



# Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building


725 Summer Street NE, Suite A

Salem, OR 97301-1271

503-986-0900

FAX 503-986-0904

## MEMORANDUM

TO: Water Resources Commission 

FROM: Tracy Loudon, Administrator for Administrative Services Division

SUBJECT: Agenda Item G, February 25, 2016  
Water Resources Commission Meeting

### Water Resource Loan Fund – Process Overview

#### I. Introduction

The Water Resources Department was authorized by the 2015 Legislature to issue General Obligation bonds in the amount of \$30 million to fund loans from the Water Development Loan Fund for water development projects pursuant to Article XI-I(1) of the Oregon Constitution, ORS 541.700 to 541.855. During this agenda item, staff will provide an overview of the program and the loan approval process.

#### II. History

The Water Development Fund was created to provide loans to develop the water resources of the state. The fund was established by the Water Development Act, Chapter 246, 1977 Oregon Laws and approved by the public in the November 1977 general election. The Act was subsequently amended to authorize loans for fish protection projects, watershed enhancement projects, and community water supply projects for communities of populations less than 30,000.

The history of bond issuances are shown in the table below:

Date	Bond Amount (\$)	# of Projects	Interest Rate
May 1979	3,346,000	25	6.55%
November 1979	7,425,000	23	6.59%
May 1980	4,515,000	44	6.59%
October 1980	4,305,000	34	8.40%
June 1981	3,775,000	36	10.75%
October 1982	1,165,000	9	9.00%
October 1984	2,215,000	3	10.28%
October 1984	650,000	2	10.49%
	27,396,000	136	

*Note: Refunding Bonds were later issued to "refinance" previously issued bonds.*

As outlined below, the Water Development Loan Fund faced a number of challenges in its early years:

- 1985 - Secretary of State audit criticized loan procedures.
- The majority of loans for the program to date had been for private activity. The 1986 Federal Tax Reform Act makes changes that modify how future loans can be issued for private activity, which results in higher interest rates for the borrowers.
- 1986 Bankruptcy Act allows small farmers to write down existing loans without regard to lenders loan agreement terms.
- Loan defaults occur: the state cannot recuperate the losses because the property held as security has less value than the loan amounts.
- 1991 - Borrowers sued the state in a class action lawsuit claiming they had been charged too much interest. The lawsuit was settled in favor of borrowers at a cost of \$1.3 million.
- Flawed cash flow management and defaulted loans led to General Fund subsidies in the amount of \$7.5 million from 1993 to 2001. A \$1.6 million residual balance was returned in 2009.

As a result of some of the challenges incurred by the program, safeguards have been put in place:

- State Treasurer was given authority over all bonding programs in 1985. Bonding does not occur without a comprehensive analysis and approval by the State Treasurer.
- The administrative rules were rewritten in 1997 to strengthen oversight, loan management, and debt issuance. The rules added a Loan Advisory Board to incorporate external expertise in the recommendation process.
- A Policy Manual was also written in 1997 which incorporated protocols recommended by external audits.

There are currently no outstanding loans under this program.

### **III. Loan Advisory Board**

The Water Development Loan Fund administrative rules require the appointment of a Loan Advisory Board (Board) by the Director. This administrative rule was adopted in 1997 and has never been utilized due to a lack of loan applications. If an application is received, this will be the first time for the Board to be constituted.

The Board must be composed of five to seven individuals with expertise in and representing interests of one or more of the following: instream flow and watershed enhancement, finance or banking, project development, agriculture, and local government operations. Members would be appointed for two-year terms, following a public solicitation for nominations. The Director's appointments to the Board must be approved by the Commission.

The Board is tasked with reviewing loan applications and making recommendations to the Director. The Board is authorized to hold public meetings at the call of the Director, accept public comments, and make recommendations on the amount of money that should be authorized for a loan.

#### **IV. Application and approval process**

The application and approval process is outlined below:

1. Applicant requests pre-application process.
2. Applicant submits application.
3. Public notice of application is made within one week of receipt and is open for public comment for 14 days.
4. The Loan Advisory Board reviews the loan and makes a recommendation to the Director.
  - The Director may approve or deny a loan under three million dollars.
5. Loans greater than three million dollars are referred to the Commission with a recommendation on whether to authorize the loan.
  - The Commission may approve or deny referred loan applications.
6. The Commission requests the State Treasurer to issue bonds for approved loans.
7. The State Treasurer issues bonds for qualifying loans.

#### **V. Loan Criteria and Loan Security**

The Department's Division 90 administrative rules provide a comprehensive list of criteria and loan security requirements. As mentioned above, the rules were significantly updated in 1997 to address the early problems experienced with the program. Attachment 1 provides the full text of the administrative rules.

Section 025 provides criteria for granting a loan. Some of the required criteria includes making findings that the proposed project is feasible and a reasonable risk; the project plan is satisfactory; the applicant is qualified and credit-worthy; there is a need for the proposed project; the proposed project is in the public interest; and the project will not be in conflict with any state or federal laws. Section 030 provides a detailed description of loan security requirements for eligible applicants to the loan fund program.

