measure and report the water diverted and used from the project. The Department shall make the final determination regarding the method, timing, frequency and location of measurement.**
- (5) The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the Department.**
- (6) The Department may impose other project specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.**
- (7) The Department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (6) of this section.**

690-093-0160

Authority of the Director

- (1) The Director is authorized by the Commission to enter into agreements with applicants who have been awarded a grant or loan by the Commission.**
- (2) The Director may:**
 - (a) Contract with regulated lenders, state or federal agencies or others to provide services to the program.**
 - (b) Take such steps as are needed to:**
 - (i) Ensure repayment or recovery of loan funds; and**
 - (ii) Prevent project funds from being diverted from the originally approved purpose.**
 - (c) Delegate to staff, in writing, authority to approve, deny, or amend agreements consistent with these rules.**
- (3) The Director or the Director's designee may conduct periodic inspections of water projects with reasonable notice.**

690-093-0170

Loan Interest Rates and Terms

- (1) Interest on loans shall be at reasonable rates as determined by the Commission.**
- (2) Loan repayment terms shall be for no more than 50 years and shall not exceed the estimated lifespan of the project.**

690-093-0180

Loan Closing

- (1) If the Commission approves a loan, the Department and the applicant or applicants shall enter into an agreement for repayment; arrangements for repayment shall be made by the applicant and the Director.**

- (2) The loan agreement shall set forth the repayment schedule. The repayment schedule shall:**
 - (a) Include the amortization of the principal plus interest and provide for full repayment of the loan within 50 years or the life of the project, from the date of the first payment, whichever occurs first; and**
 - (b) Provide for commencement of repayment by the applicant 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 Director may provide.**
- (3) The loan agreement shall be a binding legal document between the applicant and the Director stating the terms of the loan, including but not limited to:**
 - (a) The purpose of the loan describing the project and location;**
 - (b) The amount of the loan and payment schedule;**
 - (c) The description of good and sufficient collateral for the loan; and**
 - (d) A statement allowing the Director to inspect the project to ensure that the developer complies with conditions for which the money was loaned. This shall remain in effect for the length of the agreement.**
- (4) The loan agreement shall include provisions for early prepayment of the loan.**
- (5) The ownership of a project shall not be assigned or transferred during the term of the loan without the prior written approval of the Director; such approval shall not be unreasonably withheld.**

690-093-0190

Standards for Security of Loans

Loans shall not be approved unless:

- (1) The applicant demonstrates and the Department finds that the loan will comply with all requirements of the Department and any applicable federal and state requirements.**
- (2) The Director determines that the applicant meets the following standards:**
 - (a) Demonstrated revenues or other resources available to:**
 - (A) Repay the loan in accordance with its terms; and**
 - (B) Provide for the continued operation and maintenance of the project.**
 - (b) The applicant is qualified, credit-worthy and responsible as demonstrated by a satisfactory credit history or rating from a rating agency; or**
 - (c) A first lien or other good and sufficient collateral is available to secure and provide repayment of the loan; and**
 - (d) The project plan assures timely completion and includes schedules with measurable performance benchmarks.**
- (3) The application requirements and qualifications are met.**
- (4) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints.**

690-093-0200

Program Review

- (1) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in ORS 541.677 are being achieved, and shall report the review findings to the Water Resources Commission.**
- (2) The Commission shall modify the project selection process as necessary to better achieve the outcomes described in ORS 541.677.**

