



Oregon

Theodore R. Kulongoski, Governor

Oregon Watershed Enhancement Board

775 Summer Street NE, Suite 360

Salem, OR 97301-1290

(503) 986-0178

FAX (503) 986-0199

www.oregon.gov/OWEB



August 28, 2008

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Melissa Leoni, Senior Policy Coordinator

SUBJECT: **Agenda Item I: Administrative Rulemaking – Grant Administration and Salmon Emergency Grant Rules
September 16-17, 2008 OWEB Board Meeting**

I. Introduction

This report seeks Board approval of two sets of proposed administrative rules. One set of rules was developed to update OWEB's grant administration rules relating to landowner agreements, grant amendments, rule waivers, consistent language usage, and the Board's authority to make watershed enhancement investments. The second set of rules would make permanent the temporary rule amendments adopted by the Board in May of 2008 relating to the 2008 Salmon Season State of Emergency Grants.

II. Grant Administration Rules

A. Background

OWEB staff completed an extensive review and update of its administrative rules in 2004. Since the 2004 rule restructuring, staff have been tracking issues associated with the rules that have created frustration with grantees or generated requirements for staff that do not effectively or efficiently assist in the grant administration effort. At the January 2008 Board meeting in Astoria, staff described the main areas where it wanted to begin a policy discussion and revisit rule language, including addressing landowner agreements, grant amendments, and partnership investments. In addition to these specific issues, staff had also identified a number of other minor technical adjustments that would make the rules more consistent (e.g., consistent distinction between Director and designee and clarification between effectiveness monitoring and post project implementation reporting).

B. Rulemaking Process

Proposed rules were developed through internal discussions among OWEB's program managers and with an internal work group of staff from each of OWEB's program areas. On June 24, 2008, staff convened a Rules Advisory Committee (RAC) to review a staff set of proposed rules. The RAC included the following representatives of OWEB's grantees, regional review teams, and partners.

Liz Volmer-Buhl, Siuslaw Watershed Council

Bob Kinyon, Partnership for Umpqua Rivers

Gerry St. Pierre, Willamette Riverkeeper
Ryan Houston, Upper Deschutes Watershed Council
Ellen Hammond, Oregon Department of Agriculture (Region 4 Regional Review Team)
Bev Kopperud, Umatilla Soil and Water Conservation District

With input from the RAC, staff developed a set of rules that were made available for public comment on July 7, 2008. The public comment period began on July 7 and ended on August 1, 2008. OWEB held one public hearing on July 15, 2008, at the State Lands Building in Salem. No written public comments were submitted by the August 1 deadline, and no one attended the public hearing to give oral testimony.

C. Proposed Rules

The public comment version of the rules is included as Attachment A. The sections below provide additional information about the proposed rules.

1. Landowner Agreements [695-005-0030(4) and 695-005-0060(4)]

The purpose of OWEB's rules related to landowner agreements is to ensure that OWEB grant recipients have permission to access the project site and to implement the project as proposed. These rules and the policy foundation under the rules have a long history at OWEB and its predecessor, including a statutory requirement for access and maintenance (ORS 541.396).

Under the current rule language, landowner signatures are requested in the grant application and required prior to release of a grant agreement, and a cooperative agreement must be signed by the landowner before any funding is released. This requirement has not been practical for many complex, multi-landowner grants. The application requirement has been waived by OWEB at least 35 times since 2006 and the cooperative agreement requirement has been waived at least 30 times to facilitate implementation of complex, multi-landowner projects.

Staff would like to address this situation to allow for greater flexibility to allow payments for activities within a grant agreement that still meet the landowner access, approval, and maintenance agreement objectives. The proposed rules eliminate the requirements for landowner signatures in the application and OWEB copies of the cooperative agreement, and instead require the applicant and grantee to certify that they have the required commitments.

2. Grant Amendments [695-005-0050(1)]

OAR 695-005-0050(1) does not allow staff to enter into new agreements or to process any grant amendments unless the grantee has all other reporting and administrative functions completed. The purpose of the rule was to improve grant management and reporting by grantees. Small Grants were exempted in 2004, primarily because most grantees were landowners (that changed in 2005 when OWEB's rule defined eligible applicants to be tribes, watershed councils, and soil and water conservation districts) and OWEB had separate databases to track small grants and regular grants.

There have been occurrences when the ability to amend a budget or change the fiscal agent in an agreement has created additional administrative burdens for both OWEB and

its grantees. Staff recommend eliminating the Small Grants exemption because Small Grants and regular grants are both tracked in the same database and are awarded to similar grantees. Staff also recommend allowing certain amendments, such as budget or fiscal agent change amendments, to proceed regardless of reporting obligation status. Staff feel that exempting these amendments will relieve an unnecessary administrative burden without undermining our timely reporting needs. Staff do not propose changing the requirement that all reporting obligations be met prior to the release of new grant agreements.

