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

SEP 20 3 18 PM '88

BARBARA COOPER'S  
SECRETARY

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on September 16, 1988  
(Date)

by the Water Resources Commission  
(Department) (Division)

to become effective September 16, 1988  
(Date)

The within matter having come before the 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 fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO  YES  Date Published: July 15, 1988

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted: Chapters 690-90-050 through 690-90-060  
(New Total Rules)

Amended: Chapters 690-90-005, 010, 020 then 030, 040, 045  
(Existing Rules)

Repealed: \_\_\_\_\_  
(Total Rules Only)

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SEP 20 1988  
LEG. COUNSELS OFF.

as Administrative Rules of the Water Resources Department, Water Development Loan Program, Central Services Div.  
(Department) (Division)

DATED this 20th day of September, 1988

By: William H. Young  
Wm. H. Young (Authorized Signer)  
Title: Director

Statutory Authority: ORS 183 or

Chapter(s) 541.700 to 541.855 Oregon Laws 19 88 or

House Bill(s) HB 3395, HJR 45, 19 87 Legislature; or Senate Bill(s) \_\_\_\_\_, 19 \_\_\_\_\_ Legislature

Subject Matter:

For further information contact Roelin Smith Phone: 378-8131  
(Rule Coordinator)

CHAPTER 690  
ADMINISTRATIVE RULES  
DIVISION 90  
WATER DEVELOPMENT LOAN FUND

PURPOSE

690-90-005 The Water Development Loan Fund was created in the Water Development Act, Chapter 246, 1977 Laws and approved by a general election in November, 1977. The Fund was created to provide loans to develop the water resources of the state. The Act was codified in ORS 541.700 to ORS 541.855. The 1981 Legislative Session amended the Act under Chapter 166 and Chapter 592, 1981 Laws. The State Constitution was amended on May 18, 1982, to add loans for community water supply projects which benefitted communities of less than 30,000 population as an authorized use of funds. The 1987 Legislature amended the Act under ORS 541.700 to allow funding for fish protection and watershed enhancement. The State Constitution was amended by a vote of the people in a general election on May 17, 1988.

These rules provide instructions for the administration of the loan program.

DEFINITIONS

690-90-010 As used in these rules and forms to be prepared by the Water Resources Commission, the following definitions apply:

- (1) "Community" - Incorporated or unincorporated town or locality with more than three service connections and a population of less than 30,000.
  - (2) "Director" - The Director of the Water Resources Department designee.
  - (3) "Drainage Project" - Facilities installed to provide for the removal of
- NOTE: Text underlined is new proposed wording. Text within brackets is to be deleted.

excess water and thereby increase soil versatility and productivity. These

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.

(4) "Family Farm Unit" - Land devoted primarily to agriculture under the ownership of a resident Oregon family.

(5) "Irrigation Project" - 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, ditches, revetments and all other structures, facilities and property necessary or convenient for supplying lands with water for irrigation purposes.

(6) "Multipurpose Project" - A water development project which provides more than one use. To be eligible for funding the primary use of the project must 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;
- (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.

(7) "Community Water Supply Project" - An undertaking, in whole or in part, in this state for the purpose of providing community water supply including dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments, and all other structures and facilities necessary or convenient for supplying water.

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

(9) Watershed Restoration - 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.

(10) "Principal Income" - Major source of income as stated in the applicant's Federal tax return for the three years previous to filing the Water Development Loan Fund application or such other evidence acceptable to the Director.

(11) "Real Property" - Land, buildings and other permanent improvements to the land.

(2) "Resident" - Individual living in the state of Oregon for the six months immediately preceding the date of filing an application.

(13) "Water Developer" -

(a) Any individual resident of this state;

(b) Any profit-making partnership subject to the provisions of ORS Chapter 68 or 69 whose principal income is from farming in Oregon;

(c) Any profit-making corporation subject to the provisions of ORS Chapter 57, whose principal income is from farming in Oregon;

(d) Any nonprofit corporation subject to provisions of ORS 61.005 to 61.950, 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 545.002;

(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 the Irrigation District Act, as defined in ORS 545.002;
- (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;
- (m) Any city or county;
- (n) Any organization formed for the purpose of distributing water for community water supply; or
- (o) Any soil and water conservation district organized under ORS 568.210 to 568.805.

(14) "Water Development Project" - An undertaking, in whole or in part, in Oregon with the primary purpose of irrigation, drainage, community water supply, fish protection, or watershed enhancement.

(15) "Loan Contract" - 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.

(16) "Commission" - The Water Resources Commission.

#### ELIGIBILITY

690-90-015 To be eligible, applicants or their assignees shall meet the definition of Water Developer, as stated in rule 690-90-010, Administrative Rules, Water Resources Department.

#### 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.

(2) The application form shall be completed and filed with the Director in order to be considered eligible for funds from the Water Development Loan Fund. The level of detail of the information provided in the application shall be commensurate with the size and scope of the project. All applications for water development projects shall:

(a) Describe the nature and purpose and location of the proposed water development project and the need to be met by the project. Location shall be described in reference to the public land survey.

