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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 695
OREGON WATERSHED ENHANCEMENT BOARD

FILED

04/25/2024 3:29 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: OWEB Drinking Water Source Protection Grant Program Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/07/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Eric Hartstein
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/15/2024

TIME: 10:00 AM

OFFICER: Eric Hartstein

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-900-6833

CONFERENCE ID: 89877437377

SPECIAL INSTRUCTIONS:

Passcode: 024793

NEED FOR THE RULE(S)

HB 2010 (2023) established a drinking water source protection grant program to be administered by OWEB. The legislation requires OWEB to develop rules regarding the administration of the grant program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 2010 is located on the Oregon Legislative Information website here:

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2010>

The July 2023 OWEB Board meeting staff report which requested board authorization to initiate rulemaking for the Drinking Water Source Protection Grant Program is located here:

<https://www.oregon.gov/oweb/Documents/2023-Jul-ItemO-Initiate-Rulemaking.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rules are not expected to affect racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The proposed Drinking Water Source Protection Grant Program rules outline how a voluntary grant program will be administered. Property transactions to protect drinking water supported by the grant program involve willing sellers and buyers. The proposed rules are not expected to have a fiscal impact beyond the expenditure of grant funds in local communities.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) The Drinking Water Source Protection Grant Program may allow certain grantees to pay off loans early that are associated with Oregon's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. Paying loans off early would result in less revenue received by the State through interest payments and annual loan fees, which are used to help offset agency operating costs. However, there are positive economic benefits to units of local government and communities associated with the Drinking Water Source Protection Grant Program, including communities avoiding costs for drinking water treatment installation, developing alternative drinking water sources, operations and management costs associated with water treatment facilities, and outreach costs to address changes in public confidence due to potential pollutants in water supplies.

2) a) Small businesses as defined by ORS 183.310(10) do not include eligible applicants for OWEB grants. OWEB grantees may contract with small businesses to implement activities and work within the scope of the grant agreement, but the proposed rule revisions do not dictate any element of that contractual relationship. b) The reporting, record keeping, and administrative activities required by the rules are principally borne by program grantees that are voluntarily entering the program and are not defined as small businesses. c) Similar to section b, the cost of professional services, equipment, supplies, labor, and increased administration to comply with the rules will be borne principally by program grantees that are not defined as small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

As noted in "Cost of Compliance", the proposed rules will not impact small businesses. However, representatives from the conservation community, municipalities, and water suppliers participated on the Rules Advisory Committee. These entities often contract with small businesses through the implementation of OWEB grants and would understand if any proposed administrative rule revisions would impact small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

695-048-0010, 695-048-0020, 695-048-0030, 695-048-0040, 695-048-0050, 695-048-0060, 695-048-0070, 695-048-0080, 695-048-0090, 695-048-0100, 695-048-0110, 695-048-0120, 695-048-0130, 695-048-0140, 695-048-0150, 695-048-0160, 695-048-0170, 695-048-0180, 695-048-0190

ADOPT: 695-048-0010

RULE SUMMARY: Provides overview of the purpose of the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0010

Purpose

(1) These rules guide the Oregon Watershed Enhancement Board "OWEB" in administering the Drinking Water Source Protection Grant Program under the provisions of ORS 448.370-448.380. The program includes grants to Water Suppliers to protect, restore, or enhance sources of drinking water through: ¶

(a) The acquisition of lands from willing sellers; ¶

(b) Entering into covenants, easements, or similar agreements with willing landowners; or ¶

(c) Repaying a loan used to finance a Project as described in OAR 695-048-0010(1) or (2). ¶

(2) The program intent is that lands protected by this program will benefit a source of drinking water used by a Water Supplier. ¶

(3) This Chapter 695, Division 48 supplements the OWEB Grant Program rules under OAR Chapter 695, Division 5, which also apply to this program. Division 48 provides specific requirements for the OWEB Drinking Water Source Protection Grant Program. In any conflict between these requirements and requirements identified in OAR 695-005, the Drinking Water Source Protection Grant Program requirements in this division will take precedence.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