3. Waiver of Rules [Divisions 10, 35, and 40]

The purpose of the rule waiver in division 5 is to allow the OWEB Director some flexibility, unless required by statute, to address specific situations or particular types of Board investments where it may be more effective or efficient to use an alternate application or grant implementation process. Rules waivers are rarely granted and always involve serious discussion between the grantee and OWEB's grant and fiscal staff.

Staff propose giving the Director similar discretion, unless required by statute, to waive rule requirements in other rule divisions for the same purpose, i.e. the more efficient or effective implementation of the OWEB grant program. Rule waivers are proposed for divisions 10, 35, and 40 (restoration, small grants, and council support) at this time because the education, monitoring and assessment rule divisions have few rule requirements to waive, and divisions 45 and 46 already include rule waiver provisions for due diligence requirements.

4. Consistent Use of "Board" and "Director" [Divisions 5 and 10]

The purpose for including a rule definition would be to provide clarity for a term used in that division that isn't already defined in statute. ORS 541.351(3) defines Board by the statutory reference that creates and describes the membership of the 17 member OWEB Board. There is no statutory definition of OWEB the state agency.

As OWEB's administrative rules have been developed over the past nine years by different staff, the terms "OWEB," "Board," and "Director" have been used inconsistently among the rule divisions. In this rulemaking, we propose to update only the definitions for these terms in divisions 4 and 5 and update the references to "Director" in divisions 5 and 10. The use of OWEB, Board, and Director in the remaining divisions, and the creation of a general definition rule will be addressed in the 2009 periodic review process.

5. Budget Form Requirements [695-005-0030(2)(d)]

The Application Requirements rules in division 5 require an application to include an estimate line item budget including the sources and amount of funding in addition to the amount of funding requested from OWEB. There is also rule language requiring that applicants demonstrate at least 25% match on a form "prescribed by the Board." The purpose of these rules is to have the applicants provide a detailed budget showing what is proposed to be implemented and to show how and by whom match funding or in-kind contributions will be provided.

Staff are proposing updated rule language that requires applicants to provide an estimated line item budget on the most current form prescribed by the Board and provided by OWEB. This language allows staff the most flexibility to design budget forms to meet the needs of applicants, regional review teams, OWEB staff, and the Board.

**6. Consistent use of Effectiveness and Implementation Monitoring Terms
[695-005-0060(4)(a) and 695-010-0100(2)]**

The term effectiveness is used in three administrative rules contained in divisions 5, 10, and 35. OWEB has developed the following distinction between effectiveness and implementation monitoring (otherwise known as post-project implementation reporting or status reports). Post-project implementation reporting is a requirement of all OWEB grants and includes a brief project description of the project and the work completed, pre- and post-project photographs, lessons learned during the project, recommendations on the implementation of future projects, maintenance performed, and accounting of expenditures. Effectiveness monitoring is monitoring above and beyond grant compliance monitoring, and determines whether the project is effective at meeting its biological and ecological objectives.

The purpose of the term in two of the three rules is inconsistent with OWEB's current usage of the term effectiveness. OWEB proposes to change "effectiveness" to "track the status" in two of the three rules. "Effectiveness" is also used in small grant rule 695-035-0020(17). In that rule, the use appears to be consistent; therefore staff propose waiting to address this rule until the stakeholder discussion about the small grant program, described in Agenda Item N, is conducted.

7. Partnership and Other Investment Rules [Division 4]

The majority of OWEB's existing administrative rules address the Board's grant program investments. The purpose of these new rules is to give clear recognition to the Board's other investment areas, like the Conservation Reserve Enhancement Program (CREP), Special Investment Partnerships (SIP), Whole Watersheds Partnership, or Coastal Wetlands Grants, and to provide internal and external guidance for those investments.

OWEB has proposed rule language to that creates an overall framework for all the Board's watershed enhancement program investments. For investments where no standards or guidance exist in rule, the Board will be asked to approve standards and guidance for application requirements, application processing, application evaluation, grant or interagency agreement conditions, and fund distribution criteria or conditions.

Staff made minor changes to the public comment draft based on review by OWEB's legal counsel. Those changes are reflected in Attachment B and are mainly wording changes, except for a change to 695-005-0030(4) where the language is changed to require the applicant to certify that it has informed landowners about the application and has advised all landowners that monitoring information is public, rather than the applicant certifying awareness and understanding from the landowners.

III. Salmon Emergency Grant Rules

These proposed rules would permanently adopt the temporary administrative rules adopted by the Board in May 2008 that establish grant application and award criteria for restoration, inventory and data collection, outreach, and project development grants that support priority salmon habitat enhancement and that are able to create work opportunities for fishers or workers displaced by the 2008 restrictions in ocean commercial and sport salmon fishing.

