



*Agenda Item M supports OWEB's Strategic Plan priority #7: Bold and innovative actions to achieve health in Oregon's watersheds.*

## MEMORANDUM

**TO:** Oregon Watershed Enhancement Board  
**FROM:** Jillian McCarthy, Partnerships Coordinator  
Eric Williams, Grant Program Manager  
**SUBJECT:** Agenda Item M – Water Acquisition Grants Administrative Rules  
April 21-22, 2020 Board Meeting

### I. Introduction

This report requests board approval of proposed administrative rules for OWEB's Water Acquisition grant program (Division 46)

### II. Background

Water Acquisitions grants are a fundamental OWEB grant offering, providing important resources that assist grantees in acquiring an interest(s) in water from a willing seller for the purpose of increasing instream flow in order to address the conservation needs of habitats and species and/or to improve water quality.

At the July 2019 meeting, the board authorized staff to initiate rulemaking for Water Acquisition grants. The rules were last updated in 2013. A rules advisory committee (RAC) was established to assist OWEB staff in developing Water Acquisition administrative rules. A list of RAC members is found in Attachment A.

The RAC convened on four occasions between September and December 2019, reviewing each section of the current rule and recommending changes where there was consensus to do so.

### III. Summary of Proposed Changes

In addition to technical changes and new definitions, the following changes are included in the proposed rules:

- Eligible water acquisition projects are expanded to include those that address conservation needs as determined by Oregon Department of Fish and Wildlife.
- The monetary interest on bridge loans is an eligible use of grant funds.
- Evaluation criteria are expanded to include ecological outcomes, cost effectiveness, watershed context, and organizational capacity considerations.
- Public involvement includes public hearings held on grant applications seeking funding for permanent instream transfers.

#### **IV. Comment on Proposed Water Acquisition Grant Administrative Rules**

OWEB released draft rules for public comment on February 1, 2020. The public comment period was open from February 1 – March 1, 2020 with a public hearing in Salem on February 26<sup>th</sup>. A summary of the comments, and OWEB staff response, are provided in Attachment B. The three written comments that were received during the public comment period are provided in Attachment C. There were no attendees at the public hearing.

OWEB solicited tribal comments from the nine federally recognized tribes in Oregon and the Nez Perce Tribe on the draft rules amendments on February 3, 2020. No tribal comments were received.

The rules are provided as Attachments D-1 and D-2 to the staff report. During the board meeting, staff will walk through changes with the board. At the April meeting, the board may only receive public comment on the revisions to the proposed rules that have occurred since the close of the public comment period.

#### **V. Recommendation**

Staff recommend the board approve Water Acquisition grant administrative rules found in Attachment D.

#### **Attachments**

- A. Rules Advisory Committee Members
- B. Staff Summary and Response to Public Comments
- C. Public Comments
- D-1. Proposed Monitoring Grants Rules – Redline
- D-2. Proposed Monitoring Grants Rules - Clean

**2019-2020 Water Acquisition Grants Rules Advisory Committee**

<b>Name</b>	<b>Affiliation</b>
Danette Faucera	Oregon Dept. of Fish and Wildlife
Lisa Jaramillo	Oregon Water Resources Dept
Kacy Markowitz	National Fish and Wildlife Foundation
Spencer Sawaske	The Freshwater Trust
April Snell	Oregon Water Resources Congress
Chrysten Lambert	Trout Unlimited
Natasha Bellis	Deschutes River Conservancy
Shilah Olson	Wasco Soil and Water Conservation District
Anton Chiono	Confederated Tribes of the Umatilla Indian Reservation
Caylin Barter	Jordan Ramis PC

**OWEB Staff**

Eric Williams  
Jillian McCarthy  
Eric Hartstein

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

### Rules: 695-046-0010, Purpose

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Recommends adding language to clarify that water acquisition grants must result in legally protected water instream.	OWEB will clarify the purpose statement to include legally protected instream flow.	Yes
	Recommends adding language to clarify that a purpose of the grant program is to maintain or restore streamflows.	OWEB will clarify the purpose statement to include maintaining or restoring streamflows.	Yes