The compliance with administrative rules is the responsibility of the Director and staff of the Department and will be reported on in detail for loan applications that are received and processed. It has been a number of years since these rules have been updated; staff are reviewing them at this time to determine if changes will be recommended to the Commission.

#### **VI. Conclusion**

No loan applications have been received at this time; however, entities in the Umatilla Basin have expressed an interest in potentially applying for a loan later in the biennium. The Department will continue to keep the Commission apprised of the status of possible requests as there are new developments.

Attachment 1 – OAR 690, Division 90 Rules

Tracy Loudon, Administrator  
(503) 986-0920

## WATER RESOURCES DEPARTMENT

### DIVISION 90

#### WATER DEVELOPMENT LOAN FUND

##### 690-090-0005

##### Purpose

- (1) The Water Development Fund, referred to in these rules as the Water Development Loan Fund, was created to provide loans to develop the water resources of the state. The fund was established in the Water Development Act, Chapter 246, 1977 Laws and approved by a general election in November, 1977. The Act was subsequently amended to authorize loans for community water supply projects which benefit communities of less than 30,000 population, fish protection projects, and watershed enhancement projects. The Act is codified in ORS 541.700 to [ORS 541.855](#).
- (2) These rules provide instructions for the administration of the loan program.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.845](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

##### 690-090-0010

##### Definitions

As used in these rules and forms to be prepared by the Water Resources Commission, the following definitions apply:

- (1) "Applicant" means a loan program applicant or borrower.
- (2) "Commission" means the Water Resources Commission.
- (3) "Community" means an incorporated or unincorporated town or locality with more than three service connections and a population of less than 30,000.
- (4) "Community water supply project" means an undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, canal lining and restoration, ditches, revetments, and all other structures, facilities, real property and methods necessary or convenient for supplying water.
- (5) "Department" means the Water Resources Department or its staff.
- (6) "Director" means the director of the Water Resources Department or designee.
- (7) "Drainage project" means facilities installed to provide for the removal of excess water and thereby increase soil versatility and productivity. These facilities may include ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods.
- (8) "Family farm unit" means land devoted primarily to agriculture under the ownership of a resident Oregon family.

- (9) "Fish protection project" means an undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways, passage, and all other structures and facilities necessary or convenient for providing fish protection.
- (10) "Irrigation project" means facilities designed to provide water to land for the purpose of irrigation. Projects may include dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, canal lining and restoration, ditches, revetments and all other structures, facilities, real property and methods necessary or convenient for supplying lands with water for irrigation purposes.
- (11) "Loan advisory board" means a board appointed by the director to review applications made under [ORS 541.700](#) through 541.855 and make recommendations thereon to the director.
- (12) "Loan contract" means the loan agreement, supplemental loan agreement, promissory note, mortgage and other documents relating to the construction, operation and maintenance of the project, and repayment of the loan.
- (13) "Loan funds" means moneys loaned by the department to finance water development projects.
- (14) "Multipurpose project" means a water development project in this state which provides more than one use. To be eligible for funding, the primary use of the project shall be irrigation, drainage, community water supply, fish protection or watershed enhancement projects. Secondary uses may include other water uses which are compatible with the primary use. Secondary uses are:
- (a) Any water-related recreational use;
  - (b) Any wildlife or natural resource conservation use;
  - (c) Municipal or industrial water uses with a water development project as the source;
  - (d) Water quality enhancement directly related to the development of a new water development project;
  - (e) Any flood control use;
  - (f) Any power generation use;
  - (g) Any water supply system utilized for the purpose of agricultural temperature control;
  - (h) Any water supply system utilized for the maintenance of livestock;
  - (i) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.
- (15) "Personal property" means movable property or possessions not permanently affixed to and a part of the real estate.
- (16) "Principal income" means a major source of income as stated in the applicant's federal tax returns for the three years previous to filing the Water Development Loan Fund application or such other evidence acceptable to the director.
- (17) "Real property" means land, buildings, and other permanent improvements to the land.
- (18) "Resident" means an individual living in the State of Oregon for the six months immediately preceding the date of filing an application.
- (19) "Water developer" means:
- (a) Any individual resident of this state;