A. Background

On April 24, 2006, Governor Kulongoski issued Executive Order No. 06-06, declaring a state of emergency for Oregon's coastal counties impacted by Klamath River fishing restrictions. In response to the Executive Order, OWEB staff developed concepts to (1) create immediate opportunities to employ displaced fishers in salmon recovery-related activities; (2) develop future employment opportunities for fishers for additional salmon recovery restoration work; and (3) significantly expand state and local efforts to recover salmon populations on the Oregon coast.

In response to legal advice, staff developed temporary (emergency) administrative rules to give OWEB the ability to apply award preferences related to the employment of displaced fishers, providing fish habitat benefits, and addressing identified watershed needs. The Board adopted the temporary rules on July 20, 2006, and they expired on January 21, 2007.

Staff developed a proposed set of permanent rules based on the temporary rules and from the Board discussion at the September 2007 meeting. The proposed permanent rules contained the application criteria of the adopted temporary rules, but moved the rules to their own division (Division 7) of Chapter 695. The Board adopted the permanent administrative rules on January 25, 2007.

On April 10, 2008, the Governor issued Executive Order 08-10 declaring a state of emergency due to the limitations on ocean commercial and sport salmon fishing. The emergency was declared in response to the serious economic and social impacts facing coastal communities due to significant commercial and sport fishing restrictions imposed this year.

In order to exercise the preference for grants that hire displaced fishers to perform restoration and other related work under the new Executive Order, OWEB needed to amend the rules in Division 7 to reference the 2008 Executive Order and add eligibility for the charter fleet, which wasn't affected by the 2006 closure. The Board adopted these temporary rule amendments at the May Board meeting. The temporary rules expire on November 14, 2008.

B. Rulemaking Process

The adopted temporary rules were sent out for public comment beginning on August 1 and ending on August 22, 2008. OWEB did not convene a Rules Advisory Committee to review and discuss the proposed rule amendments because the proposed changes were discussed in the Board's May 2008 meeting, and because these are technical updates to a set of rules that were developed in 2006 in consultation with the Governor's Office, Oregon Salmon Commission, local watershed councils, and soil and water conservation districts, Oregon State University Extension, and affected fishers.

OWEB held a hearing on August 19, 2008, in Salem at the State Lands Building. No persons attended the hearing or provided written or oral comments at that time. No written public comments were received by the close of the public comment period.

C. Proposed Permanent Rules

The public comment draft is included as Attachment C to this staff report. Staff made one minor change to the definition of displaced worker from the public comment draft based on review by OWEB's legal counsel. That change is reflected in Attachment D.

IV. Recommendation

Staff recommend the Board approve:

- A. The proposed amendments to OAR 695, Division 5, 10, 35, and 40, and the proposed new rules in OAR 695, Division 4 as shown in Attachment B of this staff report.
- B. The proposed amendments to OAR 695, Division 7 as shown in Attachment D of this staff report.

Attachments

- A. Grant Administration Public Comment Draft Rules
- B. Proposed Grant Administration Rules
- C. Salmon Season State of Emergency Grants Public Comment Draft Rules
- D. Proposed Salmon Season State of Emergency Grants Rules

Proposed Administrative Rules

New language is underlined.

Deleted language is in ~~striketrough~~.

DIVISION 4
WATERSHED ENHANCEMENT PROGRAM

695-004-0010

Purpose

The Oregon Watershed Enhancement Board has broad authority to carry out a watershed enhancement program under the provisions of ORS 541.351 to 541.415. The Board may allocate funds to projects for restoration, monitoring, technical assistance, small grants, education and outreach, watershed council support, land acquisition, instream water leases and transfers, research and other related activities that advance the purposes of the watershed enhancement program.

695-004-0020

Definitions

(1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

(3) "OWEB" means the Oregon Watershed Enhancement Board state agency.

695-004-0030

Process and Criteria

The Board shall approve standards and guidance for application requirements and processing, evaluation criteria, agreement conditions, and distribution of funds.

(1) Guidance and criteria for accepting and reviewing applications for watershed enhancement projects proposed under the regular grant program are contained in OAR Chapter 695, divisions 5 through 50.

(2) For watershed enhancement project requests for initiatives or programs that are separate or distinct from the programs referenced in subsection (1), the Board shall approve additional necessary guidance and criteria.

(3) Board allocations under subsections (1) and (2) may be distributed through grant agreements, interagency agreements, and contracts for services.

(4) The Director shall enter into the grant agreements, interagency agreements, or contracts necessary to carry out the standards approved by the Board.

DIVISION 5
OWEB GRANT PROGRAM

695-005-0010

Purpose

NO CHANGE

695-005-0020

Definitions

(1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

(3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in these rules, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(4) "Regional Review Team" is a team, appointed by the Director, of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate regional grant applications. The Director may change the composition of regional review teams.

(5) "Partners" are non-governmental or governmental persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed project.

