

March 19-20, 2008 OWEB Board Meeting Executive Director Update #C7: Administrative Rule Development

Background

In January, staff sought Board authorization to begin administrative rulemaking to address three areas of OWEB's administrative rules. At the time staff was uncertain whether all three areas would ultimately require rule language changes, but staff wanted the ability to pursue rulemaking that could be completed by May 2008, if needed. The following sections update the Board on the three administrative rulemaking efforts.

Watershed Council Support Rules

The issue for potential rule revision is the council support funding allocation formula or criteria, including whether umbrella or multiple watershed councils should be allocated additional funding, how that additional increment is determined, and how additional funding is distributed. Because the funding distribution criteria or formula plays only a minor role in how councils prepare their grant application, staff have determined that rulemaking, if needed, can wait until the September 2008 Board meeting.

This will allow staff the time to have further discussions with the Board subcommittee, watershed councils, and other stakeholders on the formula or criteria between now and May, with a longer public comment period during June and July. Any rule revisions will be covered in the application workshops or training to be held in October of 2008 and will give staff the opportunity to explain how the rules will be implemented and how that implementation may affect how watershed councils prepare their applications (i.e. the proposed budget).

Restoration Grant Eligibility

OWEB's administrative rules prohibit grant funds to be used for a restoration project "constructed solely to comply with a state or federal agency enforcement order, legal judgment or mitigation requirement" (OAR 695-010-0040(3)). Staff are encountering significant and increasing opportunities to leverage OWEB funding with some other types of funding that could be construed as being required for mitigation purposes or are in compliance with a state or federal legal judgment. After further staff discussion, we have concluded that rulemaking is not needed at this time. The existing rule provides enough flexibility to allow OWEB funds to be used in these types of scenarios. Instead staff will develop additional guidance to provide internal and external clarification about the rule and these scenarios.

Grant Administration

There are two areas where a policy discussion and re-visitation of the grant administration rules could benefit the program. The first is the requirement for and consequences of landowner agreements. The second has to do with the ability of the grant program manager to amend grants. Due to a number of factors, including a new grant program manager and compressed spring Board meeting schedule, staff have determined that any rule revisions on these issues can wait until the September 2008 Board meeting. This schedule will allow staff more time to explore these issues to determine whether rules changes are needed.

Staff Contact

If you have questions or need additional information about OWEB's administrative rules, please contact Melissa Leoni, Senior Policy Coordinator at melissa.leoni@state.or.us or 503-986-0179.