RULE SUMMARY: Provides definitions for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0020

Definitions

(1) "Community Drinking Water Enhancement and Protection Fund" is a fund established in the State Treasury for use by OWEB to carry out the purpose of ORS 448.370. ¶

(2) "Community Water System" means a Public Water System that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents as defined in OAR 333-061-0020(25). ¶

(3) "Conservation Easement" means a nonpossessory interest in real property that imposes limitations or affirmative obligations for the purposes of protecting, restoring, or enhancing lands where doing so will benefit a source of drinking water. ¶

(4) "Drinking Water Source Area" is an area delineated under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. This includes Drinking Water Protection Areas defined in OAR 333-061-0020(52) that are certified by Department of Environmental Quality or the Oregon Health Authority and drinking water source areas delineated by Tribes or by Environmental Protection Agency (EPA) for Tribal Public Water Systems. For a surface water-supplied drinking water source, the Drinking Water Source Area is a specifically determined part of a lake's, reservoir's, or stream's watershed that supplies water to the source. For a groundwater-supplied drinking water source, the Drinking Water Source Area is the surface area that directly overlies that part of the aquifer that supplies groundwater to a well, well field, or spring. ¶

(5) "Drinking Water Source Protection Grants" are funded with the Community Drinking Water Enhancement and Protection Fund and awarded by OWEB to Grantees to protect, restore, or enhance sources of drinking water. ¶

(6) "Grantee" means an applicant that enters into an agreement with OWEB to accomplish a Project. ¶

(7) "Holder" has the meaning given to it in ORS 271.715, other than a state agency. ¶

(8) "Long-Term Management Plan" means the planned future management and stewardship of the land for the benefit of drinking water pursuant to a Protective Instrument and that is intended to carry out the purposes of ORS 448.370 and is consistent with guidance established by OWEB. The term includes, but is not limited to, proposed restoration activities, strategies for monitoring, maintaining, managing, and improving the property, including providing signage, controlling access, enforcing use restrictions, and resolving violations. ¶

(9) "Non-Transient Non-Community Water System" means a Public Water System that regularly serves at least 25 of the same persons over 6 months per year as defined in OAR 333-061-0020(86). ¶

(10) "Notice of Grant Requirements" is a recorded document providing protection in perpetuity to Drinking Water Source Protection Grant Program investments in or on deeds conveying estates in fee simple absolute. ¶

(11) "Oregon Very Small Water System" means a Public Water System, which serves 4 to 14 service connections or that serves commercial or public premises which are used by 10 to 24 people at least 60 days per year as defined in OAR 333-061-0020(91). ¶

(12) "Partnership" means a collaboration between an eligible Water Supplier and a Holder that have agreed in writing to coordinating funding, expertise, materials, labor, or other assistance to a proposed Project. A Water Supplier may form a Partnership for the acquisition of any Protective Instrument. ¶

(13) "Profit" means a positive difference between the original purchase price for the Protective Instrument acquired with OWEB grant funds and a subsequent purchase price for a transfer of the Protective Instrument or an estate in fee simple absolute minus the owner's property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed. ¶

(14) "Project" means the aggregate of eligible activities included in OAR 695-048-0100 that comprise an application and are specific to parcels of land, all of which are essential to the protection, restoration, or enhancement of a drinking water source. ¶

(15) "Protective Instrument" means a legal document conveying an estate in fee simple absolute, granting a Conservation Easement, creating a real covenant, or an equitable servitude, or establishing similar agreements for the purposes of protecting, restoring, or enhancing lands where doing so will benefit a drinking water source. ¶

(16) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has three or more service connections used by year round residents, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day as defined in OAR 333-061-0020(109). A Public Water System is either a "Community Water System," a "Transient Non-Community Water System," a "Non-Transient Non-Community Water System," or an "Oregon Very Small Water System". ¶

