

(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 690-05-045 (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 ORS 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.

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

Loan Security

690-90-030 (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 690-90-030 (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 OAR 690-90-025 (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.

Statutory Authority: ORS Ch. 183 & 541
Stats. Implemented: ORS 541.740, 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 -1997. f. & cert. ef. 4-15-97

Notice and Public Meetings

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

(b) Such meeting shall be conducted according to procedures described in ORS Chapter 192 and OAR 690-90-019.

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

Fees and Charges

690-90-036 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.

Statutory Authority: ORS Ch. 541
Stats. Implemented: ORS 541.710, 541.730
Hist: WRD -1997. f. & cert. ef. 4-15-97

Appeal Process

690-90-038 (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.

Statutory Authority: ORS Ch. 541
Stats. Implemented: ORS 541.710, 541.720
Hist: WRD -1997. f. & cert. ef. 4-15-97

Closing of the Loan

690-90-040 (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 690-90-030 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.

Statutory Authority: ORS Ch. 183 & 541

Stats. Implemented: ORS 541.730, 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 -1997, f. & cert. ef. 4-15-97

Issuance of Bonds

690-90-045 (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.

Statutory Authority: ORS Ch. 183 & 541
Stats. Implemented: ORS 541.780 to 541.815
Hist.: WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD -1997.
f. & cert. ef. 4-15-97

Loan Servicing

690-90-050 (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.

Statutory Authority: ORS Ch. 183 & 541
Stats. Implemented: ORS 541.730 to 541.740
Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD -1997. f. & cert. ef. 4-15-97

Collection of Delinquencies

690-90-055 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.

Statutory Authority: ORS Ch. 183 & 541
Stats. Implemented: ORS 541.740
Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD -1997. f. & cert. ef. 4-15-97

Property Management

690-90-060 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.

Statutory Authority: ORS Ch. 183 & 541
Stats. Implemented: ORS 541.745 & 541.770
Hist.: WRD 15-1988, f. & cert. ef. 9-20-88