### Rules: 695-046-0020, Definitions

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Recommends adding a definition for a “Conserved Water Project”.	OWEB concurs.	Yes

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

### Rules: 695-046-0020(5), Definitions

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Recommends changing the definition of “Protected Instream Flow” to, “Legally Protected Instream Flow”.	OWEB concurs.	Yes
	Recommends providing new language for the definition of “Legally Protected Instream Flow” to clarify that legally protected instream flow include only the instream flow that is protectable under Oregon law through mechanisms administered by Oregon Department of Water Resources.	OWEB considers all of the transaction types listed in the definition of “Water Acquisition Project” to result in legally protected instream flow, through either State enforcement mechanisms or legally enforceable water use agreements.	No

### Rules: 695-046-0020(7), Definitions

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Concerned that definition of “Technical Review Team” is too vague and broad. Suggests limiting to experts from relevant state agencies, tribes, and NGOs that have as a mission restoring and protecting streamflows.	The proposed definition of “Technical Review Team” align with other OWEB grant program definitions of review teams. OWEB does not want to be overly prescriptive on this definition, as certain entities may have expertise on water acquisition grants that would be valuable to incorporate into a review team.	No

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

### Rules: 695-046-0020(9), Definitions

Commenter(s)	Comments	Response	Rule Change
<p>Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon</p>	<p>Concerned that proposed definition of “Water Acquisition Project” does not contain reference to “legally” protected instream flow and will not ensure that water is legally protected instream under Oregon law. Recommends adding “legally” in front of “protected instream flow”.</p>	<p>OWEB concurs with including “legally” before “protected instream flow in the definition of “Water Acquisition Project”.</p>	<p>Yes</p>
	<p>Recommends deleting language referring to Water Use Agreements.</p>	<p>OWEB considers all of the transaction types listed in the definition of “Water Acquisition Project” to result in legally protected instream flow, through either State enforcement mechanisms or legally enforceable water use agreements, and will retain Water Use Agreements in the definition.</p>	<p>No</p>
	<p>Recommends adding “flow augmentation secondary rights from storage” as a type of water acquisition project.</p>	<p>Unlike traditional leases and transfers that result in an instream water right, flow augmentation rights require a diversion or other control of the water in order for the water to benefit instream flow. Flow augmentation rights can be stored in a reservoir and later released for instream benefits, or they could be diverted from one source and then re-diverted to another stream for instream benefits. Flow augmentation rights may be held by an individual or an organization instead of OWRD. Because these rights are typically junior, without an agreement among downstream water right holders, there is little assurance that water from a secondary</p>	<p>No</p>

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

		<p>augmentation right from storage would remain instream. Due to the lack of assurance, OWEB will not add “flow augmentation secondary rights from storage” to the definition of Water Acquisition Project; however, OWEB may consider flow augmentation secondary rights from storage as a mechanism included in a water use agreement that will result in legally protected instream flow.</p>	
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### Rules: 695-046-0020(10)

Commenter(s)	Comments	Response	Rule Change
<p>Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon</p>	<p>Suggests deleting the definition of “Water Use Agreement” as the State cannot enforce or regulate water that is kept instream pursuant to private agreements.</p> <p>Suggests that if “Water Use Agreements” is retained in the rules, that it is limited to projects where the</p>	<p>OWEB considers all of the transaction types listed in the definition of “Water Acquisition Project” to result in legally protected instream flow, through either State enforcement mechanisms or legally enforceable water use agreements and proposes to retain the definition of “Water Use Agreements. Non-state regulated agreements, like forbearance and minimum flow agreements, allow for creative approaches to water allocation issues and are often used as an initial way to engage a landowner that could lead to an OWRD-regulated agreement over time. Oregon water law currently restricts split-season water transactions to 1-5 years (renewable for up to 10), this leaves water users with very few long-term options to maintain the integrity of working lands and improve instream condition.</p>	<p>No</p> <p>No</p>