(17) "Source Water Assessment" is an assessment completed under the source water assessment program of the

federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. This includes Source Water Assessments defined in OAR 333-061-0020(127) that are completed by Department of Environmental Quality or the Oregon Health Authority and Source Water Assessments completed by Tribes or by Environmental Protection Agency (EPA) for Tribal Public Water Systems. Source Water Assessments include delineation of the Drinking Water Source Area and an inventory and susceptibility analyses of the drinking water source. ¶

(18) "Transient Non-Community Water System" means a Public Water System that serves a transient population of 25 or more persons as defined in OAR 333-061-0020(139). ¶

(19) "Water Supplier" means any person, group of persons, municipality, district, corporation, or entity that owns or operates a Water System as defined in ORS 448.115. ¶

(20) "Water System" means a system for the provision of water for human consumption through pipes or other constructed conveyances as defined in ORS 448.115.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0030

RULE SUMMARY: Provides information on protective instruments associated with the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0030

Protective Instrument Requirements

(1) A Protective Instrument accomplishing the protection, restoration, or enhancement of land for the benefit of a drinking water source, other than a deed conveying an estate in fee simple absolute, acquired with funds awarded in a Drinking Water Source Protection Grant shall include: ¶

(a) A legal description of the land subject to the Protective Instrument acquired; ¶

(b) The objectives of the grant and terms demonstrating how the Protective Instrument will meet those objectives; ¶

(c) Specific obligations of the Grantee including, but not limited to: ¶

(A) A requirement that the Grantee will monitor the property, at least annually, and enforce the terms in the Protective Instrument; ¶

(B) A requirement that the Grantee will repay the grant funds to OWEB if Grantee fails to enforce the terms of the Protective Instrument; ¶

(C) A covenant that the Grantee will not modify, assign, transfer, or convey the Protective Instrument without the consent of OWEB and, if applicable, the Department of Administrative Services; ¶

(D) Terms that provide for the obligations to run with the land and bind any successor in interest or permitted assignee; and ¶

(d) A requirement that OWEB and its designees will be provided sufficient legal access to the land protected, restored, or enhanced for the benefit of a drinking water source accomplished by the Protective Instrument acquired with Drinking Water Source Protection Grants, given reasonable notice, for the purpose of compliance inspections. ¶

(e) The duration of the protection of land for the benefit of a drinking water source accomplished by the Protective Instrument: ¶

(A) A Conservation Easement shall last in perpetuity. ¶

(B) The duration of the protection of land for the benefit of a drinking water source accomplished by anyt other Protective Instrument, other than a deed conveying an estate in fee simple absolute, may last for a term unlimited in duration unless the instrument creating it otherwise provides. A real covenant term shall be set at 12-month increments only and not partial years. ¶

(2) If the Project includes a Partnership with a Holder, and the Grantee will not hold the Protective Instrument, the Holder will be required to execute any Protective Instrument so that it meets the requirements in OAR 695-048-0030(1)(a)-(e). ¶

(3) If a Grantee, or a Holder in Partnership with the Grantee, acquires an estate in fee simple absolute, the Grantee or the Holder, shall record on title a Notice of Grant Requirements that includes OAR 695-048-0030(1)(a)-(e).

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0040

RULE SUMMARY: Provides information on applicant eligibility for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0040

Eligible Applicants

(1) Eligible applicants include Water Suppliers with service populations at or below 25,000 users. Applicants described in OAR 695-005-0040(2) are not eligible for Drinking Water Source Protection Grants unless they otherwise qualify as Water Suppliers. ¶

(2) Eligible Water Suppliers may form Partnerships with eligible Holders.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0050

RULE SUMMARY: Provides information on eligible properties for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0050

Eligible Properties

(1) Eligible properties for Drinking Water Source Protection Grants are lands for which the acquisition of a Protective Instrument will result in the protection, restoration, or enhancement of those lands for the benefit a drinking water source used by the Water Supplier. ¶

(2) Eligible properties must be partially or fully within a delineated Drinking Water Source Area.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0060

