



Senate Bill 839: Governance Task Force

October 30, 2014

Today's Agenda

- **Logistics**
- **Understanding the Context of Water Supply Development in Oregon**
- **Charge of the Governance Task Force**
- **In-Depth Review of the Bill Structure**
- **Public comment and next steps**

Logistics

- **Recall ground rules set at first meeting**
- **Use name cards to indicate desire to speak**
- **Contact Racquel if unable to attend, need call-in, or if you will send a delegate:**
 - **racquel.r.rancier@state.or.us**
 - **(o) 503-986-0828, (c) 503-302-9235**
- **Parking passes and reimbursement**
 - **Lorri Cooper, 503-986-0875**
lorri.l.cooper@state.or.us

Finding Materials On-line

The screenshot shows the Oregon.gov website's Water Resources Department page. The main content area is titled "Oregon's Integrated Water Resources Strategy" and includes a text block about the strategy's adoption and availability. Below this, there are two columns: "Agency Resources" and "Agency Spotlight". The "Agency Resources" column lists various links under categories like "Resources For:" and "Lookup Information:". The "Agency Spotlight" column features news items such as "Klamath Basin Task Force Updates" and "Commission Offers 2nd Cycle of Grant Funding". On the right side, there is a vertical navigation menu with categories like "Groundwater", "Surface Water", and "Water Law". At the bottom left, a sidebar contains a list of navigation links, with "Work Groups" circled in red.

Work Groups

“Work Groups” contains your membership roster, meeting calendar, agendas, and background materials.



II. Understanding the Context: Water Supply Development in Oregon

Integrated Water Resources Strategy

- **Recommended Actions to understand Oregon's instream and out-of-stream needs and to articulate a strategy to meet those needs into the future**

Place-Based Planning Concept

9.A - Undertake Place-Based Integrated Water Resources Planning

SB 1069 (2008) – Funding Feasibility Studies

13.C - Fund communities needing feasibility studies for water conservation, storage and reuse projects