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

	<p>applicant can prove water will be protected instream in the same way a legal transfer or lease would be.</p> <p>Suggests that the applicant for a project involving a Water Use Agreement be a tribe, ODFW, or a 501(c)(3) nonprofit with a mission of protecting and restoring streamflows.</p>	<p>While OWRD does not regulate and enforce these types of agreements, OWEB grant agreements include conditions for monitoring that are appropriate for the transaction type, and payments to the water right holder are contingent upon documentation that the terms of the private agreement have been met.</p> <p>Applicants for this grant program are traditionally Qualified Local Entities (QLEs) designated through the National Fish and Wildlife Foundation’s Columbia Basin Water Transaction Program. Applicants who are not QLEs or who are outside of the Columbia Basin must demonstrate, through their grant application, that they possess the capacity and experience to complete the proposed water transaction and manage it over time. 501(c)(3) nonprofit organizations with a mission of protecting and restoring streamflows are the primary applicant; however, tribes, special districts, counties, and cities are eligible to apply. OWEB does not want to be overly restrictive on applicant eligibility.</p>	<p>No</p>
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### Rules: 695-046-0035(1), Eligibility

Commenter(s)	Comments	Response	Rule Change
<p>Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon</p>	<p>Proposes inserting word “legally” before “protected instream flows” and replacing the term “lead to” with “result in”.</p>	<p>OWEB concurs.</p>	<p>Yes</p>



## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

### Rules: 695-046-0035(2), Eligibility

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Proposes deleting as it is a circular reference to OAR 695-046-0035(1).	OWEB concurs.	Yes

### Rules: 695-046-0185, Use of Grant Funds

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Suggests removing provision that “legal fees” of a grantee may be an appropriate use of grant funds as it may encourage water speculation. Non-profits dedicated to restoring instream flows can capture necessary costs through the “customary due diligence activities” provision in the proposed rules.	OWEB concurs.	Yes

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

### Rules: 695-046-0196(1)(e), Evaluation Criteria

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Suggests changing “or” at end of sentence to “and”.	OWEB concurs.	Yes

### Rules: 695-046-0196(3)(d), Evaluation Criteria

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Recommends deleting this section of the proposed rule, as many restoration and protection opportunities fall outside of designated collaboratives.	OWEB concurs.	Yes

### Rules: 695-046-0195, Coordinating and Partnering with Other Funders

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Suggests including language to ensure that coordination is limited to projects that result in “legally” protected water instream.	OWEB concurs.	Yes

### Rules: 695-046-0196, Evaluation Criteria

Commenter(s)	Comments	Response	Rule Change
Craig Horrell, President, Deschutes Basin Board of Control	Recommends adding new section to proposed rules, requiring grant applicants to obtain written consent from irrigation districts potentially impacted by a water acquisition grant.	There is a legitimate concern that an irrigation district could be impacted by the lease or transfer of water rights that are privately held, but within the boundary of the district. Because not all of these transactions would require irrigation district consent, staff have amended the language in	Yes

## Summary of Public Comments: Water Acquisition Grants Rules (Division 46)

		Proposed OAR 695-046-0035, "Eligibility" to require notification of the irrigation district if the water rights involved in a proposed transaction are within the boundary of an irrigation district.	
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### Rules: 695-046-0200, Application Evaluation Process

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst, WaterWatch of Oregon	Suggests that this proposed rule contain a public notice and comment period as part of the application evaluation process. Specifically, proposes an opportunity for public comment on the technical review team review before staff make a recommendation to the board.	OWEB intends on including an opportunity for public comment for grant applications seeking funding for permanent water transactions. Accordingly, staff have amended the language in proposed OAR 695-046-0205, "Public Involvement". Public comment on proposed permanent water transactions would be incorporated into the application evaluation that would be provided to the board.	Yes