- (b) Any profit-making partnership subject to the provisions of ORS Chapter 68 or 70 whose principal income is from farming in Oregon;
  - (c) Any profit-making corporation subject to the provisions of ORS Chapter 60, whose principal income is from farming in Oregon;
  - (d) Any nonprofit corporation subject to provisions of ORS Chapter 65, whose principal income is from farming in Oregon;
  - (e) Any cooperative subject to the provisions of ORS Chapter 62, whose principal income is from farming in Oregon;
  - (f) Any irrigation district organized under or subject to the Irrigation District Act, as defined in ORS Chapter 545;
  - (g) Any water improvement district organized under ORS Chapter 552;
  - (h) Any water control district organized under ORS Chapter 553;
  - (i) Any irrigation or drainage corporation organized under or subject to ORS Chapter 554;
  - (j) Any drainage district organized under ORS Chapter 547 or subject to all or part of ORS Chapter 545;
  - (k) Any corporation, cooperative, company, or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;
  - (l) Any port district organized under ORS Chapter 777.005 to 777.725, 777.915 to 777.953 and 777.990;
  - (m) Any city or county;
  - (n) Any organization formed for the purpose of distributing water for community water supply; or
  - (o) Any local soil and water conservation district organized under [ORS 568.210](#) to 568.808 and 568.900 to 568.933.
- (20) "Water development project" means an undertaking, in whole or in part, in Oregon with the primary purpose of irrigation, drainage, community water supply, fish protection, or watershed enhancement, including acquisition of water for instream flow.
- (21) Watershed enhancement project" means an undertaking, in whole or in part, in this state for the purpose of watershed enhancement including methods and materials to restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's river, lake and estuary systems.

Stat. Auth.: ORS 183, [ORS 197](#), [ORS 536](#) & [ORS 541](#)

Stats. Implemented: [ORS 541.700](#) - [ORS 541.855](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef. 4-15-97

## **690-090-0015**

### **Eligibility: Applicant and Project**

- (1) To be eligible, applicants shall meet the definition of water developer, as stated in OAR 690-090-0010.
- (2) To be eligible, projects shall meet the definition of a drainage project, irrigation project, community water supply project, fish protection project, watershed enhancement project or multipurpose project, as defined in OAR 690-090-0010.

Stat. Auth.: ORS 541

Stats. Implemented: [ORS 541.700](#) - [ORS 541.855](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 3-1997, f. & cert. ef. 4-15-97

### **690-090-0016**

#### **Eligible Costs**

Subject to these rules, a loan may be approved to pay costs relating to the project including:

- (1) The costs of buying or otherwise acquiring, building, installing, rehabilitating or reconstructing a water development project as defined in OAR 690-090-0010;
- (2) Costs of obtaining a loan;
- (3) Design, engineering and license costs;
- (4) Reserves, interest costs relating to construction or interim financing, staff training, and site costs; and
- (5) Grant matching funds or other costs of funds needed for the project.

Stat. Auth.: ORS 541

Stats. Implemented: [ORS 541.700](#), [ORS 541.705](#), [ORS 541.750](#), [ORS 541.770](#) & [ORS 541.835](#)

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

### **690-090-0017**

#### **Preferences**

To satisfy the preference set in [ORS 541.703](#) and providing that the guidelines and criteria set forth in [ORS 541.700](#) through [541.855](#) and these rules are met, the director shall give priority to those projects required to be undertaken as a result of a proceeding under [ORS 222.840](#) to [222.915](#) or [431.705](#) to [431.760](#) to alleviate conditions constituting a danger to public health. Priority, as used here, shall mean moving such loan applications ahead of other applications that may have been previous in time and, to the extent funds are inadequate to meet demands of pending applications, priority in funding.

Stat. Auth.: ORS 541

Stats. Implemented: [ORS 541.703](#)

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

### **690-090-0018**

#### **Authority of Director**

- (1) The director is authorized by the commission to approve, deny, or amend loans, establish loan interest rates, and to execute bond and loan contracts. The director shall refer decisions on loan requests greater than three million dollars, or such other amount as may be established by order of the commission, to the commission with a written loan recommendation when discretionary authority allowed under OAR 690-090-0025 is exercised. The director may, at the director's discretion, refer any loan decision to the commission along with a written loan recommendation.
- (2) The director may:
  - (a) Contract with regulated lenders, state or federal agencies or others to provide services, subsidies or grants to the program.

- (b) Take such steps as are needed to recover loan funds and prevent their misuse, or to prevent project funds from being diverted from the originally approved purpose.
- (c) Delegate to staff, in writing, authority to approve, deny, or amend loans and to execute bond and loan contracts consistent with these rules.
- (d) Take any action allowed by law to comply with federal codes and rules on bonding or to assure the payment of program bonds.