SB 839 (2013) – Funding to Support Projects

3.A - Determine flows needed to support instream needs

10.A - Improve water-use efficiency and water conservation

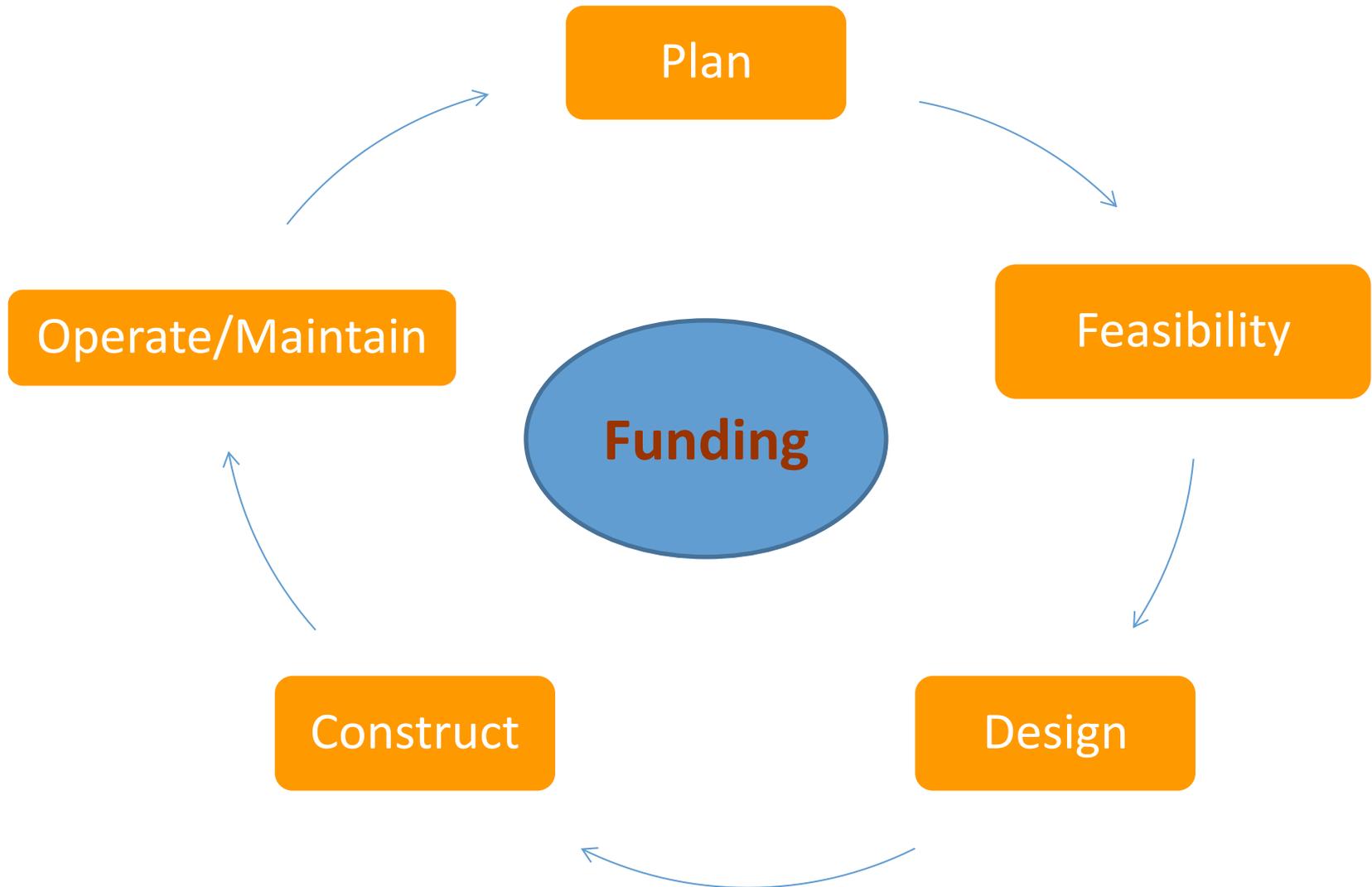
10.B - Improve access to built storage

10.C - Encourage additional water reuse projects

10.E - Authorize and fund a water supply development fund

11.B - Develop additional instream protections

Planning and Project Development



Place-Based Integrated Water Resources Planning

- **Collaborative process that brings together various sectors and community interests**
- **Identify a vision for the area and steps necessary to meet both instream and out-of-stream needs**
 - **Including water quantity, water quality, and ecosystem needs**
- **Facilitate the identification of a suite of projects to meet the area's instream and out-of-stream needs**

SB 1069 (2008) - Feasibility

Water Conservation, Reuse and Storage Grant Program

- Qualifying costs of planning studies that evaluate the feasibility of developing water conservation, reuse or storage projects
- Grant may not exceed \$500,000
- Dollar-for-dollar match
- 54 grants statewide; over \$3.16 million
 - Range from under \$5,000 to just over \$250,000 each

SB 1069 – What is a feasibility study?

- **An analysis of the viability of an idea**
- **Focuses on helping answer the essential question of “should we proceed with the proposed project idea?”**
- **Provides information for a decision**

Examples of eligible activities

- **Ecological flows analysis and impact of project**
- **Analysis of alternate means of supplying water (including cost/benefits)**
- **Hydrological analysis, refill capacity**
- **Engineering and financial feasibility studies**
- **Fiscal analyses (costs, financing, financial returns)**
- **Geologic analyses**
- **Water needs analysis**
- **Environmental impacts**
- **Public benefits accrued**
- **Water quality impacts**
- **Water exchange studies**

SB 1069 - What cannot be funded?