### Rule: General Comments

Commenter(s)	Comments	Response	Rule Change
Keith Jordan	Expresses concern over depleted aquifer in Harney County leading to water quality issues near Burns. Suggests looking at number of irrigation pivots in area as a potential cause of water quality issues.	OWEB understands the groundwater issue in Harney County, and is involved in identifying solutions to the problem. However, the focus of the water acquisition grant program is surface water.	No



**WaterWatch of Oregon**  
**Protecting Natural Flows In Oregon Rivers**

March 2, 2020

Eric Hartstein, Rules Coordinator  
 Oregon Watershed Enhancement Board  
 775 Summer St NE, Suite 360  
 Salem, OR 97301

Re: Comments Chapter 695, Revisions to OWEB Water Acquisition Grant Program Rules

Dear Mr. Hartstein,

Thank you for the opportunity to comment on the proposed rule changes to OWEB's Water Acquisition Grant Program Rules.

WaterWatch is a river conservation group that is dedicated to restoring and protecting streamflows statewide. As a general matter, we are supportive of state grants that result in legally protected water instream. That said, we do have some concerns with the rules as drafted. Comments will follow the ordering of the rules.

OAD 695-046-0010 Purpose of OWEB's Water Acquisition Grant Program: We would suggest that this section be amended to clarify that the water acquisition program must result in legally protected water instream. As is, the purpose is limited to acquiring from willing sellers interests in water for the purpose of maintaining or restoring watersheds and habitats for native fish or wildlife, without actually stating that the interest acquired must be water rights that can be legally protected instream.

Suggested amendment (in underline): OWEB may consider grant applications that propose to acquire from willing sellers legally protectable water rights for the purposes of maintaining or restoring streamflows, watersheds and habitats for native fish or wildlife.

OAD 695-046-0020 Definitions: Below are some suggested amendments as well as new terms.

(ADD NEW DEFINITION) Conserved Water Project: A project that conserves water pursuant to Oregon's Conserved Water Act, ORS 537.455 to 537.500.

(5) Protected Instream flow: This should be changed to "legally protected instream flow" and should be defined as instream flow that is protected under Oregon law through permanent or temporary transfers, instream leases, allocations of conserved water under a Conserved Water Project (ORS 537.455 to 537.500), flow augmentation rights (from stored water) or split season leases. See note on water use agreements under (10).

The definition provided simply punts to the definition of "water acquisition project" which includes measures that do not result in water that is legally protectable instream. See suggested edits to definition 9 ("water acquisition project") below.

(7) Technical review team: The definition seems both overly vague and overly broad. We would suggest limiting it to technical experts from relevant state agencies, Tribes and NGOs that have as a mission restoring and protecting streamflows.

(9) Water Acquisition project: This definition is the defining term of the program. As currently written it will not ensure that water is legally protected instream under Oregon law. To ensure that state funds are spent on projects that will result in legally protected water instream that can be enforced, we suggest the following amendments (cross out of deleted words, underline of replacement/amendments).

“Water Acquisition Project” means a voluntary transaction that results in a legally protected instream flow through Oregon Water Resources Department, ~~or other mechanisms~~, that includes Instream Leases, Split Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water Projects<sup>1</sup>, Permanent Instream Transfers and flow augmentation secondary rights from storage. ~~And other Water Use Agreements.~~<sup>2</sup>

(10) Water Use Agreement: We would suggest deleting this definition in whole. State money for water acquisition should be limited to water acquisition tools that result in legally protected water instream. The State of Oregon cannot enforce/regulate water that is put instream pursuant to private agreements between users. As such, state funds should not be spent on such agreements.