Stat. Auth.: ORS 536 & ORS 541

Stats. Implemented: ORS 541.700 - ORS 541.855

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

**690-090-0019**

**Loan Advisory Board**

- (1) The director shall appoint a loan advisory board to review applications made under ORS 541.700 through 541.855 and pursuant to these rules and make recommendations thereon to the director. The members appointed to the board shall be subject to the approval of the commission.
- (2) At least five but not more than seven members shall be appointed to the loan advisory board. The board shall be composed of individuals with expertise in and representing interests of one or more of the following: instream flow and watershed enhancement, finance or banking, project development, agriculture, and local government operations.
- (3) Before appointing a member to the board, the director shall mail notice to all persons and organizations which have filed with the department a written request to be included on the mailing list maintained for the Water Development Loan Fund program.
- (4) Appointments to the board are not limited to individuals submitted for consideration as a result of the solicitation process set forth in (3) above.
- (5) Each member shall serve at the pleasure of the director and be appointed to serve a two-year term. The term may exceed two years, at the discretion of the director, until such time as a successor is appointed and qualified. The director may provide administrative facilities and services for the board.
- (6) The director shall annually appoint a chair of the board. The chair or chair's designee shall preside over all board meetings. An affirmative act of the majority of the appointed members shall be required to act on a loan recommendation.
- (7) The director shall select a department employee to serve as secretary to the board.
- (8) The board shall hold public meetings at the call of the director. The chair and secretary shall set the date, time and place of meetings. The agenda for each meeting shall be prepared by the secretary and the chair and shall include all matters to come before the board at the meeting. The secretary shall send the agenda, the staff loan recommendation and any related material to members and the applicant at least one week prior to a meeting.
- (9) Meetings may be run informally by the chair. The chair or chair's designee shall sign all board documents unless a member or the secretary is allowed by a board vote to do so.
- (10) The director shall make public notice of each loan advisory board meeting as provided in OAR 690-090-0035.
- (11) The board shall hear comments on any matter before it. The board may set time limits on comments.



- (12) After its review, the board shall advise the director in writing whether the project complies with OAR Chapter 690, Division 090 and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the board.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.700 - ORS 541.855

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

**690-090-0020**

**Application Procedure**

- (1) It is recommended that potential applicants contact the director for a pre-application conference prior to submitting an application. The director or delegated staff may advise applicants whether the project appears to comply with these rules, whether funds are available and which costs may be eligible. No advice, opinion or statements of any nature rendered pursuant to this subsection shall constitute a loan approval or any other form of representation or binding commitment.
- (2) The application shall be made on forms and in a manner set by the director. Application forms shall be completed and filed with the director in order to be considered eligible for funds from the Water Development Loan Fund.
- (3) The level of detail of the information provided in the application shall be commensurate with the size and scope of the project. The director may reject incomplete applications. All applications for water development projects shall:
- (a) Describe the nature, purpose and location of the proposed water development project. The location shall be described in reference to the public land survey.
  - (b) State the amount and term of loan requested.
  - (c) Include a statement describing the need for the project.
  - (d) Include a statement describing the reason why the project would be in the public interest.
  - (e) Include information the applicant has that describes the effect, if any, of the proposed project on fish and wildlife, including endangered, threatened or sensitive species; water quality; water use conservation or efficiency; economic development; public uses of the affected surface waters, including recreation; and any other anticipated environmental impact.
  - (f) Provide the legal description of the real property to be used as security for the loan.
  - (g) Include a feasibility study for the construction, operation, and maintenance of the proposed water development project; cost estimates and material specifications; and construction schedule for completion of the project.
  - (h) State whether any moneys other than those in the Water Development Loan Fund are proposed to be used for the construction of the proposed water development project and whether any other moneys are available or have been sought for the construction.
  - (i) Show that the applicant holds or can acquire all real property and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.
  - (j) Include land use information as outlined in the department's Land Use Planning Procedures Guide.
  - (k) Provide a fiscal impact statement as to any impact that the proposed project may have on small businesses, including Oregon family farm units.

- (l) Contain information demonstrating that the applicant is a qualified, credit-worthy and responsible water developer who is willing and able to enter into a contract for loan repayment and who has financial resources adequate to operate and maintain the project including, but not limited to, an itemization of assets and liabilities and credit references.
  - (m) Include written consent from the applicant and guarantors allowing the department to complete a full credit investigation, including a credit report.
  - (n) Include evidence of sufficient income to meet loan repayment. This evidence may include, but is not limited to, the prior three years tax returns, audited financial statements, cash flow projections, current year budget information or other evidence deemed satisfactory by the director. The director may require such financial information dating back further than three years if, in the director's judgment, it is deemed necessary.
  - (o) Include a narrative description of the applicant's management personnel, board or council members and any contracted personnel. This information should include the names, titles, experience, specialized training and expertise of personnel that will be responsible for decision making, general management responsibilities, technical responsibilities, and internal operations including fiscal and accounting responsibilities.
  - (p) Include a brief history of the applicant's business or operation, including the number of years in operation, population or customers served, economic trends and significant operational or management changes made in the last three years.
  - (q) Except for an individual or sole proprietorship, include evidence satisfactory to the director of legal authority to borrow and enter into a loan contract with the department.
- (4) The director may require specific additional information be included with the application forms to determine that:
- (a) The applicant is qualified to operate and maintain the project;
  - (b) The applicant has a history of responsible credit management;
  - (c) The applicant is willing and able to enter into a contract with the director for repayment of the loan; and
  - (d) The applicant's project is economically feasible in that income from the enterprise will support the loan payments.
- (5) An application for irrigation or drainage projects shall also:
- (a) State whether any purposes other than irrigation or drainage will be served by the proposed project and the nature of other such purposes;
  - (b) Include an evaluation of the agricultural potential of the land from any competent public agency;
  - (c) Contain an estimate of the total acreage to be served by the proposed project; and
  - (d) Include a statement from the applicant that the proposed project is, or will be built and operated in compliance with all state and federal, as applicable, laws and permitting requirements.
- (6) An application for community water supply projects shall also:
- (a) State whether any purposes other than supplying water for community use will be served by the proposed project and the nature of other such purposes;
  - (b) Include a schedule of the annual net revenues available to meet the debt servicing requirements of the loan; and

(c) Include a statement from the applicant that the proposed water project is, or will be, in compliance with all state and federal, as applicable, laws and permitting requirements, in addition to federal community water standards.