RULE SUMMARY: Provides information on eligible water systems for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0060

Eligible Systems

(1) Eligible Public Water Systems include: ¶

(a) Community Water Systems owned by a non-profit Water Supplier; ¶

(b) Transient Non-Community Water Systems owned by a non-profit Water Supplier; ¶

(c) Non-Transient Non-Community Water Systems owned by a non-profit Water Supplier; ¶

(d) Oregon Very Small Water Systems owned by a non-profit Water Supplier; and ¶

(e) Tribal Public Water Systems. ¶

(2) The following Water Systems are ineligible for Drinking Water Source Protection Grants: ¶

(a) Federally owned Water Systems; ¶

(b) State owned Water Systems; and ¶

(c) Water Systems operated for profit.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0070

RULE SUMMARY: Provides information on the maximum grant amount in the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0070

Maximum Grant Amount

The maximum available award for a Drinking Water Source Protection Grant is \$3,000,000.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0080

RULE SUMMARY: Provides information on matching contributions to the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0080

Matching Contributions

(1) Notwithstanding anything to the contrary in OAR Chapter 695, Division 5, a grant recipient shall provide at least five percent of the total Board Grant request as a match. Match contributions must be from non-OWEB sources. ¶

(2) The following funds and activities qualify as match: ¶

(a) In-kind contributions to activities listed under OAR 695-048-0100; ¶

(b) Funding commitments made by others as a result of grant applicant efforts; ¶

(c) The forgiven portion of a loan that was used to acquire the Protective Instrument; ¶

(d) Interest paid on a loan that was used to acquire the Protective Instrument; and ¶

(e) A donated portion of a sale. ¶

(3) Match contributions qualify if they were incurred no earlier than 18 months before the applicable Drinking Water Source Protection Grant application deadline. ¶

(4) The Director retains the discretion to determine whether specific proposed match contributions not specifically identified in OAR 695-048-0080(2)(a)-(e) can be recognized as qualifying match.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

RULE SUMMARY: Describes the application requirements for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0090

Application Requirements

- (1) In accordance with ORS 448.370, OWEB will accept on a regular basis Drinking Water Source Protection Grant applications for the acquisitions of Protective Instruments that lead to the protection, restoration, or enhancement of drinking water sources. ¶
 - (2) If a Water Supplier has formed or proposes to form a Partnership with a Holder, the application must include, at a minimum, the following information about the Partnership: ¶
 - (a) A description of Partnership resources to assist with the long-term protection, restoration, or enhancement of drinking water sources. ¶
 - (b) Whether the Partnership's mission supports the protection or restoration of natural resources and/or drinking water. ¶
 - (c) Documentation of a formal commitment between Water Supplier and Holder. ¶
 - (3) The application must include an ordinance, order, or resolution by the applicant's governing body authorizing the applicant to fulfill the obligations proposed in the applicant's grant application. ¶
 - (4) The application must describe the timeline for acquiring the Protective Instrument within the period established by OWEB. ¶
 - (5) If the applicant is requesting loan repayment, then the application must include the fully executed loan agreement if in place or a draft of the agreement if the loan is not yet incurred. ¶
 - (6) The application must include a demonstration of Water System and/or well ownership and authority to use the water (i.e., holds pertinent water right or has legal access to pertinent water right). ¶
 - (7) The application must show property proximity to drinking water intake and/or wells and confirmation of location fully or partially within a Drinking Water Source Area. ¶
 - (8) Applicants must provide the Source Water Assessment of the Drinking Water Source Area and explain how the proposed Project will address the risk(s) identified in the Source Water Assessment, including: ¶
 - (a) A description of land uses or activities that potentially result in pollution and may pose significant threat to water quality. ¶
 - (b) A description of which pollutant(s) will be addressed. ¶
 - (c) A description of how the protection, restoration, or enhancement of lands accomplished by the proposed Protective Instrument will reduce risk or pollutant load to the drinking water source. ¶
 - (d) A map of the proximity of the land parcel and potential sources of pollution to sensitive areas for the drinking water source. ¶
 - (e) For groundwater-supplied Drinking Water Source Areas, a description of the hydrologic or soil characteristics of the source area that potentially allow the transport of contaminants to the well. ¶
 - (9) For Projects that provide water quantity benefits to a Drinking Water Source Area, the application must describe how the proposed Protective Instrument will protect or restore water storage capacity and/or baseflow for the drinking water source. ¶
 - (10) Applications must include a description of community characteristics of the population served by the Water Supplier, including information about the following: ¶
 - (a) Whether there are seasonal variations in the number of users and the impacts that has on the Water System; ¶
 - (b) Whether drought or low water supply has impacted the Water System; and ¶
 - (c) Information that demonstrates whether the Water Supplier is economically distressed due to: ¶
 - (A) Small population size; ¶
 - (B) The population served by the Water Supplier is lower income; or ¶
 - (C) The Water Supplier serves a rural community. ¶
 - (11) If a Conservation Easement or an estate in fee simple absolute transaction is not proposed, the applications must explain the reasoning for the Protective Instrument proposed and the reasoning for the Project duration if less than perpetual. ¶
 - (12) Applications must include documentation of an existing Long-Term Management Plan or the intent to develop a Long-Term Management Plan that incorporates measures targeted at maintaining or enhancing drinking water quality and/or quantity. If a Long-Term Management Plan does not exist or is not proposed, justification and rationale must be provided about why a Long-Term Management Plan is not necessary given the type of Protective Instrument proposed.
- Statutory/Other Authority: ORS 448.370(7)
Statutes/Other Implemented: ORS 448.370 - 448.380

