

OREGON ADMINISTRATIVE RULES
CHAPTER 690, DIVISION 100 - WATER RESOURCES DEPARTMENT

DIVISION 100

PAYMENT FOR
PUBLIC BENEFITS IN WATER
PROJECTS

Purpose

690-100-005 (1) ORS 541.830 and ORS 542.075 authorize the Legislative Assembly to partially fund water development projects which afford public benefits, in proportion to those benefits. This legislation was enacted in 1981.

(2) These rules provide the procedure for determining eligibility, applying for payment, determining public benefits and for the Water Resources Commission's recommendation to the Governor and the Legislative Assembly.

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Definitions

690-100-010 (1) "Director" - The director of the Water Resources Department or in his absence or inability to act, his designee.

(2) "Legislative Assembly" - Regularly scheduled Legislative Assembly or the Emergency Board acting for the full assembly during interims between legislative sessions.

(3) "Significant Public Benefit" - Synonymous with Public Benefit.

(4) "Public Benefit" - The identifiable benefit of a water development project which contributes to the general well-being or enjoyment of the citizens of the State of Oregon, including, but not limited to, the maintenance or improvement of the following:

- (a) Aquatic life;
- (b) Wildlife;
- (c) Public recreation facilities;
- (d) Environmental enhancement;
- (e) Riparian (streamside) enhancement;
- (f) Flood control;
- (g) Pollution abatement;
- (h) Watershed management;
- (i) Esthetic enhancement;
- (j) Instream habitat improvement;
- (k) Streamflow augmentation;
- (l) Groundwater recharge.

(5) "Reimbursable Public Benefit" - A public benefit that is identified by purpose and cost in a water resources project and application for "Request for Public Benefit Repayment".

(6) "Partial Repayment" - The amount recommended to the Legislature by the Water Resource Commission to partially pay for projects affording public benefits. The amount of partial repayment shall not exceed the cost of providing the public benefit in the water development project.

(7) "Financed Projects" - Water development projects that will be financed under the Water Development Loan Program.

(8) "Proposed Projects" - Water development projects that will be financed from sources other than the Water

Development Loan Program. A Proposed Project may also be an existing project that will provide a public benefit due to a change in the purpose for which the project was constructed or managed.

(9) "Environment Assessment" - A report, provided by the sponsor of a water development project, which identifies and evaluates the positive and negative impacts of the project as it relates to the public benefits defined in these Administrative Rules.

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

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Eligibility

690-100-015 (1) To be eligible to apply for partial repayment of a project financed under the Water Development Loan Program, an applicant shall meet the definition of a Water Developer, as stated in ORS 541.700.

(2) Any sponsor of a Proposed Project as defined in these rules is eligible for partial repayment of a water development project affording a public benefit.

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Application Procedure

690-100-020 Information required in the application shall be in the format specified by the Water Resources Commission. The application shall include, but not be limited to, the following:

(1) A description of the project, in summary form, which identifies each project purpose and the geographical location of the project.

(2) A map which shows the project in relation to the U. S. Public Land Survey as well as political boundaries such as cities and counties.

(3) An identification of the reimbursable public benefits requested for funding, stating the benefit and the dollar amount of its value, and description of methods used to compute the value.

(4) An allocation of all of the costs of the project by purpose.

(5) A feasibility study for the construction, operation and maintenance of the project.

(6) A financing plan which details project funding sources as well as repayment capability.

(7) An environmental assessment report which identifies and evaluates both the positive and negative impacts of the project as related to public benefits.

(8) A statement from the appropriate local authority that the project is in compliance with all applicable land use plans and regulations.

(9) Any other information or data required by the Commission.

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Criteria and Procedure For Determining Public Benefit

690-100-025 (1) In determining public benefits, the Director, acting for the Commission, shall request data and information from appropriate public agencies and others.

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The Director shall recommend to the Water Resources Commission the dollar amount of public benefit based on a comparison of the cost to provide the benefit and the value of the benefit.

(2) The amount of public benefit recommended for partial repayment to the project shall not exceed the cost of providing the benefit.

(a) Criteria for determining public benefit:

(A) The applicant shall submit to the Director a summary report of the water project which shall contain, but not be limited to, a description of the project and its operation, a breakdown of project costs by purpose, the dollar benefits of each project purpose, the source of funds for each project purpose and the dollar amount of the public benefits requested.