- **Engineering and other work occurring post feasibility determination, e.g. plans and specs.**
- **Full NEPA analysis** (only environmental impact analysis is eligible)
- **Environmental permitting, i.e. wetland delineations, CWA 401 & 404 permitting**
- **ESA consultation**
- **WRD application fees for permanent transactions**
- **Taxes**

Senate Bill 839 (2013)

- **Purpose: To establish a means for the state to support water supply development projects that provide economic, environmental and community benefits.**
- **Loans and grants to evaluate, plan, and develop both instream and out-of-stream water development projects**

77th OREGON LEGISLATIVE ASSEMBLY-2013 Regular Session

Enrolled
Senate Bill 839

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to water; creating new provisions; amending ORS 541.700, 541.710, 541.720, 541.730, 541.740 and 541.830 and sections 17, 33, 34 and 46, chapter 907, Oregon Laws 2009; repealing ORS 541.600, 541.606, 541.611, 541.616, 541.621, 541.631, 541.636, 541.641, 541.646 and 541.725; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

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(a) Stored for a project providing new or expanded storage;

(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or

(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.

(2) "Seasonally varying flows" means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes.

SECTION 2. (1) The purpose of sections 1 to 15 of this 2013 Act is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits.

(2) The Legislative Assembly intends that any conditions or requirements described in sections 1 to 15 of this 2013 Act apply only to projects that receive loans or grants from the Water Supply Development Account established in section 3 of this 2013 Act.

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(a) Subject to subsection (4) of this section, making loans and grants to evaluate, plan and develop in-stream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:

Senate Bill 839 – Eligible Projects

Projects that:

- increase water use efficiency
- develop new or expanded storage
- allocate federally stored water
- promote water reuse or conservation
- protect or restore streamflows

Projects developed in connection with newly developed water that:

- improve operations of existing storage facilities
- create new or improved water distribution, conveyance or delivery systems
- provide for water management or measurement
- determine seasonally varying flows

Senate Bill 839 – Eligible Projects

- Comprehensive basin studies done by BOR
 - Ongoing studies by USACE to allocate stored water
- Not required to meet the scoring and ranking, or grant and loan procedures

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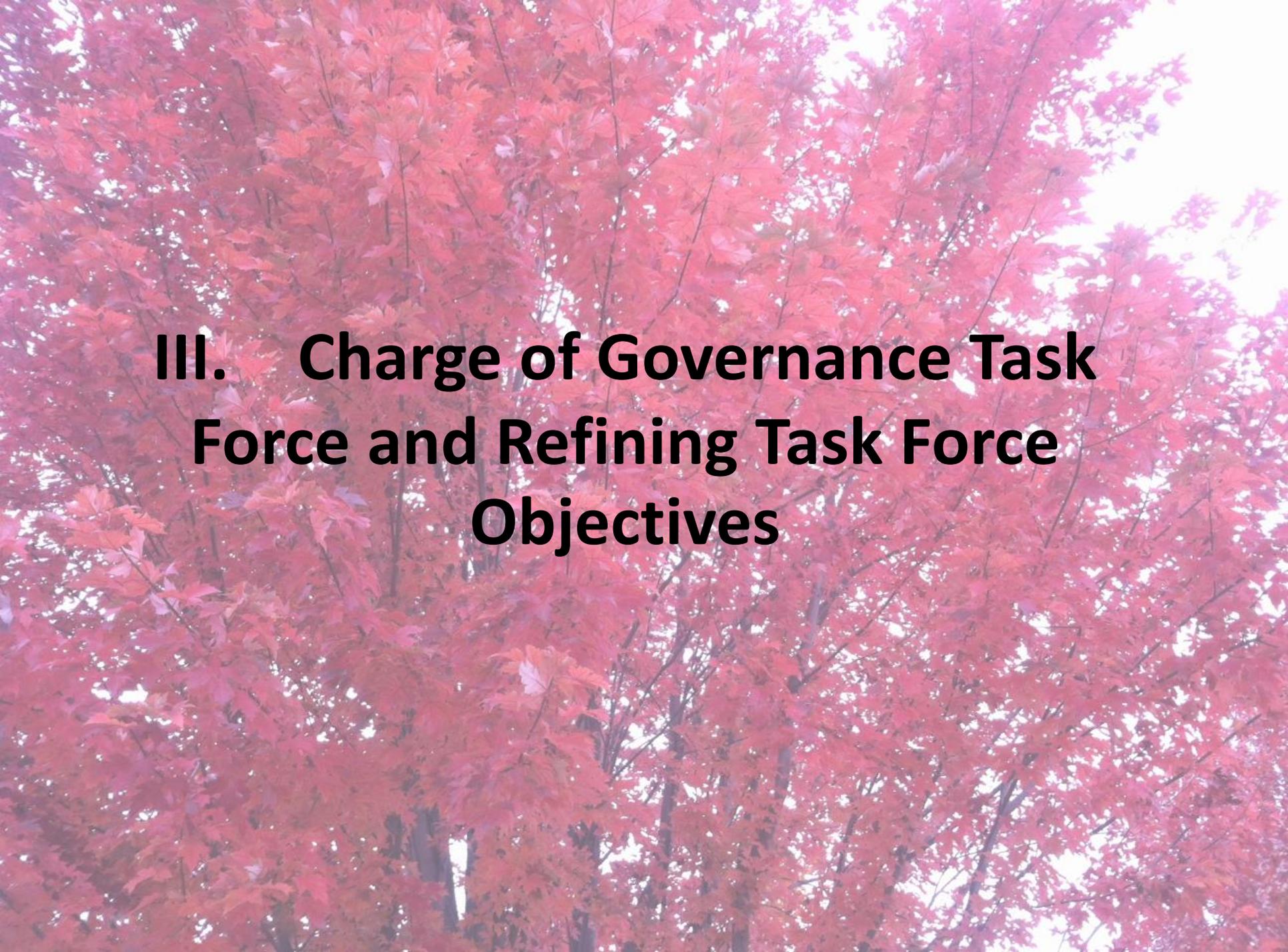
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**III. Charge of Governance Task
Force and Refining Task Force
Objectives**