(6) "Match" is any contribution to a project that is non-Board funds. Match may include:

(a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;

(b) Secured funding commitments from other sources;

(c) Pending commitments of funding from other sources. In such instances, Board funding will not be released prior to secured commitment of the other funds. Pending commitments of the funding must be secured within 12 months from the date of the award; or

(d) The value of in-kind labor, equipment rental and materials essential to the project, based on local market rates.

(7) "OWEB" means the Oregon Watershed Enhancement Board state agency.

695-005-0030

Application Requirements

(1) Applications must be submitted on the most current form prescribed by the Board. Current applications are available on the OWEBBoard's website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application, and the required attachments, an applicant may submit additional information that will aid the Board in evaluating the project.

(2) All applicants for Board grants shall supply the following information:

(a) Names, physical and email addresses, fax and telephone numbers of the applicant contact person(s) and the fiscal officer(s);

(b) Name and address of involved landowner(s);

(c) The name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, and stream mile, if appropriate;

(d) ~~Estimated line item budget for the project including the sources and amounts of funding, and the amount of funding requested from using the most current budget form prescribed by the Board.~~ Current budget forms are available on the OWEB website;

(e) Identification of specific project elements for which Board funds will be used;

(f) A list of any non-Board funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;

(g) If the project is part of a multi-year project, and a new funding request continues a previously Board-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;

(h) Identification of volunteers and partners and the contribution they will make to the project;

(i) A project schedule including times of project beginning and completion; and

(j) Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.

(3) All applicants shall demonstrate at least 25% match is being sought, on a form prescribed by the Board, based on the total Board grant request, at the time of application.

(4) All applications that involve physical changes or monitoring on private land must include ~~a signature of approval of the landowner signifying their approval~~ certification from the applicant that all landowners involved are aware of the application and the understanding that all monitoring information obtained on their property is public record. If the contact with all landowner's signature was not obtainable possible at the time of application, explain why. The landowner's signature will be required prior to release of the grant agreement if the application is approved for funding.

(5) Fiscal administration costs, which may include accounting, auditing, contract management and fiscal reporting expenses for the project, for a grant awarded by the Board may not exceed 10% of the total Board funds expended for the project.

(6) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline.

(7) Applicants are encouraged to submit requests for up to \$10,000 for watershed restoration projects to the Small Grant Team in their Small Grant Area, unless the project is not eligible for funding under the Small Grant Program or the Small Grant Program has no funds available at the time of application. Applicants may not submit the same proposal to both the Board and the Small Grant Team.

695-005-0040

Application Processing

NO CHANGE

695-005-0050

Grant Agreement Conditions

(1) The Board will only enter into new agreements or amendments to existing agreements for time extensions and award amounts, exclusive of Small Grant agreements, with prior Grantees if all reporting obligations under earlier agreements have been met.

(2) If the grant agreement has not been fully executed by all the parties within one year of Board approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board.

(3) The Director ~~or designee~~ shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions.

(4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement.

(5) All project activities must demonstrate, to the extent possible, consistency with local community workforce and economic development plans and policies.

(6) Following project completion, equipment purchased with Board funds shall reside with any of the following: watershed council, soil and water conservation district, tribe, local government, state agency, institution of higher learning, or a school district. These entities will make the equipment available to others at no cost, other than nominal operation and maintenance costs.

(7) Upon notice to the Grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.

(8) The Grantee will account for funds distributed by the Board, using project expense forms provided.

(9) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board.

(10) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions may include:

- (a) A commitment by the landowner for continued access for monitoring the project after completion;
- (b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board;
- (c) A commitment to supply future reports on the project as required;
- (d) Such other conditions as the Board deems appropriate to the particular circumstances of the project.

695-005-0060

Distribution of Funds

(1) The Board will not reimburse the Grantee for any expenditures incurred prior to the signing of the grant agreement by all parties, except for fees charged by an affected city or county for processing the required Land Use Information Sheet.

(2) The Director may withhold payments to a Grantee in a situation where there are significant and persistent difficulties with satisfying Board requirements.

(3) Prior to disbursement of Board funds, the Grantee must provide proof that the 25% required match, based on the total Board award, has been secured.

(4) Prior to disbursement of Board funds for projects involving private lands, the Board must receive a ~~signed cooperative agreement between the landowner and~~ certification from the Grantee that they will obtain, prior to expending Board funds on a property, a cooperative agreement from the landowner that, at a minimum, includes:

(a) Permission to access the private land, at times agreeable to the landowner, to implement the project, inspect the project, ~~monitor the effectiveness~~ track the status of the project, or perform repairs or maintenance;

(b) Permission for the Board or its representatives to access the private land for inspection and evaluation of the project; and

(~~b~~c) Identification of the party responsible for repairs and maintenance of the project.

(5) Funds shall not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Board have been submitted.