(7) An application for fish protection projects shall also:

(a) Include an assessment and a recommendation from the Oregon Department of Fish and Wildlife on the proposed project; and

(b) Include a statement from the applicant that the proposed project is, or will be built and operated, in compliance with all state and federal, as applicable, laws and permitting requirements.

(8) An application for a watershed enhancement project shall also:

(a) Include a recommendation from the Governor's Watershed Enhancement Board for the project;

(b) State whether any purposes other than watershed enhancement will be served by the proposed project and the nature of other such purposes; and

(c) Include a statement from the applicant that the proposed project is, or will be built and operated, in compliance with all state and federal, as applicable, laws and permitting requirements.

(9) All applications for water development projects shall include fees as set forth in OAR 690-090-0036.

(10) All applications for water development projects shall include an assessment and a recommendation from the Oregon Department of Fish and Wildlife on the proposed project.

Stat. Auth.: ORS 183, [ORS 197](#), [ORS 536](#) & [ORS 541](#)

Stats. Implemented: [ORS 541.705](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef. 4-15-97

## **690-090-0025**

### **Criteria For Granting a Loan**

(1) No application for loan funds may be approved by the director unless the director makes findings required by [ORS 541.720](#) and additional findings as follows:

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

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

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

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

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

(f) There is a need for the proposed project;

(g) The proposed project is in the public interest;

- (h) The applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project;
  - (i) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project;
  - (j) The project will not be in conflict with any state or federal agency statutes or administrative rules; and
  - (k) The project meets the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).
- (2) The director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds.
- (3) In order to maximize the number of users of the Water Development Loan Fund, the director may, at the director's discretion, deny a loan if granting the loan would deplete the Water Development Loan Fund and preclude the granting of loans to a greater number of borrowers.
- (4) The director shall require the applicant to obtain insurance coverage adequate to protect the State's interest during and after construction of the project and for the life of the loan, in amounts and terms deemed satisfactory to the director.
- (5) The director may require borrowers to submit audited financial statements or other annual financial information pertaining to the loan annually.
- (6) For any water development project requiring the filing of a water right application, the director shall make any loan approval conditioned upon issuance of a permit or approved transfer in accordance with ORS Chapter 536, 537, and 540.
- (7) For any community water supply project, the director shall make any loan approval conditioned upon the project complying with the standards of the Oregon Health Division.
- (8) Unless the director finds financial factors warrant otherwise, an applicant that is a sole proprietorship, profit-making partnership, corporation or cooperative shall meet the following conditions:
- (a) Have been in existence and operating for at least three years.
  - (b) Have made a profit after taxes for the last three years before loan application.
  - (c) Meet the following financial standards:
    - (A) Have a ratio of current assets to current debt of at least 1.75 to 1;
    - (B) Have a ratio of quick assets, consisting of cash, marketable securities, accounts and notes receivable, and other assets readily convertible to cash, to current debt of at least 1 to 1; and
    - (C) Have a ratio of total debt to owner's equity of no more than 2 to 1.
    - (D) The director may exempt an applicant from this rule if the applicant shows that financially sound entities of the same type and under similar size and circumstance do not normally meet these standards.
  - (d) Provide a personal or corporate guarantee or other acceptable credit enhancement satisfactory to the director.
  - (e) Demonstrate, to the director's satisfaction, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

- (f) A publicly traded entity must demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.
- (9) Unless the director finds financial factors warrant otherwise, an applicant that is a non-profit corporation or non-profit cooperative shall meet the following conditions:
- (a) Have been in existence and operating for at least three years.
  - (b) Demonstrate adequate income to fund all expenses, debt obligations and a reserve for unforeseen contingencies, for at least the last three years before loan application;
  - (c) Meet the following financial standards:
    - (A) Have a ratio of current assets to current debt of at least 1.75 to 1;
    - (B) Have a ratio of quick assets, consisting of cash, marketable securities, accounts and notes receivable, and other assets readily convertible to cash, to current debt of at least 1 to 1; and
    - (C) Have a ratio of total debt to equity of no more than 2 to 1.
    - (D) The director may exempt an applicant from this rule if the applicant shows that financially sound entities of the same type and under similar size and circumstance do not normally meet these standards.
  - (d) Demonstrate, to the director's satisfaction, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.
  - (e) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.
  - (f) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.
- (10) An applicant that is an irrigation district, water improvement district, water control district, drainage district, or port district shall meet the following conditions:
- (a) Unless the director finds financial factors warrant otherwise, have been in existence and operating for at least three years.
  - (b) Have a loan to value ratio of all real property within the district which is served by the water development project or which is served by a water source enhanced or restored by the water development project, including new debt and outstanding debt of the district, that does not exceed 1 to 10.
  - (c) Collect assessments or user charges which, together with other available funds on hand for each fiscal year, are sufficient to generate coverage by revenues net of operation and maintenance expenses of 125 percent of annual debt service from property owners. The director, at the director's discretion, may allow establishment of a rate or collection stabilization fund to satisfy this condition.
  - (d) Demonstrate, to the satisfaction of the director, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