(B) All public benefits claimed in an application for payment shall be quantified.

(C) Public benefits for which payment is requested may be of local or statewide significance.

(D)(i) Payment for public benefits that have already occurred in a constructed project may be requested if the application is made within five years of the date of beginning of construction of the project.

(ii) Payment for public benefits planned in a proposed project may be requested if the application is made prior to the beginning date of construction of the project.

(iii) For projects planned or constructed after the effective date of these rules, public benefits shall be identified and applied for in advance of construction or within one year of the beginning of construction or within one year of the date of issuance of a water right permit required for the project.

(E)(i) Public benefits claimed for recreation facilities shall be evaluated taking into consideration the Statewide Comprehensive Outdoor Recreation Plan of the Department of Transportation.

(ii) If the Project providing public benefit requires a Federal Energy Regulatory Commission permit, only those recreation benefits over and above those required in the federal permit or license are eligible as a reimbursable public benefit.

(F) Pollution abatement in a stream at a specific treated waste discharge location is the responsibility of the individual discharger and is not eligible to be claimed as a public benefit for payment, even though water to meet the discharge standard is provided by the water project.

(G) Water released from a project to abate pollution at a downstream location may provide a public benefit in the stream reach between the project and the downstream location. If quantifiable, the dollar amount of such releases may be requested for payment.

(H) Water provided by a project to meet minimum streamflows for aquatic life adopted by the Commission or recommended for adoption by the Director, may be considered a public benefit and the dollar value of such water, if quantifiable, may be requested for payment.

(b) Procedure for determining public benefit:

(A) The Director shall circulate the applicant's summary report of the project which describes the project, the costs, benefits, source of funds and amount of payment requested to the following state agencies:

- (i) Department of Human Resources, Health Division;
- (ii) Department of Environmental Quality;
- (iii) Department of Fish and Wildlife;

(iv) Department of Land Conservation and Development;

(v) Division of State Lands;

(vi) Department of Transportation, Parks and Recreation Division;

(vii) Department of Forestry;

(viii) Department of Geology and Mineral Industries;

(ix) Department of Agriculture;

(x) Department of Energy.

(B) The Director shall hold a meeting of the applicant and state natural resource agencies listed in subsection (b)(A) of this section for the purpose of presenting the project and payment request to the agencies and for the applicant to respond to agency concerns and questions regarding the project.

(C) A public hearing shall be held in the vicinity of the water project for the purpose of taking public comments on the payment request.

(D) Following the public hearing, the state natural resources agencies shall develop findings, conclusions and recommendations on the payment request.

(E) The Director shall prepare a recommendation based on comments received at the public hearing and the findings, conclusions and recommendations of the state natural resources agencies for presentation to the Water Resources Commission.

(F) The Commission may accept the Director's recommendation, modify the recommendation, or prepare a different recommendation for submission to the Governor and Legislative Assembly.

(G) The Commission shall submit its recommendation to the Governor for approval.

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Commission's Recommendation

690-100-030 (1) The Commission, with the approval of the Governor, shall recommend to the Legislative Assembly funding of water development projects in proportion to the public benefits offered.

(2) The Commission's recommendation shall contain:

(a) A description of the water development project, including the location and all of the purposes served by the project.

(b) An identification of the public benefits afforded by the project, the dollar amount associated with those benefits and the cost of providing the public benefits.

(c) The amount of repayment recommended to the Legislative Assembly for funding.

(d) Any conditions placed on the project and project sponsors in exchange for funding by the State of Oregon.

(e) A compliance agreement which, upon legislative approval, binds project sponsors to the terms and conditions imposed by the Legislative Assembly.

(3) The Commission shall submit its recommendation within a reasonable time period after receipt of a complete application.

Stat. Auth.: ORS Ch. 541 & 542

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

Disbursement of Funds

690-100-035 (1) Any funds appropriated by the Legisla-

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PURPOSE

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These rules provide the procedure for determining eligibility, applying for payment, determining public benefits and for the Water Resources Commission's recommendation to the Governor and the Legislative Assembly.