(6) Funds will be released upon presentation of a completed fund release request form accompanied by receipts or invoices, and proof of completion of specific work elements of the project as identified in the Grant Agreement.

(7) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to the Board. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director ~~or designee~~.

(8) The Board shall retain ten percent of project funds until the final report, as required in the grant agreement, has been approved. Final reports are due within 60 days of project completion. Any unexpended Board funds must be returned to the Board with the final report. Upon receipt of the final report, the Board shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed.

(9) All Grantees shall account for at least 25% in actual match, on a form prescribed by the Board, based on the total Board grant expenditures, upon project conclusion and final reporting.

695-005-0070

Waiver of Rules

The Director ~~or designee~~ may waive the requirements of division 5, unless they are required by statute, for individual grants where doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

695-005-0080

Periodic Rules Review and Program Evaluation

NO CHANGE

DIVISION 10 RESTORATION GRANTS

695-010-0010 to 695-010-0090

NO CHANGE

695-010-0100

Grant Agreement Conditions

(1) The Grantee must submit a report at completion of the project describing the work done and placing it in its larger watershed context.

(2) The Grantee will ~~monitor the long term effectiveness~~ track the status of the project, and continue its maintenance, submitting periodic reports on a schedule set by the Board. All reports will be filed with the Board or at a location specified by the Board.

(3) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director ~~or designee~~ prior to the beginning of any work proposed in the modification.

(4) The Director ~~or designee~~ will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project, the proposed activity is within the same watershed, and the modification would be compatible with acknowledged comprehensive plans.

(5) The Director ~~or designee~~ may authorize minor changes within the scope of the original project plan.

(6) The Grantee will allow Board members or designated representatives access to the project area at a mutually agreeable time to monitor and evaluate the project.

(7) The Grantee must submit as part of their final report a completed Oregon Watershed Restoration Reporting form, using the most current form available on the ~~Board~~OWEB website.

695-010-0110

The Director may waive the requirements of division 10, unless they are required by statute, for individual grants where doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

DIVISION 35 SMALL GRANT PROGRAM

695-035-0100 to 695-035-0070

NO CHANGE

695-035-0080

The Director may waive the requirements of division 35, unless they are required by statute, for individual grants where doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

DIVISION 40 WATERSHED COUNCIL SUPPORT

695-040-0100 to 695-040-0070

NO CHANGE

695-040-0080

The Director may waive the requirements of division 40, unless they are required by statute, for individual grants where doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

Proposed Administrative Rules

New language is underlined.

Deleted language is in ~~strikethrough~~.

DIVISION 4
WATERSHED ENHANCEMENT PROGRAM

695-004-0010

Purpose

The Oregon Watershed Enhancement Board has broad authority to carry out a watershed enhancement program under the provisions of ORS 541.351 to 541.415. The Board may allocate funds to support projects for restoration, monitoring, technical assistance, small grants, education and outreach, watershed council support, land acquisition, instream water leases and transfers, research and other related activities that advance the purposes of the watershed enhancement program.

695-004-0020

Definitions

(1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

(3) "OWEB" means the Oregon Watershed Enhancement Board state agency.

695-004-0030

Process and Criteria

The Board shall approve standards and guidance for application requirements and processing, evaluation criteria, agreement conditions, and distribution of funds.

(1) Guidance and criteria for accepting and reviewing applications for watershed enhancement projects proposed under the regular grant program are contained in OAR Chapter 695, divisions 5 through 50.

(2) For watershed enhancement project requests for initiatives or programs that are separate or distinct from the programs referenced in subsection (1), the Board shall approve additional necessary guidance and criteria.

(3) Board allocations under subsections (1) and (2) may be distributed through grant agreements, interagency agreements, and contracts for services.

(4) The Director shall enter into the grant agreements, interagency agreements, or contracts necessary to carry out the standards approved by the Board.

DIVISION 5
OWEB GRANT PROGRAM

695-005-0010

Purpose

NO CHANGE

695-005-0020

Definitions

(1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

(3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in these rules, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(4) "Regional Review Team" is a team, appointed by the Director, of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate regional grant applications. The Director may change the composition of regional review teams.

(5) "Partners" are non-governmental or governmental persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed project.

(6) "Match" is any contribution to a project that is non-Board funds. Match may include:

(a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;

(b) Secured funding commitments from other sources;

(c) Pending commitments of funding from other sources. In such instances, Board funding will not be released prior to secured commitment of the other funds. Pending commitments of the funding must be secured within 12 months from the date of the award; or

(d) The value of in-kind labor, equipment rental and materials essential to the project, based on local market rates.

(7) "OWEB" means the Oregon Watershed Enhancement Board state agency.

695-005-0030

Application Requirements

(1) Applications must be submitted on the most current form prescribed by the Board. Current applications are available on the OWEB Board's website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application, and the required attachments, an applicant may submit additional information that will aid the Board in evaluating the project.