Scope of Task Force – Section 18

- Review the structure established for water development project loans and grants
- Review the decision-making process outlined in the §1-15, including:
 - Role of the state in providing loan and grant funding for multipurpose water resources development.
 - Decision-making process for the allocation of newly developed water.

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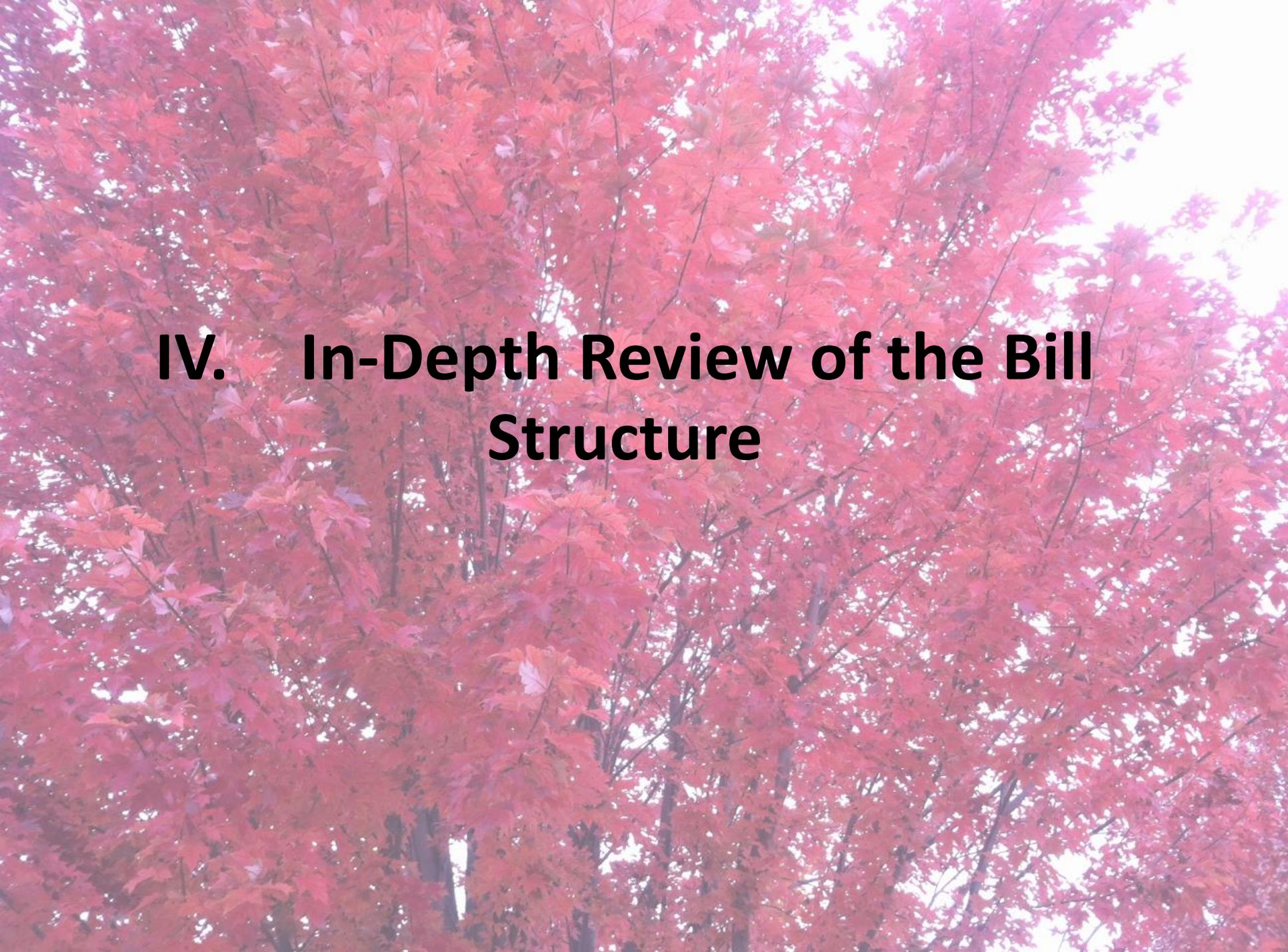
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IV. In-Depth Review of the Bill Structure

Senate Bill 839 – In Depth

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Senate Bill 839 - Purpose

Purpose: Means for the state to support water supply development projects that provide economic, environmental and community benefits [Section 2(1)].

Establishes the Water Supply Development Account [Section 3(1)] which can be used by the Department to carry out the Act and make loans and grants to **evaluate, plan, and develop** projects [Section 3(2)].

Eligible entities: Persons, Oregon tribes, as well as nonprofit organizations [Section 4].

Senate Bill 839 – Eligible Projects

Projects that:

- increase water use efficiency
- develop new or expanded storage
- allocate federally stored water
- promote water reuse or conservation
- protect or restore streamflows

[Section 3(2)]

Senate Bill 839 – Eligible Projects

Projects developed in connection with newly developed water that:

- improve operations of existing storage facilities
 - create new or improved water distribution, conveyance or delivery systems
 - provide for water management or measurement
 - determine seasonally varying flows [Section 3(2)]
-
- Newly developed water is water that results from (1) new or expanded storage, (2) allocation of uncontracted USACE stored water, or (3) the allocation of conserved water [Section 1(1)].

Senate Bill 839 – Eligible Projects

- Comprehensive basin studies done by BOR
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[Section 3(3)]

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Senate Bill 839 – Other Uses of Fund

The Department may also spend funds from the Account to:

- Pay the technical and administrative costs of the Department to carry out the bill [Section 3(2)]
- Pay the cost of establishing a seasonally varying flow, and to pay other costs directly related to project development [Section 13].
- Pay for costs related to the task forces and SVF rule development, prior to July 1, 2017 [Sections 27 and 28].

Moneys not expended during a funding cycle are carried over to future cycles [Section 7(4)].

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Enrolled Senate Bill 839 (SB 839-B)

Page 1

Senate Bill 839 – Pre-Application

Pre-Application - A prospective applicant can engage the department in a pre-application conference to review the requirements of the application and the scoring system, and identify issues that may affect project eligibility. [Section 5].