DEFINITIONS

690-100-010

- 1) Director - The Director of the Water Resources Department or in his absence or inability to act, his designee.
- 2) Legislative Assembly - Regularly scheduled Legislative Assembly or the Emergency Board acting for the full assembly during interims between legislative sessions.
- 3) Significant Public Benefit - Synonymous with Public Benefit.
- 4) Public Benefit - The identifiable benefit of a water development project which contributes to the general well-being or enjoyment of the citizens of the State of Oregon, including, but not limited to, the maintenance or improvement of the following:
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 - f) Flood control;
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- h) Watershed management;
 - i) Esthetic enhancement;
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 - k) Streamflow augmentation;
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- 5) Reimbursable Public Benefit - A public benefit that is identified by purpose and cost in a water resources project and application for "Request for Public Benefit Repayment".
 - 6) Partial Repayment - The amount recommended to the Legislature by the Water Resources Commission to partially pay for projects affording public benefits. The amount of partial repayment shall not exceed the cost of providing the public benefit in the water development project.
 - 7) Financed Projects - Water development projects that will be financed under the Water Development Loan Program.
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A Proposed Project may also be an existing project that will provide a public benefit due to a change in the purpose for which the project was constructed or managed.
 - 9) Environmental Assessment - A report, provided by the sponsor of a water development project, which identifies and evaluates the positive and negative impacts of the project as it relates to the public benefits defined in these Administrative Rules.
 - 10) Commission - The Water Resources Commission.

ELIGIBILITY

690-100-015

1) To be eligible to apply for partial repayment of a project financed under the Water Development Loan Program, an applicant shall meet the definition of a Water Developer, as stated in ORS 541.700.

2) Any sponsor of a Proposed Project as defined in these rules is eligible for partial repayment of a water development project affording a public benefit.

APPLICATION PROCEDURE

690-100-020

1) Information required in the application shall be in the format specified by the Water Resources Commission. The application shall include, but not be limited to, the following:

- a) A description of the project, in summary form, which identifies each project purpose and the geographical location of the project.
- b) A map which shows the project in relation to the U. S. Public Land Survey as well as political boundaries such as cities and counties.
- c) An identification of the reimbursable public benefits requested for funding, stating the benefit and the dollar amount of its value, and description of methods used to compute the value.
- d) An allocation of all of the costs of the project by purpose.
- e) A feasibility study for the construction, operation and maintenance of the project.
- f) A financing plan which details project funding sources as well as repayment capability.
- g) An environmental assessment report which identifies and evaluates both the positive and negative impacts of the project as related to public benefits.
- h) A statement from the appropriate local authority that the project is in compliance with all applicable land use plans and regulations.
- i) Any other information or data required by the Commission.

CRITERIA AND PROCEDURE FOR DETERMINING PUBLIC BENEFIT

690-100-025 In determining public benefits, the Director, acting for the Commission, shall request data and information from appropriate public agencies and others. The Director shall recommend to the Water Resources Commission the dollar amount of public benefit based on a comparison of the cost to provide the benefit and the value of the benefit.

The amount of public benefit recommended for partial repayment to the project shall not exceed the cost of providing the benefit.

1) Criteria for determining public benefit:

a) The applicant shall submit to the Director a summary report of the water project which shall contain, but not be limited to, a description of the project and its operation, a breakdown of project costs by purpose, the dollar benefits of each project purpose, the source of funds for each project purpose and the dollar amount of the public benefits requested.

b) All public benefits claimed in an application for payment shall be quantified.

c) Public benefits for which payment is requested may be of local or statewide significance.

d) Payment for public benefits that have already occurred in a constructed project may be requested if the application is made within five years of the date of beginning of construction of the project.

Payment for public benefits planned in a proposed project may be requested if the application is made prior to the beginning date of construction of the project.

For projects planned or constructed after the effective date of these rules, public benefits shall be identified and applied for in advance of construction or within one year of the beginning of construction or within one year of the date of issuance of a water right permit required for the project.

e) Public benefits claimed for recreation facilities shall be evaluated taking into consideration the Statewide Comprehensive Outdoor Recreation Plan of the Department of Transportation.