RULE SUMMARY: Describes the use of grant funds for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0100

Use of Grant Funds

Funding for the Community Drinking Water Enhancement and Protection Fund comes from the General Fund and from Lottery Revenue Bonds. Eligible costs for each fund source are specified in this section. Lottery Revenue Bonds shall not be used for loan repayment. ¶

(1) Drinking Water Source Protection Grants may be applied towards costs related to: ¶

(a) Acquiring lands from willing sellers for the purposes in ORS 448.370; ¶

(b) Entering into real covenants, Conservation Easements, or similar agreements for the purposes of ORS 448.370, which are defined as Protective Instruments in these rules; and ¶

(c) Repaying a loan used to finance a Project to protect, restore, or enhance lands consistent with OAR 695-048-0100(1)(a) or (b). If a Project involves the payoff of a Grantee's loan used to finance the acquisition of a Protective Instrument, and the loan is forgivable in part, the Grantee cannot be reimbursed by OWEB for the forgiven portion of the loan. ¶

(2) Use of Lottery Revenue Bond funds deposited into the Community Drinking Water Enhancement and Protection Fund may only be applied to a Project for acquisition of Protective Instruments that include the protection, restoration, or enhancement of lands for the benefit of drinking water source accomplished through the following: an estate in fee simple absolute, Conservation Easement, or other legal agreements drafted to run with the land and survive in perpetuity. ¶

(3) Eligible costs for Projects under OAR 695-048-0100(1)(a) or (b) that are funded with Lottery Revenue Bonds deposited into the Community Drinking Water Enhancement and Protection Fund must be only "capital expenditures" for federal income tax purposes as defined by 26 C.F.R. § 1.150-1(b). This term includes both capitalized and capitalizable expenditures. Eligible costs include: ¶

(a) The purchase price associated with the Protective Instrument. ¶

(A) The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice for an estate in fee simple absolute and Conservation Easement acquisitions. ¶

(B) Other methods of substantiating the purchase price conducted by an independent third-party entity may be accepted at the discretion of OWEB for all other Protective Instruments. ¶

(b) The staff and contractor costs incurred as part of the acquisition process related to the Protective Instrument. Staff and contractor costs (labor hours) must be documented and tracked to the Project and capitalizable to the asset. ¶