(2) All applicants for Board grants shall supply the following information:

(a) Names, physical and email addresses, fax and telephone numbers of the applicant contact person(s) and the fiscal officer(s);

(b) Name and address of involved landowner(s);

(c) The name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, and stream mile, if appropriate;

(d) ~~Estimated line item budget for the project including the sources and amounts of funding, and the amount of funding requested from using the most current budget form prescribed by the Board.~~ Current budget forms are available on the OWEB website;

(e) Identification of specific project elements for which Board funds will be used;

(f) A list of any non-Board funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;

(g) If the project is part of a multi-year project, and a new funding request continues a previously Board-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;

(h) Identification of volunteers and partners and the contribution they will make to the project;

(i) A project schedule including times of project beginning and completion; and

(j) Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.

(3) All applicants shall demonstrate at least 25% match is being sought, on a form prescribed by the Board, based on the total Board grant request, at the time of application.

(4) All applications that involve physical changes or monitoring on private land must include ~~a signature of approval of the landowner signifying their approval~~ certification from the applicant that the applicant has informed all landowners involved of the existence of the application and the has also advised all landowners understanding that all monitoring information obtained on their property is public record. If the contact with all landowner's signature was not obtainable possible at the time of application, explain why. The landowner's signature will be required prior to release of the grant agreement if the application is approved for funding.

(5) Fiscal administration costs, which may include accounting, auditing, contract management and fiscal reporting expenses for the project, for a grant awarded by the Board may not exceed 10% of the total Board funds expended for the project.

(6) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline.

(7) Applicants are encouraged to submit requests for up to \$10,000 for watershed restoration projects to the Small Grant Team in their Small Grant Area, unless the project is not eligible for funding under the Small Grant Program or the Small Grant Program has no funds available at the time of application. Applicants may not submit the same proposal to both the Board and the Small Grant Team.

695-005-0040

Application Processing

NO CHANGE

695-005-0050

Grant Agreement Conditions

(1) The Board will ~~only~~ enter into new agreements or amendments to existing agreements for time extensions and award amounts, exclusive of Small Grant agreements, with prior Grantees only if all reporting obligations under earlier agreements have been met.

(2) If the grant agreement has not been fully executed by all the parties within one year of Board approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board.

(3) The Director ~~or designee~~ shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions.

(4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement.

(5) All project activities must demonstrate, to the extent possible, consistency with local community workforce and economic development plans and policies.

(6) Following project completion, equipment purchased with Board funds shall reside with any of the following: watershed council, soil and water conservation district, tribe, local government, state agency, institution of higher learning, or a school district. These entities will make the equipment available to others at no cost, other than nominal operation and maintenance costs.

(7) Upon notice to the Grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.

(8) The Grantee will account for funds distributed by the Board, using project expense forms provided.

(9) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board.

(10) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions may include:

(a) A commitment by the landowner for continued access for monitoring the project after completion;

(b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board;

(c) A commitment to supply future reports on the project as required;

(d) Such other conditions as the Board deems appropriate to the particular circumstances of the project.

695-005-0060

Distribution of Funds

(1) The Board will not reimburse the Grantee for any expenditures incurred prior to the signing of the grant agreement by all parties, except for fees charged by an affected city or county for processing the required Land Use Information Sheet.

(2) The Director may withhold payments to a Grantee in a situation where there are significant and persistent difficulties with satisfying Board requirements.

(3) Prior to disbursement of Board funds, the Grantee must provide proof that the 25% required match, based on the total Board award, has been secured.

(4) Prior to disbursement of Board funds for projects involving private lands, the Board must receive a ~~signed cooperative agreement between the landowner and~~ certification from the Grantee that they will obtain, prior to expending Board funds on a property, a cooperative agreement from the landowner that, at a minimum, includes:

(a) Permission to access the private land, at times agreeable to the landowner, to implement the project, inspect the project, ~~monitor the effectiveness~~ track the status of the project, or perform repairs or maintenance;

(b) Permission for the Board or its representatives to access the private land for inspection and evaluation of the project; and

~~(c)~~ Identification of the party responsible for repairs and maintenance of the project.

(5) Funds shall not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Board have been submitted.

(6) Funds will be released upon presentation of a completed fund release request form accompanied by receipts or invoices, and proof of completion of specific work elements of the project as identified in the Grant Agreement.

(7) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to the Board. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director ~~or designee~~.

(8) The Board shall retain ten percent of project funds until the final report, as required in the grant agreement, has been approved. Final reports are due within 60 days of project completion. Any unexpended Board funds must be returned to the Board with the final report. Upon receipt of the final report, the Board shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed.

(9) All Grantees shall account for at least 25% in actual match, on a form prescribed by the Board, based on the total Board grant expenditures, upon project conclusion and final reporting.