That said, if OWEB decides to retain the option of “water use agreements”, we would suggest that it be limited to projects where the applicant can prove that the water will be protected instream as against other users on the stream in the same way a legal transfer or lease would be; and that the applicant is a Tribe, ODFW, or is working through 501(c)(3) nonprofit that has a mission of protecting and restoring streamflows.

695-046-0035 Eligibility: We would suggest the following edits:

- (1) Insert the word “legally” before “protected instream flows” in sub (1). Delete the words “lead to” and replace with “result in”
- (2) Sub (2) should be deleted as it is a circular provision. Section (1) already says that it will only consider water acquisition projects that result in (a) or (b), so it is unnecessary to then have section (2) as an additional layer. In other words, it is already captured in (1).

695-046-0185 Use of Grant Funds:

The new provision for “legal fees” does not seem to be a judicious use of taxpayer monies. As OWEB is likely aware, there are a number of non-profits dedicated to restoring instream flows through transactions that broker instream deals on staff time. It seems to us that they could capture necessary

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<sup>1</sup> If a definition of “conserved water project” is added to the definition section, then use of this term here is not problematic; If, however, the definition is not added then it should be made clear here that only conservation projects that go through the Conserved Water Act are eligible.

<sup>2</sup> See note in OAR 695-046-002 (10). If OWEB keeps this term in this section we would suggest limiting its use to ODFW, Tribes or applicants working through a 501(c)(3) organizations that have an organizational mission of restoring and protecting water instream.

costs under “customary due diligence activities”. Increasingly, there are water speculators and/or districts that don’t have as part of their mission/work to restore water instream that are attempting to circumvent the work of these nonprofits; OWEB should not encourage this by allowing undefined attorney fees.

695-046-0195 Coordinating and Partnering with Other Funders: This section should be amended to ensure that coordination is limited to projects that result in legally protected water instream and fit into the definition of “water acquisition project”. Too often we see grant applications for projects that claim to “increase instream flow” or “improve water quality,” but do not result in legally protectable water instream and therefore are of limited value.

695-046-0196 Evaluation Criteria:

(1)(e): The “or” at the end of (e) should be changed to an “and”.

(3)(d): We would suggest deleting this section. Many restoration and protection opportunities fall outside of designated “collaboratives,” which are often geared at addressing out-of-stream uses (even under the OWRD Place Based Planning work, there is not balance). 3(c) is a much better tier.

695-046-0200 Application Evaluation Process:

We do not see any public notice and comment allowed in this section. While we appreciate that Section OAR 695-046-0205 allow for general public comment, we would suggest that this section provide for a specific and robust public notice and comment period as part of the application evaluation process. Specifically, OWEB should offer an opportunity to the public to comment on the Technical Review team review/ranking before staff makes a recommendation to the board. Given that Boards often defer to staff recommendations, a more transparent process would allow comment before the staff makes its final recommendation to the Board.

We would suggest looking to the Oregon Water Resources Department’s Water Supply Grant and Loan program as an example. OAR Chapter 690, Division 93.

Conclusion: WaterWatch very much supports OWEB’s Water Acquisition Program. Our comments are meant to help ensure that water is actually protected instream and that public money is spent on projects that actually bring a public benefit. Thank you for your consideration.

Sincerely,



Kimberley Priestley  
Senior Policy Analyst



# Deschutes Basin Board of Control



February 28, 2020

Attn: Eric Hartstein, Rules Coordinator  
Oregon Watershed Enhancement Board  
775 Summer St. NE, Suite 360  
Salem, OR 97301

VIA ELECTRONIC MAIL: [eric.harstein@oregon.gov](mailto:eric.harstein@oregon.gov)

**Re: Comments on OWEB Water Acquisition Grant Program Rules**

Dear Mr. Hartstein,

The Deschutes Basin Board of Control (“DBBC”) appreciates the opportunity to comment on OWEB’s proposed revisions to the Water Acquisition Grant Program Rules, OAR Chapter 695, Division 46. The DBBC includes eight Central Oregon irrigation districts, which are quasi-municipal corporations organized under ORS Chapter 545.