- (e) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.
  - (f) Demonstrate a percentage of collection of assessments or user charges that is satisfactory to the director and either have in place or adopt a standard package of delinquency and foreclosure policies acceptable to the director prior to receiving a loan.
  - (g) Districts with less than 100 members may be required to provide additional financial information, guarantees or other form of credit enhancement as required by the director.
  - (h) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.
  - (i) In any case of a loan to, or the purchase of bonds issued by, a district to which the judicial confirmation procedure authorized by [ORS 548.105](#) is available and in which subject matter jurisdiction exists under 548.105, no loan agreement shall be executed unless the district first has delivered to the director a certified copy of the circuit court judgment confirming the regularity and legality of the proceedings and order or other determination providing for the issue of the district's bonds.
- (11) An applicant that is a city or county shall meet the following conditions:
- (a) Except when the city or county offers a general obligation, collect assessments or user charges which, together with other available funds on hand for each fiscal year, are sufficient to generate coverage by revenues net of operation and maintenance expenses of 125 percent of annual debt service from property owners. The director, at the director's discretion, may allow establishment of a rate or collection stabilization fund to satisfy this condition.
  - (b) Demonstrate, to the satisfaction of the director, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.
  - (c) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, in the director's judgment, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.
  - (d) Demonstrate a percentage of collection of assessments, user charges or other revenue pledged for repayment that is satisfactory to the director and either have in place or adopt a standard package of delinquency and foreclosure policies acceptable to the director prior to receiving a loan.
  - (e) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.
- (12) The director may require applicants to establish a reserve fund, if not prohibited or unduly restricted by federal tax law as determined at the discretion of the director, up to the maximum annual debt service or maximum allowed by federal law, or pledge other reserve funds the director deems acceptable as loan security. The director shall establish conditions for use of the fund and its duration in the loan contract.
- (13) The director may place additional conditions on the applicant in the loan contract limiting additional borrowing.
- (14) Findings under this rule and [ORS 541.720](#) are for lending purposes only. Such findings do not endorse the project, its design, or its parts and provide no assurances of any kind for any other purpose.

Stat. Auth.: ORS 183, [ORS 197](#), [ORS 536](#) & [ORS 541](#)

Stats. Implemented: [ORS 541.710](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0030

#### Loan Security

- (1) For individual residents, profit-making partnerships or corporations and non-profit corporations subject to ORS Chapter 65, whose principal income is from farming in Oregon, the security for the loans shall be a mortgage or security agreement upon real property of the water developer. Any personal property acquired with loan funds will also be held as security for the loan with the filing of the appropriate documents and security agreements. This property need not be directly benefited by the project. Existing liens shall be released or subordinated of record before any Water Development Fund loan proceeds will be advanced. The amount of security shall be sufficient to recover the amount of the loan. Unless the director finds financial factors warrant otherwise, the maximum amount of loan, including amounts loaned for reserves and loan fees, shall not exceed 60 percent of the current appraised value of the security for the loan. In no event shall the amount of loan exceed 70 percent of the appraised value of the security for the loan.
- (2) For water developers not covered by OAR 690-090-0030(1), security for the loan includes but is not limited to a first lien to the state of Oregon attached to the real property of the water developer, and the user charges owed to or received by the water developer. At the discretion of the director, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project. Except as otherwise provided in 690-090-0025(7)(c) and (9)(a), the water developer shall enter into a written agreement with the director that assessments, user charges or other revenue pledged for repayment used for security shall be maintained at no less than 125 percent of the debt service on the loan.
- (3) Real property used for securing the loan shall have been appraised by a licensed appraiser, county assessor, or department appraiser, at the discretion of the director, within six months prior to the date of the loan commitment.
- (4) There will be no advance first lien documents required at the time of application. Applicants should consult anyone who holds an existing lien against property to be used as security for the loan to be sure that applicant can meet the first lien requirement.
- (5) Where the applicant is a water developer described in [ORS 541.700\(7\)\(e\)](#) through (o), the water developer shall represent and warrant in the loan agreement that it is fully authorized to, and does, grant the State of Oregon, the liens required under [ORS 541.740\(1\)](#) and that the granting of a lien of the type required under [ORS 541.740](#) will not violate or conflict with any other agreement, pledge or contract to which the water developer is a party, or with any decree, order or judgment of any competent tribunal to which the water developer is subject.
- (6) A partial release of lien may be granted by the director upon written request of an individual, partnership, or corporation borrower if the remaining property provides adequate security as required by law and these Administrative Rules.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.740](#) & [ORS 541.770](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-89; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0035

#### Notice and Public Meetings

- (1) The director shall make public notice of each application within one week of receipt and at least 14 days prior to the public meeting as provided in OAR 690-090-0019. The notice shall contain a summary of the application including the names of the applicants, the location, nature and any new water appropriations required by the proposed project.