(c) The cost of due diligence activities associated with acquisition of the Protective Instrument after the specific property has been identified and that are capitalizable to the asset, including appraisal or other method of substantiating the purchase price, environmental site assessment, survey, title review, consultant fees, and other customary due diligence activities. ¶

(d) The cost of baseline inventory preparation documenting the natural and human characteristics and conditions of the specific property at the time of acquisition. The cost of the baseline inventory must be capitalizable to the asset. ¶

(e) Discrete legal costs incurred by the Water Supplier that are specific to the acquisition of the asset, and capitalizable to the asset. Legal costs (labor hours) must be documented and tracked. General in-house legal costs that are related to the overall management or policy of the entity are not eligible. ¶

(f) Closing fees, including recording and title insurance costs. Pre-payments, such as those that fund the escrow account for insurance, taxes, or interest payments, are not eligible. ¶

(g) For the costs in OAR 695-048-0100(3)(a)-(f) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 60 days prior to the issuance of the Lottery Revenue Bonds. ¶

(4) Eligible costs for Projects under OAR 695-048-0100(1)(a)-(c) that are funded with General Funds deposited into the Community Drinking Water Enhancement and Protection Fund include: ¶

(a) The purchase price associated with the Protective Instrument. ¶

(A) The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including but not limited to the Uniform Standards of Professional Appraisal Practice for an estate in fee simple absolute and Conservation Easement acquisitions. ¶

(B) Other methods of substantiating the purchase price conducted by an independent third-party entity may be accepted at the discretion of OWEB for all other Protective Instruments ¶

(b) The interest on bridge loans needed to close on the Protective Instrument prior to when funding will be

available for distribution through the program. ¶

(c) The staff and contractor costs incurred as part of the Protective Instrument acquisition process related to the property. ¶

(d) The cost of due diligence activities, including appraisal or other method of substantiating the purchase price, environmental site assessment, survey, title review, consultant fees, and other customary due diligence activities. ¶

(e) The cost of baseline inventory preparation documenting the natural and human characteristics and conditions of the specific property at the time of the acquisition of the Protective Instrument. ¶

(f) The legal fees incurred by the Water Supplier related to the Project. General in-house legal costs that are related to the overall management or policy of the entity are not eligible. ¶

(g) The closing fees, including recording and title insurance costs. ¶

(h) The cost of developing a Long-Term Management Plan to meet program requirements. ¶

(i) Indirect costs of the Grantee, dependent on available funding. ¶

(j) For the costs in OAR 695-048-0100(4)(a)-(i) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 18 months before the applicable Drinking Water Source Protection Grant application deadline.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

RULE SUMMARY: Describes the evaluation criteria for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0110

Evaluation Criteria

Drinking Water Source Protection Grant applications shall be evaluated on the following criteria: ¶

(1) Significance of the acquisition of the Protective Instrument to the protection, restoration, or enhancement of drinking water sources with respect to sensitive areas, potential pollutants, and potential sources of pollution identified in the Source Water Assessment for the Drinking Water Source Area. ¶

(2) The capacity and experience of the applicant and, if a Partnership is proposed, the Holder, to achieve the ongoing management and stewardship of the Protective Instrument, and the property if applicable, as the long-term owner. ¶

(3) The strength of the technical, legal, and financial aspects of the real estate transaction. ¶

(4) Project readiness, including, but not limited to, the capacity of the parties engaged in the Project to complete acquisition transaction and due diligence steps within OWEB established timelines, and quality of due diligence information provided by the applicant. ¶

(5) The Climate-Related Evaluation Criteria described in OAR 695-005-0045. ¶

(6) For applicants that form Partnerships with eligible Holders: ¶

(a) Demonstrated capacity and resources for long-term protection, restoration, or enhancement of drinking water sources. ¶

(b) A Partnership mission that is in support of protection or restoration of natural resources and/or drinking water. ¶

(c) A clearly defined and documented Partnership including respective roles and responsibilities. ¶

(7) The impacts of at least one of the following limiting factors on the Water System that will benefit from the proposed project: ¶

