

Governance Task Force Minutes
December 15, 2014, 9:00 am to 2:00 pm
Oregon Water Resources Department
North Mall Office Building
725 Summer St. NE
Salem, Oregon 97301

GOVERNANCE TASK FORCE MEMBERS

David Filippi, Stoel Rives; Eric Quaempts, Confederated Tribes of the Umatilla Indian Reservation (phone); Patrick Griffiths, City of Bend (phone); Mark Landauer, Special Districts Association of Oregon; Janet Neuman, Tonkon Torp; Teresa Huntsinger, Oregon Environmental Council; April Snell, Oregon Water Resources Congress; Jeff Stone, Oregon Association of Nurseries; Jerome Rosa, Oregon Cattlemen; Katie Fast, Oregon Farm Bureau; Tracy Rutten, League of Oregon Cities (phone); Joe Furia, The Freshwater Trust; Chris Taylor, West Coast Infrastructure Exchange (phone); Amanda Rich, The Nature Conservancy; Brad Taylor, Eugene Water and Electric Board (phone).

Absent: Kimberley Priestley, WaterWatch; Gil Riddell, Association of Oregon Counties.

FACILITATION TEAM

Richard Whitman, Office of Governor John Kitzhaber, Convener; Racquel Rancier, Oregon Water Resources Department (WRD); Nancy Salber, Governor's Natural Resources Office; Jon Unger, WRD; Josh Spansail, WRD.

OBSERVERS

Tim Hardin; Lauren Smith; Margaret Matter; Tom Byler; Rob Kirschner; Scott Jorgenson; Mateusz Perkowski.

MEETING OBJECTIVES

- ~ Review and provide guidance on draft paper
- ~ Understand permitting and funding interface; refine process
- ~ Explore role for state to support mitigation banking
- ~ Identify funding parameters regarding large projects and allocation of limited funds
- ~ Refine scoring and ranking process

Agenda, PowerPoints, copies of SB 839, and other meeting materials for this and other Governance meetings will be available on-line:

http://www.oregon.gov/OWRD/pages/SB_839_Governance_Task_Force.aspx.

Look under the specific meeting date.

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Note: These meeting notes are grouped by topic and may not reflect the order of conversation.

I. Introductions, Review of Agenda, and Minutes

II. Overview of Progress on Draft Report

Racquel Rancier presented a draft report of the group's findings. If there are missing items please let Racquel know. Today's meeting will result in more information being added to this draft report.

III. Seasonally Varying Flows

Several documents were presented to the group including a document identifying four potential paths for funding Seasonally Varying Flows and a color coded flowchart that describes the Water Right and SB 839 Grant/Loan Application Process for Storage Projects. Funding for project construction cannot be disbursed until all permits are obtained.

SB 1069 has requirements that storage projects provide final analyses of by-pass, optimum - peak, flushing, and other ecological flows of the affected stream and the impact of the storage project on those flows. Path 1 shows SB 1069 Feasibility Studies being used to do SVF work. General consensus was that 1069 should not be used for establishing an SVF but could be used for gathering initial information for future SVF work. Concern was expressed that the SB 1069 funding source would be diluted if resources are directed at SVF determination. In addition, the SVF is a requirement under SB 839, not SB 1069, so SB 839 is the proper funding source for establishing SVFs.

Path 3 shows the option of applying for SB 839 funds all at once to perform both the SVF analysis and project implementation. The challenge with Path 3 is that the SVF determination could take 6 months to 3 years to complete. During that time, the implementation funding would be held and could not be used for projects that are ready to move forward. This may be less of a concern for projects in which the SVF analysis is expected to take less time.

Path 2 shows the option of using 839 funds to perform SVF studies, and then reapplying for 839 funds for project implementation. This option may be preferred for projects, in which the SVF analysis is expected to take longer to perform.

In terms of the cost share, one member noted that there are applicants that may not be willing to pay for an SVF that could potentially result in a determination that the storage project cannot be constructed. The Department could do SVFs through the direct spending authorized under SB 839 instead of through a grant or loan requiring the match. Another member commented that the Department may want to ensure that the applicant has a vested interest in the SVF being done. Some members agreed that the establishment of a SVF has a value in itself outside of a determination for a specific project.

For feasibility, when is it more appropriate to apply for SB 1069 vs. SB 839?