The DBBC requests that OWEB incorporate an additional requirement into the proposed rules, requiring grant applicants obtain written consent from irrigation districts potentially affected by grant projects. Oregon irrigation districts have statutory responsibilities to deliver water to patrons within their geographic boundaries. The DBBC is aware of previous instances in which a grant applicant failed to inform, let alone obtain consent from, an irrigation district before pursuing a project that would have interfered with the district’s ability to deliver water. Requiring grant applicants to first obtain consent from an affected irrigation district is a simple but necessary step to ensure that OWEB grant projects do not interfere with district statutory responsibilities.

To accomplish this change, the DBBC requests that OWEB add a new section (5) to the proposed revision to OAR 695-046-0196:

(5) Whether the proposed water acquisition project is within the boundaries of or may otherwise affect an irrigation district organized pursuant to ORS Chapter 545 and, if so, that the applicant has obtained written consent from the irrigation district for the proposed water acquisition project.

This language will alert applicants of the need to coordinate with affected irrigation districts. It will also ensure that the Board and its staff have the opportunity to evaluate applications for impacts to irrigation districts and to seek additional information, if necessary, during the application evaluation process.

Thank you for the opportunity to comment.

Sincerely,

Craig Horrell  
DBBC President

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PO Box 919 - Madras, OR 97741

*DBBC Member Districts*

*Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District  
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District  
DBBC President - Craig Horrell, 541-548-6047; [chorrell@coid.org](mailto:chorrell@coid.org)*

**From:** Donita Jordan  
**To:** [HARTSTEIN Eric \\* OWEB](#)  
**Subject:** Comments on OWEB Rules  
**Date:** Tuesday, February 04, 2020 7:02:08 PM

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Mr. Hartstein

My name is Keith Jordan and I'm a Harney County resident residing in Burns. Over the past several years I have become aware that families living within a few miles of the Burns-Hines district are losing quality of their well water and the water dept continues to plunge. I consider this to be a very serious problem that will probably effect all of us here sooner rather than later. I know folks who have not been able to drink their well water for several years because it has become toxic. It seems to me that the number of pivots draining the aquafur would be the first thing to look at.

Sincerely

Keith Jordan



**Chapter 695****Division 46**WATER ~~LEASE AND TRANSFER~~ ACQUISITION GRANTS**695-046-0010**~~**695-046-0010**~~

## Purpose

~~The purpose of this rule is~~ In accordance with Section 4b of Article XV of the Oregon Constitution and ORS 541.956, OWEB may consider grant applications that propose to ~~supplement~~ acquire from willing sellers interests in water that result in Legally Protected Instream Flow to maintain or restore streamflows for the benefit of watersheds and habitats for native fish or wildlife. This division supplements the OWEB Grant Program rules under OAR 695-005 and ~~to add~~ provides specific guidance regarding requirements for the OWEB water acquisition grant program. ~~The Oregon Watershed Enhancement Board~~ In the event of any conflict between these requirements and requirements identified in OAR 695-005, the water acquisition grant requirements in this division will take precedence. OWEB does not itself hold an interest in water rights in grants authorized under these rules, but rather allocates funding for Water ~~allocation~~ Acquisition Projects to other entities ~~to hold~~, which may result in the State of Oregon or other entities holding the interest in water rights.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

OWEB 2-2005, f. & cert. ef. 2-1-05

**695-046-0020,****Definitions**

(1) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.

(2) "Conserved Water Project" means a project that conserves water pursuant to Oregon's Conserved Water Act, ORS 537.455 to 537.500.

(3) "Delegated to the Director" means the grant funds that the Board has authorized to the Director to award and enter into appropriate agreements.