Senate Bill 839 – Requirements in Bill

- The requirements and conditions specified in the bill apply only to projects that receive grants or loans from the Water Supply Development Account [Section 2(2)].

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Senate Bill 839 – Application Requirements

Application Form: Section 6 prescribes the information that must be included on the application form.

Private Landowners: For applications involving physical changes or monitoring on private land, the landowners must agree to the project and aware that information is public.

Evidence of Ability to Repay: Must submit evidence of the ability to repay the loan and provide collateral. Tribes must be consulted, if required by the Department.
[Section 6]

Senate Bill 839 – Application Requirements

Cost Match - For grants, there must be a 25 percent cost match. [Section 6]

WMCP Requirement - Applicants that are required to have a water management and conservation plan must have it approved prior to submitting the grant or loan application. [Section 4]

No injury - Department must determine that the transfer of water rights will not injure existing water rights. [Section 3(4)]

Senate Bill 839 – Review Process

Initial Review: Department will check for completeness and eligibility. Incomplete applications must be returned.

Posting and Public Comment: The Department must then post new applications on the Department's website for 60 days and accept public comment.

Technical Team Review: The applications and public comments will be reviewed by a technical team which will score and rank projects, and make recommendations to the Commission. [Section 7 (2-3)].

Senate Bill 839 – Approval Process

Approval Process: The Commission will allow an additional opportunity for public comment, and then make the final decision on scoring, and awards of loans and grants [Section 7 (2-3)]. Projects must be approved by the Water Resources Commission [Section 3(2)]. Department will make all rankings and funding decisions publicly available [Section 7(5)].

Timing of Approval: The Commission is required to make the funding decisions **once** each year. Applications will be accepted year round, but a yearly deadline will be set to receive consideration for that grant cycle [Section 7(1)].

Senate Bill 839 – Evaluation of Projects

Public Benefits - Economic, environmental, and social/cultural benefits are given equal importance in the evaluation of the project [Section 8(1)].

Social/cultural and economic benefits - Project must provide social/cultural and economic benefits in a sufficient amount to qualify under the scoring and ranking system.

Environmental benefits - Project may dedicate 25 percent of the new increment of water to instream use, or by demonstrating environmental benefits to qualify under the scoring and ranking. [Section 11].

Senate Bill 839 – Evaluation of Projects

Funding Decisions: Funding decisions to be based on projects that have the greatest public benefit, and achieve the outcomes on next slide [Section 8(1)]. See public benefits in section 8(2).

Senate Bill 839 – Evaluation of Projects

Minimum Criteria: Scoring and ranking should include minimum criteria, which shall be based on the public benefits of the project and to achieve the following outcomes [Section 7(1) and 9(1)]:

- to only fund projects that provide public benefits in all three categories;
- give preference to partnerships and collaborative projects;
- fund projects of diverse sizes, types and geographic locations;
- give preference to projects that measurably improve streamflows if diverting water;
- and give preference to projects that measurable increase water efficiency, if the project proposes to do so

[Section 9(1)]

Senate Bill 839 – Protection of Water Instream

25% Instream Requirement – Applies to grants to new or expanded above-ground storage facilities that impound surface water on a perennial stream, divert water from a stream with listed species, or divert more than 500 af per year. Must provide 25 percent of the new increment of water for instream use. May include water dedicated as a result of conditions on federal, state or local permits [section 10].

May come from the new increment of water, or other sources, and may be put in other locations in the tributary, if would not injure existing water rights and provides greater or equal environmental benefits. Protected according to its priority. WRD with ODFW, to determine the timing of release to maximize instream benefits [Section 12].

Senate Bill 839 – Protection of Water Instream

25% Instream Requirement – Applies to grants to new or expanded above-ground storage facilities that impound surface water on a perennial stream, divert water from a stream with listed species, or divert more than 500 af per year.

Must provide 25 percent of the new increment of water for

Separate Requirement from SVF.