695-005-0070

Waiver of Rules

The Director ~~or designee~~ may waive the requirements of division 5, unless they are required by statute, for individual grants, when ~~where~~ doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

695-005-0080

Periodic Rules Review and Program Evaluation

NO CHANGE

DIVISION 10 RESTORATION GRANTS

695-010-0010 to 695-010-0090

NO CHANGE

695-010-0100

Grant Agreement Conditions

(1) The Grantee must submit a report at completion of the project describing the work done and placing it in its larger watershed context.

(2) The Grantee will ~~monitor the long term effectiveness~~ track the status of the project, and continue its maintenance, submitting periodic reports on a schedule set by the Board. All reports will be filed with the Board or at a location specified by the Board.

(3) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director ~~or designee~~ prior to the beginning of any work proposed in the modification.

(4) The Director ~~or designee~~ will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project, the proposed activity is within the same watershed, and the modification would be compatible with acknowledged comprehensive plans.

(5) The Director ~~or designee~~ may authorize minor changes within the scope of the original project plan.

(6) The Grantee will allow Board members or designated representatives access to the project area at a mutually agreeable time to monitor and evaluate the project.

(7) The Grantee must submit as part of their final report a completed Oregon Watershed Restoration Reporting form, using the most current form available on the ~~Board~~OWEB website.

695-010-0110

The Director may waive the requirements of division 10, unless they are required by statute, for individual grants, when doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

DIVISION 35 SMALL GRANT PROGRAM

695-035-0100 to 695-035-0070

NO CHANGE

695-035-0080

The Director may waive the requirements of division 35, unless they are required by statute, for individual grants, when doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

DIVISION 40 WATERSHED COUNCIL SUPPORT

695-040-0100 to 695-040-0070

NO CHANGE

695-040-0080

The Director may waive the requirements of division 40, unless they are required by statute, for individual grants, when doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

DIVISION 7

SALMON SEASON STATE OF EMERGENCY GRANTS

695-007-0010

Purpose

(1) The following administrative rules apply to the state of emergency established by Executive Order No. ~~06-06 and No. 06-07~~08-10, dated April ~~24, 2006~~10, 2008, relating to limitations on ocean commercial and sport salmon fishing.

(2) These rules provide for action available to the Board and Director. These rules are operative until the Governor declares that the state of emergency established by Executive Order No. ~~06-06 and No. 06-07~~08-10 is concluded. Action within these rules is intended to mitigate the economic and social impacts facing coastal communities during restricted commercial and sport salmon fishing seasons and to advance and accelerate salmon habitat restoration and recovery efforts.

695-007-0020

Definitions

(1) "Board" means Oregon Watershed Enhancement Board.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board.

(3) "Displaced Worker" or "displaced fisher" means an individual who meets the criteria adopted by the Oregon Salmon Commission to be considered displaced with respect to commercial fishing employment, or with respect to sport fishing employment, as identified as displaced by the Director in consultation with the ocean salmon charter industry to be made available on the OWEB web site prior to offering funding to grant applicants.

695-007-0030

OWEB Actions

(1) During the pendency of Executive Order No. ~~06-06 and No. 06-07~~08-10 declaring a salmon season state of emergency, the Board may:

(a) Provide grant funding to support fish-salmon habitat enhancement and related projects within salmon-bearing watersheds in Oregon, for the purpose of accelerating the rebuilding of fish-salmon populations and creating employment opportunities for displaced workers, including projects that:

(A) Support fish-salmon habitat enhancement;

(B) Gather information that can be directly used for salmon habitat restoration;

(C) Conduct outreach to the public concerning salmon habitat restoration; or

(D) Support research that assists in the evaluation of salmon stocks at sea.

(b) Provide grant funding to develop projects that would enhance salmon habitat in the future.

695-007-0040

Application Criteria

(1) For grant applicants to receive funding, the following award preferences are applicable, in addition to the evaluation criteria set forth in any other applicable rule. Projects must employ displaced fishers in all project labor opportunities to the greatest extent possible over a period of several months, and also must:

(a) Provide benefit to high priority fish-salmon habitat along the Oregon coast ~~and the Oregon portion of the Klamath River Basin;~~

(b) Directly address limiting factors for the recovery of coho-salmon in watersheds that drain directly to the ocean, including the Umpqua and Rogue basins;

~~(c) Directly address the recovery of Klamath River salmon stocks in the Klamath River Basin;~~

~~(d)~~ Be identified in an existing watershed-scale assessment and action plan; or

~~(e)~~ Address a specific limiting factor identified in the 2003-2005 Oregon Plan Biennial Report, Volume 2 published by the Oregon Watershed Enhancement Board in 2005.

(2) In addition to the preference criteria described in section 1, the following award preferences are applicable to specific types of grant applications:

(a) For Inventory and Data Collection grants, preference will be given to projects that focus on surveys and inventories that document conditions affecting aquatic resources or ground-truth mapping of high priority salmon habitat.