(a) The extent to which seasonal variations in the number of users is affecting the Water System; ¶

(b) The extent to which drought or low water supply is affecting the Water System; or ¶

(c) The extent of risks to water quality. ¶

(8) The Water Supplier is economically distressed due to a small population size, the population served is lower income, or the population served is rural. ¶

(9) The duration and type of the Protective Instrument, with a preference for longer term agreements. ¶

(10) Implementation of a Long-Term Management Plan or the intent to develop a Long-Term Management Plan that incorporates measures targeted at maintaining or enhancing drinking water quality and/or quantity. If the acquisition is for a Protective Instrument other than one accomplishing the conveyance of an estate in fee simple absolute or granting of a Conservation Easement and a Long-Term Management Plan is not proposed, the strength of the required justification and rationale about why a Long-Term Management Plan is not necessary given the type of Protective Instrument proposed. ¶

(11) The degree and urgency of risk to the land and the associated Drinking Water Source Area if the proposed protection, restoration, or enhancement of lands for the benefit of drinking water accomplished by the proposed Protective Instrument is not implemented.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0120

RULE SUMMARY: Provides information on applications submitted in the first application cycle of the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0120

First Grant Solicitation Cycle

For applications submitted during the first grant solicitation cycle of the Drinking Water Source Protection Grant Program, Matching Contributions (OAR 695-048-0080), Use of Grant Funds (OAR 695-048-0100), and Evaluation Criteria (OAR 695-048-0110) are modified in the following respects (collectively, the "First Cycle Modifications"): ¶

(1) Loan repayment and associated eligible costs are eligible activities that can be funded by General Funds for transactions that have closed no more than 60 months before the applicable Drinking Water Source Protection Grant application deadline. ¶

(2) Eligible match for Projects described in OAR 695-048-0100(1)(a)-(c) can date back to 60 months before the applicable Drinking Water Source Protection Grant application deadline. ¶

(3) A third-party demonstration of market value of the Protective Instrument is not required. ¶

(4) OWEB retains discretion to not apply some evaluation criteria in OAR 695-048-0110 to applications submitted for loan repayment during the first grant solicitation cycle. ¶

(5) The First Cycle Modifications do not apply to any grant cycle other than the program's initial grant cycle.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0130

RULE SUMMARY: Provides information on grant agreement conditions associated with the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0130

Grant Agreement Conditions

Upon Board approval of a Grant, the Board shall enter into a grant agreement with the Grantee that shall include conditions as the Board deems appropriate to the particular circumstances of the Project, including but not limited to: ¶

(1) The Grantee agrees to develop a Long-Term Management Plan if deemed appropriate and necessary by the Board. In all cases for estates in fee simple absolute, that includes, but is not limited to the stewardship, monitoring, and uses of the property intended to carry out the purposes of ORS 448.370, developed in accordance with Long-Term Management Plan content described in the grant agreement with OWEB. ¶

(2) OWEB review and approval of the Partnership agreement between the Grantee and the Holder. ¶

(3) Subsequent conveyances requirements per OAR 695-048-0180.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0140

RULE SUMMARY: Provides information on board approval and delegation of authority process for the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0140

Board Approval and Delegation of Authority

(1) The Board shall approve grants in accordance with this OAR Chapter 695, Division 48. The Director is delegated all necessary authority to ensure that funding conditions required by the Board are fully satisfied by the Grantee. ¶

(2) Other than provided for in OAR 695-048-0160(3), conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, unless a time extension is approved by the Board.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0150

RULE SUMMARY: Provides information on the process for the public to comment on grant applications associated with the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0150

Public Comment on Grant Applications

OWEB shall provide the public with meaningful opportunities to comment on grant applications being considered by the Board. In a manner consistent with this requirement, OWEB will provide written notice to the governing bodies of cities and counties with jurisdiction in the area of the proposed Protective Instrument, as well as affected governmental agencies and Tribes, of the Board's intent to consider: ¶