- (2) The notice shall be mailed to all persons and organizations which have filed a written request for notices with the department and shall be posted at the department.
- (3) Individuals or groups wishing to comment on an application shall do so to the director in writing within 14 days following the date of mailing the notice if they wish their comments to be considered.
- (4) (a) The director shall call a public meeting on an application as provided in OAR 690-090-0019.  
  
(b) Such meeting shall be conducted according to procedures described in ORS Chapter 192 and OAR 690-090-0019.

Stat. Auth.: ORS 183 & ORS 541

Stats. Implemented: ORS 541.700 - ORS 541.855

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0036

#### Fees and Charges

In accordance with ORS 541.710(2) and ORS 541.730(2), the applicant shall pay the commission for costs incurred in connection with the application and administrative expenses incurred in operating the loan program. Applicants shall pay the following charges:

- (1) An application fee as fixed by statute. As used in this rule, "application" shall include requests to assume, transfer or increase an existing loan.
- (2) A loan processing fee initially set at \$1,000 or one percent of the loan request, whichever is greater, up to \$10,000, or such other amount as may be established by order of the commission. The fee shall be used to reimburse the director for costs incurred in connection with processing the loan request but may not constitute the full amount due. Such costs shall include, but are not limited to, loan processing cost including staff time, credit reports, appraisal fees, technical reviews, expert advice, legal fees, inspections and disbursement costs. After the director has been reimbursed for all costs related to processing the loan, the applicant shall be reimbursed any funds remaining without interest. In the event the loan processing fee and the application fee referred to in this subsection are inadequate to cover the cost of processing the loan, the director shall advise the applicant of the additional amounts needed to complete loan processing and the applicant shall submit that amount at such time as the director specifies.
- (3) Administrative expenses incurred in administering the loan, in excess of any fees and charges, shall be collected through interest and any other charges specified in the loan contract executed by the applicant and the director in accordance with ORS 541.730(2).
- (4) The interest rate on a loan shall be that rate in effect for the type and size of loan on the date of the note or other evidence of indebtedness. However, an interest rate set in an executed loan commitment shall not be increased without either the applicant's consent or provisions therefore in the loan contract. Revolving loan contracts may provide for rates to be changed upon issue of permanent bonds.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.710 & ORS 541.730

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0038

#### Appeal Process



- (1) If the director rejects a loan application or approves a loan amount different than that requested by the applicant, the applicant may file an appeal to the commission. The commission may reverse, modify or affirm the director's action on the loan application.
- (2) An appeal of the director's action shall be initiated by the applicant no later than 30 days after the applicant receives notice of the director's action under [ORS 541.710](#) or [541.720](#).

Stat. Auth.: ORS 541

Stats. Implemented: [ORS 541.710](#) & [ORS 541.720](#)

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

#### **690-090-0040**

#### **Closing of the Loan**

- (1) Arrangements for repayment of a loan shall be made by the applicant and the director.
- (2) The loan contract 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 30 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 contract shall be a binding legal document between the applicant and the director stating the terms of the loan including:
  - (a) The purpose of the loan describing the project and location;
  - (b) The amount of the loan and payment schedule;
  - (c) The description of real property to serve as 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 contract.
  - (e) Agreement by the borrower to provide all information necessary to conform to the Federal Secondary Market Disclosure Rules or any other federal rules or regulations, including payment of any penalty for noncompliance, and to the full extent permitted by law, payment of compensation to the program for any costs, expenses or liability incurred by the program as a result of the borrower's noncompliance.
- (4) In loans to irrigation districts that are effected through the department's purchase of bonds issued by a district, the loan contract shall:
  - (a) Contain a covenant that the district shall not redeem, call or otherwise retire the purchased bonds prior to the agreement date or dates of maturity without the prior written consent of the director, which the director may grant or withhold at the director's sole discretion.
  - (b) Contain a covenant by which the district agrees to make, levy and collect annual assessments under [ORS 545.381](#) and other applicable law, and to charge and collect revenues, as applicable, sufficient to pay when due all indebtedness or obligations of the district, including those owed to the department.
  - (c) Require a written opinion of the irrigation district's legal counsel, addressed to the director, that the district is authorized to make covenants required by this subsection and that the covenants are valid obligations of the

district, enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other laws generally affecting creditor's rights, by the application of judicial discretion and principles of equity in appropriate cases, and common law and statutes affecting the enforceability of contractual obligations generally.