(4) “Instream Lease” means the conversion of all or a portion of an existing water use subject to their contractual and statutory obligations and the compliance requirements set forth in OAR 695-046-0220 to transfer to an instream water right for a specified time-period as authorized by ORS 537.348(2).

Stat. Auth.: ORS 541.906

Stats. Implemented: ORS 541.932(9)

Hist.: OWEB 2 2005, f. & cert. ef. 2 1 05; OWEB 2 2013, f. & cert. ef. 6 19 13

~~695-046-0020~~

#### Definition of Water Acquisition Project

~~(1) “Water Acquisition Project is a program or project that plans for or implements, or both, the acquisition of an interest or interests in water from a willing seller for the purpose of increasing instream flow to do either or both of the following:~~

~~Address the (5) “Legally Protected Instream Flow” means the amount of water secured through a Water Acquisition Project that includes Instream Leases, Split-Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water Projects, Permanent Instream Transfers, and other Water Use Agreements. .~~

(6) “Permanent Instream Transfer” means the permanent conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1).

(7) “Split-Season Use Instream Lease” means an Instream Lease in which the water right can be exercised in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that the water is not used for the existing purpose during the period in which water is to be protected instream as authorized under ORS 537.348(3).

(8) “Technical Review Teams” means a team of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities organized to evaluate water acquisition grant applications.

(9) “Time-limited Instream Transfer” means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the water right will revert back to its original use:

(a) Without further action by the Oregon Water Resources Department at the end of the period of time specified in the final order approving the instream transfer; or

(b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met.

(10) "Water Acquisition Project" means a voluntary transaction that results in a Legally Protected Instream Flow through Oregon Water Resources Department, or other legally recognized agreements.

(11) "Water Use Agreement" means a legal agreement between a water right holder and an eligible grant applicant to conserve water or curtail the beneficial use of water under a water right subject to transfer during specified periods or under specified conditions to achieve Legally Protected Instream Flow

**695-046-0035**

**Eligibility**

(1) The Board will only consider Water Acquisition Projects involving legal water rights not subject to forfeiture that will result in Legally Protected Instream Flows to address:

(a) The identified conservation needs of habitats and species; as determined by the Oregon Department of Fish and Wildlife and in consideration of needs identified by other federal or tribal fish and wildlife agencies; or

improve (b) Improving water quality in a water-quality-limited area as, as defined in OAR 340-041-0002(70) and determined by the Oregon Department of Environmental Quality.

~~(2) A water acquisition project may~~ (2) The Board will also only consider projects that include written notice to irrigation districts where the following activities:

~~(a) Strategic planning and development, project design, landowner outreach, and other activities associated with water acquisitions in a given basin or other defined area;~~

proposed Water Acquisition Project is within the boundary of an interest in water and associated due diligence; irrigation district.

~~(b) Monitoring and other associated activities to ensure the interest is maintained through time.~~

Stat. Auth.: Statutory/Other Authority: ORS 541.906

Stats:

Statutes/Other Implemented: ORS 541.932(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05;

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

OWEB 2-2005, f. & cert. ef. 6-19-13 2-1-05

**695-046-0185**

695-046-0175

Nature of Application

~~In accordance with Section 4(b) of Article XV of the Oregon Constitution, OWEB may consider grant applications in partnership with other funders for projects that plan or implement the acquisition of an interest in water from willing sellers for the purpose of maintaining or restoring watersheds and habitat(s) for native fish or wildlife. Interest in water includes, but is not limited to, instream leases (including split season use instream leases), water use agreements that result in protectable instream flows, conserved water projects as determined by the Oregon Water Resources Department's Allocation of Conserved Water Program, and permanent and time-limited instream transfers. These projects must be designed to increase instream flow to do either or both of the following:~~

- ~~(1) Address the conservation needs of habitats and species; or~~
- ~~(2) Improve water quality in a water quality limited area as determined by the Oregon Department of Environmental Quality. Applications must address the conservation and restoration needs of habitat(s) and species consistent with ecological priorities and principles identified by the Board.~~