(1) Written comments received by OWEB prior to the Board meeting at which the Board will consider the application; ¶

(2) Comments made at public hearings held by the applicant in accordance with ORS 271.735; and ¶

(3) Comments made at the Board meeting at which the grant application is considered.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0160

RULE SUMMARY: Provides information related to the distribution of grant funds in the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0160

Distribution of Funds

(1) The Director may approve the distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and transaction closing as the following conditions are met: ¶

(a) A grant agreement is executed by the Director and the Grantee; ¶

(b) The funding conditions applicable to the allowable cost, if any, imposed by the Board are satisfied to the full satisfaction of the Director; ¶

(c) The legal and financial terms of the proposed real estate transaction are approved by the Director; ¶

(d) The Protective Instrument and any required title restrictions are approved by the Director; ¶

(e) The Director has reconciled conditionally approved funding with actual Project costs; and ¶

(f) The Grantee has satisfied the match requirements under OAR 695-048-0080. ¶

(2) For grants established under these rules, the Director is authorized to reimburse the Grantee for allowable costs as identified in OAR 695-048-0100. Costs incurred in a Project by a Holder may be reimbursed if they have a Partnership established with the Grantee and reimbursements are requested through the Grantee. ¶

(3) Notwithstanding OAR 695-048-0160(1)(c)-(f), funds may be distributed prior to transaction closing for staff costs and due diligence activities specified in OAR 695-048-0100 and included in the application budget.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0170

RULE SUMMARY: Provides compliance and enforcement information on grants issued through the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0170

Compliance and Enforcement

(1) The ongoing use of the land addressed in the Protective Instrument acquired with Drinking Water Source Protection Grants shall be consistent with the purposes specified in ORS 448.370. OWEB may initiate any and all legal remedies available to OWEB to address compliance issues, including but not limited to recovery of the OWEB grant funds used to purchase the Protective Instrument, and reasonable interest and penalties at the option of the Director. ¶

(2) A Grantee is responsible for fulfilling the terms and conditions of any agreement: ¶

(a) Between the Grantee and the Board; ¶

(b) Between the Grantee and a landowner, or other person or entity, necessary for the Grantee to carry out the Project for which a grant has been awarded; and ¶

(c) If a Partnership is proposed, between the Grantee and the Holder. ¶

(3) OWEB and the Board are not liable to any landowner, person, or entity for the failure of a Grantee to fulfill the terms or conditions of any agreement between the person or entity and the Grantee.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0180

RULE SUMMARY: Provides information on subsequent conveyances on projects associated with the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0180

Subsequent Conveyances

Any subsequent conveyance of an estate in fee simple absolute, assignment or modification of a Conservation Easement, transfer, assignment or modification of a real covenant, equitable servitude, or other agreement established for the purposes of protecting, restoring, or enhancing lands for the benefit of a drinking water source accomplished through a Protective Instrument acquired with Community Drinking Water Enhancement and Protection Fund monies must: ¶

(1) Comply with the requirements of ORS 541.960 as applicable; be made subject to Board approval and, if applicable, Department of Administrative Services approval; and ensure that the modification, transfer, conveyance, or assignment shall not result in a Profit; ¶

(2) For an estate in fee simple absolute and Conservation Easements, be transferred, conveyed, or assigned only to eligible applicants or eligible Holders; and ¶

(3) Comply with the requirements of ORS 448.370 and OAR Chapter 695, Division 48.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380

ADOPT: 695-048-0190

RULE SUMMARY: Describes the process for rule waivers in the Drinking Water Source Protection Grant Program.

CHANGES TO RULE:

695-048-0190

Waiver of Rules

The Director may waive the requirements of Chapter 695, Division 48 for individual grant applications unless required by statute, when doing so will result in more efficient or effective implementation of the Drinking Water Source Protection Grant Program. Any waiver must be in writing and included in the grant file to which the waiver applies.

Statutory/Other Authority: ORS 448.370(7)

Statutes/Other Implemented: ORS 448.370 - 448.380