- (d) Contain a covenant by which the district expressly waives, as authorized with respect to bonds of the district by [ORS 545.683](#), any requirement that the director shall submit to the district a voucher or accept any performance of the district's obligations that is different from that required under the bonds and loan contract.
- (e) Provide that in the case of default or delinquency of the district in the performance of any of its obligations under the bonds and/or loan contract, the director need not make any claim or demand as a condition to the institution of appropriate enforcement proceedings and that the district shall submit to the jurisdiction of the circuit court for the County of Marion in any such action, including but not limited to any application for a writ of mandamus to require the district's board of directors to make, levy and collect sufficient annual assessments to satisfy the district's obligations.
- (5) The loan contract shall include provisions for early prepayment of the loan that are consistent with the terms of the bonds and related bond documents used to fund the loan, comply with the State Treasurer's debt management policies and do not expose the commission or program to undue risk of financial loss.
- (6) If the water developer is unable to continue the existing loan contract due to temporary hardship, the director may agree to a modification of the loan contract, at the discretion of the director and within the limitations imposed by statute and bond issue documents.
- (7) The ownership of a water development project shall not be assigned or transferred without the prior written approval of the director and the loan security filed pursuant to OAR 690-090-0030 shall remain in full force and effect notwithstanding any subsequent assignment or transfer without such prior written approval. The director may, in exchange for granting an assignment or transfer, increase the rate of interest charged on the loans as provided by [ORS 541.730](#).
- (8) The borrower may not, in any manner, assign, cancel or transfer any interest in any water right associated with the project without the written consent of the director.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.730](#) & [ORS 541.770](#)

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

#### **690-090-0045**

##### **Issuance of Bonds**

- (1) Requests to issue bonds to finance water development loans may be made to the State Treasurer by the commission as the commission finds necessary.
- (2) The director shall act on behalf of the commission at bond sales to accept or reject bid offerings on bonds to finance water development loans.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.780](#) - [ORS 541.815](#)

Hist.: WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

#### **690-090-0050**

##### **Loan Servicing**

- (1) The director or the director's designee may conduct periodic inspections of water projects.
- (2) The director shall issue to the borrower satisfactions of mortgage or liens as appropriate when the accounts or liens are paid in full.
- (3) The director may negotiate for the release and exchange of security as required to maintain the solvency of the project and program.
- (4) The director may purchase personal property insurance as needed to protect security and may add the cost of such insurance to the borrowers' account to the extent allowed in the loan documents.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.730](#) - [ORS 541.740](#)

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### **690-090-0055**

#### **Collection of Delinquencies**

The director may use any of the following methods to collect delinquent accounts, unless otherwise precluded by specific loan contract provisions:

- (1) Establish and impose a late charge as provided for in the individual loan agreements, contracts, or as negotiated in extension agreements.
- (2) Enter into extension agreements as allowed by the loan agreement, bond indentures, and opinions of the Attorney General.
- (3) Issue a demand letter at default as determined by the loan agreement or the note and mortgage. At expiration of the demand letter the director may:
  - (a) Refer the file to the Oregon Department of Justice for legal action; and
  - (b) Accept an estoppel deed in lieu of foreclosure after determining that it is in the best interest of the State to do so.
- (4) Enter bids at sheriff's sales to purchase real and personal property in order to protect the State's interest.
- (5) Refer the account to the Oregon Department of Justice for action in bankruptcy proceedings.
- (6) Enter into agreements for receivership as recommended by the Attorney General's Office.
- (7) Assign to the Oregon Department of Justice the pursuit of a writ of mandamus requiring the borrower to increase assessments, user charges or other revenue pledged for repayment to adequately facilitate repayment of the loan or bond obligation.
- (8) Nothing in this section shall limit the authority granted to the commission by [ORS 541.740](#).

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented: [ORS 541.740](#)

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### **690-090-0060**

#### **Property Management**

The Director may initiate any of the following actions in order to protect the State's interest in property owned by the Fund:

- (1) Enter into service contracts to establish value of security for the management of farm operations, servicing, repairing and securing personal property.
- (2) Enter into federal subsidy contract programs.
- (3) Advertise state-owned property for sale in the appropriate media.
- (4) Accept or reject offers to purchase property held by the Fund and extend counteroffers.
- (5) Provide warranty deeds, bargain and sale deeds, or satisfactions of mortgage, as appropriate.
- (6) Establish interest rates that will be required on contracts of sale of state-owned property.
- (7) Negotiate Commodity Certificates issued by federal subsidy programs.
- (8) Reserve mineral rights as defined in [ORS 273 .775\(1\)](#) and geothermal rights as defined in [ORS 273 .775\(2\)](#).
- (9) Make claims of risk management as appropriate for losses to state-owned property under Department of General Services guidelines.
- (10) Enter into lease, lease purchase, or rent agreements.
- (11) Sell or release property as necessary to provide for the solvency of the Fund.
- (12) Apply for, transfer, abandon, or sell water rights on state-owned property as allowed by governing statutes and rules.
- (13) Extend a grace period as appropriate for late payments.

Stat. Auth.: ORS 183 & [ORS 541](#)

Stats. Implemented:

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88