Not Addressed By SVF Task Force.

come from the new increment of water, or other sources, and may be put in other locations in the tributary, if would not injure existing water rights and provides greater or equal environmental benefits. Must be protected according to its priority. WRD with ODFW, will determine the timing of flows to maximize instream benefits [Section 12].

Senate Bill 839 – Seasonally Varying Flows

Definition: SVFs are the duration, timing, frequency, volume of flows, that must remain instream outside of the official irrigation season in order to protect and maintain the biological, ecological, and physical functions of the watershed downstream of the point of diversion, with regard for the need to balance functions against need for water [Section 1(2)]. Functions see Section 19(4). Economic considerations see Section 19(5).

SVFs are separate from the 25% Instream Requirement.

SVF = Bypass flows left instream while diverting for storage.
25% = Flows that must be diverted, stored, and released for instream benefit.

SVF Methodology addressed by SVF Task Force!

Senate Bill 839 – Seasonally Varying Flows

Applicability: Applies to project receiving grant or loan that requires a new water storage or aquifer recharge permit or license to store water outside the irrigation season, and impounds surface water on a perennial stream, diverts water from a stream with listed species, or diverts more than 500 af per year.

SVFs are separate from the 25% instream Requirement.

- **25% instream** applies to grants for new or expanded above-ground storage facilities.
- **SVF** applies to loan or grants for projects that require a new water storage or aquifer recharge permit or license to store water outside the irrigation season (above or below ground storage!)

Senate Bill 839 – Seasonally Varying Flows

Applicability: Applies to project receiving grant or loan that requires a new water storage or aquifer recharge permit or license to store water outside the irrigation season, and impounds surface water on a perennial stream, diverts water from a stream with listed species, or diverts more than 500 af per year.

Subsequent storage or aquifer recharge permits or limited licenses must be conditioned for the SVF if: project receives a SB 839 grant or loan, water stored outside the irrigation season, and has a diversion point subject to SVFs. [Section 13].

Senate Bill 839 – Seasonally Varying Flows

SVF Process: If the applicable SVFs have not been established, the Department must establish the flows in consultation with ODFW and affected Tribes, before issuing a grant or loan for the project.

Alteration of SVF and Conditions: Applicants can request that the SVF be altered based on new information. However, the Department must condition the new permit or license to protect the SVF that is in effect at the time the grant or loan is issued.

Effect on Water Availability Analysis: The SVFs do not alter other Department processes for determining water availability for a permit or license. [Section 13]

Senate Bill 839 – Reqs. for Approved Projects

Permitting and Fund Expenditures: Before loan or grant moneys are expended for project construction, all applicable local, state, and federal permits must be obtained. [Section 14]

Senate Bill 839 – Reqs. for Approved Projects

Department may:

- require the project to be completed and operated as described in the loan or grant application
- impose other project conditions
- require that before project operation, the recipient demonstrate that identified public benefits will be realized in a timely fashion.

Recipient must:

- Submit updates to the Department describing the work completed, public benefits achieved, and expenditures
- Measure and report water diverted and used from the project
- Monitor, evaluate and maintain the project for the life or the loan, or as specified for the grant and provide annual progress reports to the Department.

Funding can be terminated, reduced, or delayed upon failure to comply.

[Section 14]

Senate Bill 839 – Reqs. for Approved Projects

Standards for Borrowers:

- Commission to adopt rules establishing the standards for borrowers to ensure loans have high probability of repayment, and are adequately secured in case of default.
- Commission, DAS, and the State Treasurer's to be solicited
- The standards may require the applicant to enter into a loan contract, secured by a first lien or other collateral [Section 15].

Senate Bill 839 – Timelines

Timelines

Governance Task Force Report due July 1, 2014 [Section 18]

SVF Task Force report due July 1, 2014. [Section 19]

SVF Rules and Projects - Water Resources Commission to adopt SVF rules by Jan. 1, 2015 [Section 20]. Section 21, 25, 26 prohibit expending monies for certain projects until SVF rules are in place Jan. 1, 2015

Sunset Task Forces – Convening of 2016 Legislative Session [Section 22 and 23]