If the project providing public benefit requires a Federal Energy Regulatory Commission permit, only those recreation benefits over and above those required in the federal permit or license are eligible as a reimbursable public benefit.

f) Pollution abatement in a stream at a specific treated waste discharge location is the responsibility of the individual discharger and is not eligible to be claimed as a public benefit for payment, even though water to meet the discharge standard is provided by the water project.

g) Water released from a project to abate pollution at a downstream location may provide a public benefit in the stream reach between the project and the downstream location. If quantifiable, the dollar amount of such releases may be requested for payment.

h) Water provided by a project to meet minimum streamflows for aquatic life adopted by the Commission or recommended for adoption by the Director, may be considered a public benefit and the dollar value of such water, if quantifiable, may be requested for payment.

2) Procedure for determining public benefit:

a) The Director shall circulate the applicant's summary report of the project which describes the project, the costs, benefits, source of funds and amount of payment requested to the following state agencies:

1. Department of Human Resources, Health Division
2. Department of Environmental Quality
3. Department of Fish and Wildlife
4. Department of Land Conservation and Development
5. Division of State Lands
6. Department of Transportation, Parks and Recreation Division
7. Department of Forestry
8. Department of Geology and Mineral Industries
9. Department of Agriculture
10. Department of Energy

b) The Director shall hold a meeting of the applicant and state natural resource agencies listed in 2)a) for the purpose of presenting the project and payment request to the agencies and for the applicant to respond to agency concerns and questions regarding the project.

c) A public hearing shall be held in the vicinity of the water project for the purpose of taking public comments on the payment request.

d) Following the public hearing, the state natural resources agencies shall develop findings, conclusions and recommendations on the payment request.

e) The Director shall prepare a recommendation based on comments received at the public hearing and the findings, conclusions and recommendations of the state natural resources agencies for presentation to the Water Resources Commission.

f) The Commission may accept the Director's recommendation, modify the recommendation, or prepare a different recommendation for submission to the Governor and Legislative Assembly.

g) The Commission shall submit its recommendation to the Governor for approval.

COMMISSION'S RECOMMENDATION

690-100-030

1) The Commission, with the approval of the Governor, shall recommend to the Legislative Assembly funding of water development projects in proportion to the public benefits offered.

2) The Commission's recommendation shall contain:

a) A description of the water development project, including the location and all of the purposes served by the project.

b) An identification of the public benefits afforded by the project, the dollar amount associated with those benefits and the cost of providing the public benefits.

c) The amount of repayment recommended to the Legislative Assembly for funding.

d) Any conditions placed on the project and project sponsors in exchange for funding by the State of Oregon.

e) A compliance agreement which, upon legislative approval, binds project sponsors to the terms and conditions imposed by the Legislative Assembly.

3) The Commission shall submit its recommendation within a reasonable time period after receipt of a complete application.

DISBURSEMENT OF FUNDS

690-100-035

1) Any funds appropriated by the Legislative Assembly for partial repayment of a financed water development project shall be deposited in the Water Development Administration and Bond Sinking Fund. The Director shall, upon satisfactory completion of the project, disburse such funds to the project sponsor. The Commission shall be the final judge of satisfactory completion of the project.

2) Any funds appropriated by the Legislative Assembly for the partial repayment of a proposed water development project shall be deposited in a separate account with the Water Resources Department. The Director shall, upon satisfactory completion of the project, disburse such funds to the project sponsor. The Commission shall be the final judge of satisfactory completion of the project.

COMPLIANCE AGREEMENT

690-100-040 A compliance agreement, in preliminary form, shall be submitted to the Legislative Assembly as part of the Commission's Recommendation. The agreement shall, among other things, set forth the length of time the project is to be operated and maintained for public benefit. After approval by the Legislative Assembly, the compliance agreement shall be written in final form and executed by the project sponsor.

The Director shall be responsible for administering the terms of the compliance agreement.

PUBLIC DISCLOSURE

690-100-045

1) The Commission shall make public notice of each application for partial repayment of a project which shall contain a summary of the application including the names of the applicants, the location, nature of the project, and identify the public benefit claimed.

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 Water Resources Department.

3) Individuals or groups wishing to comment on an application shall do so to the Commission in writing within 30 days following the date of mailing the notice.

4) The Commission 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 103 and Division 2 of the Water Resources Department's Administrative Rules.

7/16/86

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