(b) For Restoration grants, preference will be given to projects that focus on restoration in high priority salmon habitat, or have received from OWEB a relevant technical assistance award in an earlier grant cycle.

(c) For Project Development grants, preference will be given to projects that have a high likelihood of being implemented within one year following completion of the project development grant, focus on high priority salmon habitat, or address a specific limiting factor identified in the 2003-2005 Oregon Plan Biennial Report, Volume 2 published by the Oregon Watershed Enhancement Board in 2005.

(3) The preferences identified in section 1 of this rule may also be applied to other OWEB grants, including Restoration Projects described in Division 10, Education and Outreach Grants described in Division 15, Monitoring Grants described in Division 25, and Assessment and Action Plan Grants described in Division 30, in addition to the evaluation criteria set forth in rules contained in those divisions.

DIVISION 7

SALMON SEASON STATE OF EMERGENCY GRANTS

695-007-0010

Purpose

(1) The following administrative rules apply to the state of emergency established by Executive Order No. ~~06-06~~ and No. ~~06-07~~08-10, dated April ~~24, 2006~~10, 2008, relating to limitations on ocean commercial and sport salmon fishing.

(2) These rules provide for action available to the Board and Director. These rules are operative until the Governor declares that the state of emergency established by Executive Order No. ~~06-06~~ and No. ~~06-07~~08-10 is concluded. Action within these rules is intended to mitigate the economic and social impacts facing coastal communities during restricted commercial and sport salmon fishing seasons and to advance and accelerate salmon habitat restoration and recovery efforts.

695-007-0020

Definitions

(1) "Board" means Oregon Watershed Enhancement Board.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board.

(3) "Displaced Worker" or "displaced fisher" means an individual who meets the criteria adopted by the Oregon Salmon Commission to be considered displaced with respect to commercial fishing employment, or, with respect to sport fishing employment, who meets the criteria identified by the Director in consultation with the ocean salmon charter industry, to be made available on the OWEB web site before funding is offered to grant applicants.

695-007-0030

OWEB Actions

(1) During the pendency of Executive Order No. ~~06-06~~ and No. ~~06-07~~08-10 declaring a salmon season state of emergency, the Board may:

(a) Provide grant funding to support ~~fish~~-salmon habitat enhancement and related projects within salmon-bearing watersheds in Oregon, for the purpose of accelerating the rebuilding of ~~fish~~-salmon populations and creating employment opportunities for displaced workers, including projects that:

(A) Support ~~fish~~-salmon habitat enhancement;

(B) Gather information that can be directly used for salmon habitat restoration;

(C) Conduct outreach to the public concerning salmon habitat restoration; or

(D) Support research that assists in the evaluation of salmon stocks at sea.

(b) Provide grant funding to develop projects that would enhance salmon habitat in the future.

695-007-0040

Application Criteria

(1) For grant applicants to receive funding, the following award preferences are applicable, in addition to the evaluation criteria set forth in any other applicable rule. Projects must employ displaced fishers in all project labor opportunities to the greatest extent possible over a period of several months, and also must:

(a) Provide benefit to high priority fish-salmon habitat along the Oregon coast ~~and the Oregon portion of the Klamath River Basin;~~

(b) Directly address limiting factors for the recovery of coho-salmon in watersheds that drain directly to the ocean, including the Umpqua and Rogue basins;

~~(c) Directly address the recovery of Klamath River salmon stocks in the Klamath River Basin;~~

~~(d)~~ Be identified in an existing watershed-scale assessment and action plan; or

~~(e)~~ Address a specific limiting factor identified in the 2003-2005 Oregon Plan Biennial Report, Volume 2 published by the Oregon Watershed Enhancement Board in 2005.

(2) In addition to the preference criteria described in section 1, the following award preferences are applicable to specific types of grant applications:

(a) For Inventory and Data Collection grants, preference will be given to projects that focus on surveys and inventories that document conditions affecting aquatic resources or ground-truth mapping of high priority salmon habitat.

(b) For Restoration grants, preference will be given to projects that focus on restoration in high priority salmon habitat, or have received from OWEB a relevant technical assistance award in an earlier grant cycle.

(c) For Project Development grants, preference will be given to projects that have a high likelihood of being implemented within one year following completion of the project development grant, focus on high priority salmon habitat, or address a specific limiting factor identified in the 2003-2005 Oregon Plan Biennial Report, Volume 2 published by the Oregon Watershed Enhancement Board in 2005.

(3) The preferences identified in section 1 of this rule may also be applied to other OWEB grants, including Restoration Projects described in Division 10, Education and Outreach Grants described in Division 15, Monitoring Grants described in Division 25, and Assessment and Action Plan Grants described in Division 30, in addition to the evaluation criteria set forth in rules contained in those divisions.