(b) State the amount of loan requested.

(c) Provide the legal description of the real property to be used as security for the loan.

(d) Include a feasibility study for the construction, operation, and maintenance of the proposed water development project, an estimate of the costs of construction and an evaluation of the agricultural potential of the land from any competent public agency.

(e) 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.

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

(g) Contain information that demonstrates that the applicant is a qualified, credit-worthy and responsible 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.

(h) Provide a fiscal impact statement as to any impact that the proposed project may have on small business.

(i) Include a statement of the appropriate city or county official stating that the proposed project complies with applicable land use regulations and other applicable regulations and ordinances.

(j) Include a minimum application fee of \$100.00 to cover initial costs of application review. In addition, the Director shall charge the applicant the amount required to reimburse the Director for costs that exceed the application fee incurred in connection with the application. The applicant shall be advised of these additional costs before they are incurred.

(k) Include a statement describing the need for the project and the reasons why the project would be in the public interest.

(l) Provide a Preliminary Title Report showing the recorded ownership at time of application.

(m) Include an estimate of the costs of construction, a construction schedule for the completion of the project and a schedule of the annual net revenues available to meet the debt servicing requirements of the loan.

(3) 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.

(d) Include a statement as to what impact, if any, the proposed project would have on Oregon family farm units.

(4) An application for community water supply projects shall:

(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.

(c) Show that the applicant's proposed water project is, or will be, in compliance with all state and federal community water standards.

(5) An application for fish protection projects shall:

(a) Include an approval and recommendation from the Department of Fish and Wildlife.

(b) Show that the applicant's proposed project is, or will be, in compliance with all state and federal standards which meet the legal requirements.

(6) An application for watershed enhancement shall:

(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.

(c) Show that the applicant's proposed project is, or will be, in compliance with all state and federal standards which meet the legal requirements.

#### CRITERIA FOR GRANTING LOAN

690-90-025

(1) The Director shall, before executing a loan agreement, evaluate the application to assure compliance with the requirements of state law and these rules.



(2) The Director may require specific additional information in evaluating each application to determine that the applicant is qualified to operate and maintain the project, has a history of responsible credit management, is willing and able to enter into a contract with the Director for repayment of the loan, and that the applicant's project is economically feasible in that the projected income will support the loan payments.

(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 by granting the loan it would deplete the Water Development Loan Fund and preclude the granting of loans to a greater number of borrowers.

(4) No loan application shall be approved that would:

(a) Fund a project that would be in conflict with any state or federal agency statutes or administrative rules;

(b) Conflict with any adopted local comprehensive land use plans approved by the Oregon Land Conservation and Development Commission; or

(c) Conflict with policies of the Water Resources Commission.

(5) The Director shall, in the Director's evaluation, apply other applicable state policies.

(6) No loan application shall be approved unless moneys are or will be available in the Water Development Loan Fund.

#### LOAN SECURITY

690-90-030

(1) For individual residents, profit-making partnerships or corporations and non-profit corporations subject to ORS 61.005 to 61.950, whose principle 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. The maximum amount of loan shall not exceed seventy-five percent (75%) of the appraised value of the security for the loan.

(2) For all other water developers security for the loan is 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. The water developer shall enter a written agreement with the Director that user charges 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 within six months prior to the date of 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) 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.

#### NOTICE AND HEARINGS

690-90-035

(1) The Director shall make public notice of each application which 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 of Water Resources.

(3) Individuals or groups wishing to comment on an application shall do so to the Director in writing within 30 days following the date of mailing the notice if they wish their comments to be considered.

(4) The Director shall hold a public hearing on an application if requested to do so by 10 or more persons, or any organization with 10 or more members, or any state agency if written request is filed with the Director within 30 days from date of mailing notice. Hearings shall be conducted according to procedures described in ORS Chapter 183 and Division 1 of the Water Resources Department's Administrative Rules.

(5) For water development projects requiring the filing of a water right application which may prejudicially affect the public interest, the filing may be referred to the Water Resources Commission in accordance with ORS Chapter 537.170. A decision on the loan application will be deferred until completion of that process.

#### CLOSING OF THE LOAN

690-90-040

(1) Arrangements for repayment of the loan shall be made by the applicant and the Director.

(2) The contract shall set forth the repayment schedule. The repayment schedule shall 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.

(3) The 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.

(4) Should the water developer be unable to continue the existing 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.

(5) 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 Section 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.

#### 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 Water Resources 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.

## LOAN SERVICING

690-90-050

- (1) The Director shall conduct annual inspections of water projects.
- (2) The Director may issue 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.

## 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 appropriate agency for legal action;
  - (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 appropriate agency for action in bankruptcy proceedings.

(6) Enter into agreements for receivership as recommended by the Attorney General's Office.

#### 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.

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