SB 1069 is limited to conservation, reuse and storage and also has a higher cost share (50% vs. 25% for 839). Do not want to have all applicants applying for SB 839 and no demand for SB 1069. In rulemaking, need to provide some guidance (not hard criteria) on when 839 should be used for feasibility. For example, 839 funding may be appropriate if a feasibility project is for greater than \$500,000, the project isn't eligible for 1069, or the project provides a large public benefit. In addition, if the project is more speculative it should be SB 1069. There could be some value to doing pilot projects.

During the pre-application process, staff could help applicants identify the most appropriate funding sources. The pre-application process could provide guidance to help applicants identify where their application would be most competitive, but would not prevent the applicant from applying to other programs.

How long are we willing to give projects to get moving? Applicant readiness to move forward should be considered in the review process. Other grant programs include this as part of scoring. Don't want to tie funds up by approving a project that will be years out. May want to look at other models for longer-term. DEQ has an intended use plan which allows projects to be put on a list for funding. The state revolving fund analyzes the merits of a project and it may sit on a priority list for years. Connect Oregon generally requires permitting and financing to be done and project to be ready. Might consider these options for SVF.

Outside of the Official Irrigation Season – Is everyone okay with a change to the statute that replaces “outside of the official irrigation season” with whenever water is available for storage? Group agreed. Governor's office has a cleanup bill that will include this as well as deadline changes.

Whitman noted that the bill includes language that the need for storing water be considered as well as the best available science in developing an SVF. To ensure that the SVF methodology achieves this balance, pilots should be conducted to ensure that it does not preclude storage projects everywhere. The Water Resources Commission could have the Department perform some SVF pilots. The results of those pilots would not become official SVFs until reviewed by the Commission. Members appeared to agree with this approach and provided some suggestions on how to identify pilots.

VI. Scoring and Ranking

The task force discussed the use of advisory groups and how other programs utilize them. Discussion centered on the role of a higher level advisory group versus a group that would participate in scoring and ranking. Some members proposed having an advisory committee score and rank projects prior to the technical team, others preferred after. Some questioned the ability to have another step in the process, given the statutory language. There was a desire by all members to ensure that any advisory committee would not become political. While it was initially suggested that the advisory committee would advise applicants on other funding opportunities, many members felt that that this was a role for staff.

The final suggestion was to have a higher level advisory group that would focus on reviewing the broader water resources development programs and making recommendations on how those programs should work or be improved. Then, there could also be a subgroup of the technical review team composed of experts such as stakeholders, or individuals with legal/regulatory, engineering, financial, or project development experience. It appeared that there was some consensus around this approach.

It was also recommended that SB 839 and SB 1069 funding cycles be aligned if possible, so that the Commission could see the full funding picture.

In addition to public benefits, the Technical Review Team should also take into account: balance in type of projects and geographical distribution, security for loans, project readiness, level of cost share, past experience with applicant and application materials. A Likert scale should be used including negative values. Consider a base score to qualify and include project feasibility as well as ability to repay.

IV. State Role in Funding Large Projects

Group discussed the state's role in funding large water projects. There may be projects that request a significant portion of total SB 839 funds. Under what circumstances do you have to go to the legislature for project approval? Comments included:

- Develop guidelines that if the project request is for x% of the total SB 839 funding, then they would have to go to legislature.
- Projects could receive multiple installments without having to reapply to reduce the percentage in a given biennium.
- Eboard approval could prevent waiting for legislative session.
- If there is not a percentage cap on a single project, geographical or project type diversity would be lacking.

When a project needs funding in excess of the total SB 839 amount, they will need to go to the legislature; however, do not want to create an incentive to get around SB 839. Will need to consider how to deal with this in the future. Perhaps projects need to be vetted before going to legislature for approval. For example, the Office of Columbia River in Washington State receives legislative approval for projects prior to expenditures.

V. Discussion of State Role in Mitigation Banking

Richard Whitman provided some background on the need for mitigation banking and pointed towards the Deschutes as an example. It was noted that there could be unintended consequences in moving water, particularly impacts on agriculture. Other concerns were discussed and suggestions were made that the state could play a role in alleviating some concerns by establishing sideboards and preventing speculation. The general consensus was that mitigation banking needs to be addressed in the future, as it could help address water needs with the appropriate sideboards.

VII. Public Comments

No public comment.

VIII. Future Schedule, Agenda, and Adjourn

Department will develop a draft report for task force to review. Goal is to have one final meeting with governance.

Next meeting: Friday, January 16, 2015 from 9:00 am to 12:00 pm.