

SED 423a
(Rev. 8/93)

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 4, 1997
by Water Resources Department Administrative Services
(Department) (Division)

to become effective? upon filing

The matter having come before the Oregon Water Resources Commission after
Department Division
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being duly advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: February 1, 1997

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List INDIVIDUAL Rule Number(s) on appropriate lines below).

ADOPTED³⁴⁴⁷: 690-90-016; 690-90-017; 690-90-018; 690-90-019; 690-90-036;
690-90-038

AMENDED³⁴⁴⁷: 690-90-005; 690-90-010; 690-90-015; 690-90-020; 690-90-025;
690-90-030; 690-90-035; 690-90-040; 690-90-045; 690-90-050; 690-90-055

REPEALED⁴: _____

RENUM. TO^{3447,8} _____

AMENDED & RENUM. TO^{3447,8} _____

AS Administrative Rules of the Water Resources Department Administrative Services

DATED this 15th Department day of April Division 97

BY: [Signature]
Title: Director (Authorized Signer)

STATUTORY AUTHORITY: ORS 541.700 to 541.855 : or

OTHER AUTHORITY: n/a

STATUTES BEING IMPLEMENTED: 541.700 to 541.855

SUMMARY: The rules have been revised to clarify loan application and loan security requirements, incorporate new credit criteria and conditions for loan approval, and to establish a loan advisory board to review loan recommendations and recommend approval or denial to the director or commission.

For Further Information Contact
RULES COORDINATOR⁵ Tom Byler Phone: 378-8455 ext. 299

INSTRUCTIONS:
1. Date must be prior to or same day as filing - not subsequent to filing date.
2. Date must be upon filing or any later specified date.
3. Numbers being assigned must be preapproved by Secretary of State's office, Archives Division, Administrative Rules Section.
4. Enter each rule number affected INDIVIDUALLY (i.e., 000-000-0000, 000-000-0000, & 000-000-0000. Do not use names or parts of rules).
5. Required to be on file with Secretary of State's office, Archives Division, Administrative Rules Section.
6. Attach the FULL TEXT of each rule number being affected. Do not attach text of rules not affected.
7. Following the text of each rule attached, insert the numbers of the statutes being implemented.
8. Enter reimburse as follows: (old number)000 000 0000 to 000-000-0000 (new number).

April 15, 1997

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 90
WATER DEVELOPMENT LOAN FUND

Purpose

690-90-005 (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.

Statutory Authority.: ORS Ch. 183 & 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 -1997, f. & cert. ef. 4-15-97

Definitions

690-90-010 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

Note: These rules were filed with the Office of the Secretary of State and took effect on April 15, 1997. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State.

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.

Statutory Authority: ORS Ch. 183, 197, 536 & 541

Stats. Implemented: ORS 541.700 to 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 -1997. f. & cert. ef. 4-15-97

Eligibility: Applicant and Project

690-90-015 (1) To be eligible, applicants shall meet the definition of water developer, as stated in OAR 690-90-010.

(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 690-90-010.

Statutory Authority: ORS Ch. 541

Stats. Implemented: ORS 541.700 to 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 -1997. f. & cert. ef. 4-15-97

Eligible Costs

690-90-016 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 690-90-010;

(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.

Statutory Authority: ORS Ch. 541
Stats. Implemented: ORS 541.700, 541.705, 541.750, 541.770, 541.835
Hist: WRD -1997. f. & cert. ef. 4-15-97

Preferences

690-90-017 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.

Statutory Authority: ORS Ch. 541
Stats. Implemented: ORS 541.703
Hist: WRD -1997. f. & cert. ef. 4-15-97

Authority of Director

690-90-018 (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 690-90-025 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.

Statutory Authority: ORS Ch 536, ORS Ch 541
Stats. Implemented: ORS 541.700 to 541.855
Hist: WRD -1997. f. & cert. ef. 4-15-97

Loan Advisory Board

690-90-019 (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 690-90-035.

(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 90 and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the board.

Statutory Authority: ORS Ch. 541

Stats. Implemented: ORS 541.700 to 541.855

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

Application Procedure

690-90-020 (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 690-90-036.
- (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.

Statutory Authority: ORS Ch. 183, 197, 536 & 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 -1997, f. & cert. ef. 4-15-97

Criteria For Granting a Loan

690-90-025 (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;