~~Stat. Auth.: ORS 541.906~~

~~Stats. Implemented: ORS 541.932(9) Hist.: OWEB 2-2013, f. & cert. ef. 6-19-13~~

~~695-046-0180~~

~~Application and Subsequent Grant Processing Requirements~~

- ~~(1) Grant applications for water acquisition projects must be submitted on the most current form that conforms with the process prescribed by the Board.~~
- ~~(2) This Board prescribed process may be conducted in cooperation with other funders of water acquisition projects.~~
- ~~(3) In the event of any conflict between these requirements and requirements identified in OAR 695-005, the water acquisition requirements in this division will take precedence.~~

~~Stat. Auth.: ORS 541.906~~

~~Stats. Implemented: ORS 541.932(9) Hist.: OWEB 2-2013, f. & cert. ef. 6-19-13~~

~~695-046-0185~~

Use of Grant Funds

Water acquisition grant funds may be applied ~~towardstoward~~ reasonable costs, as determined by OWEB, related to the ~~planning and/or~~ implementation of ~~acquisition of interest in water from willing sellers~~Water Acquisition Projects, including:

(1) The purchase price and the purchase option fees associated with acquisition of an interest in water.

(2) The monetary interest on bridge loans needed to secure the interest in water prior to when funding will be available for distribution through the program.

(3) The staff costs incurred as part of acquiring the interest in water.

(4) The cost of ~~water owner~~ outreach activities necessary for the funded Water Acquisition Project.

(5) The cost of due diligence activities, including appraisal or valuation of the interest to be acquired, title report, assessment of the timing and extent of water use and regulation associated with the interest in water, ~~Oregon Water Resources Department application costs,~~ and other customary due diligence activities.

~~(1)-(6) The legal fees incurred.~~

~~The transfer and~~ closing fees related to the acquisition of an interest in water.

(7) The cost of monitoring the ~~acquisition~~ Water Acquisition Project to certify that the water interest is being used and managed consistent with Section ~~4(b), 4b~~, Article XV of the Oregon Constitution.

~~Stat. Auth.:~~ Statutory/Other Authority: ORS 541.906

~~Stats.~~

Statutes/Other Implemented: ORS 541.932(9) ~~—Hist.:~~

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0190**

**695-046-0190**

Matching Contributions

(1) All applicants shall demonstrate at least 25% of the ~~actual~~ Water Acquisition Project cost is being sought as match, with the grant applicant required to provide matching funds and efforts necessary to complete the purchase. The following costs and activities will qualify as match:

(a) All costs listed under OAR 695-046-0185, including in-kind contributions of those costs.

(b) Funding commitments made by others as a result of grant applicant efforts (including funding to be secured from other funders as part of a Board-prescribed process conducted in cooperation with other funders).

(c) Any donated portion of the interest in water.

(2) OWEB funds ~~provided under OAR 695-046-0185~~ shall not qualify as matching contributions.

(3) The Director retains the discretion to determine ~~that specific whether~~ reasonable matching costs are ~~unreasonable in a particular grant context~~ reasonable and ~~would not~~ will be recognized as qualifying matching costs.

~~Stat. Auth.:~~ Statutory/Other Authority: ORS 541.906

~~Stats.~~

Statutes/Other Implemented: ORS 541.932(9) ~~—Hist.:~~

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0195**

**695-046-0195**

Coordinating and Partnering with Other Funders

In accordance with Section 4b of Article XV of the Oregon Constitution, OWEB may consider grant applications in partnership with other funders for the ~~purpose~~purposes of creating operational efficiencies and ~~better~~ coordinating investments in ~~water acquisitions to maintain or restore watersheds and habitat(s) for native fish or wildlife that are projects~~ designed to ~~increase result in legally protected water~~ instream ~~flow~~and to do one or both of the following:

(1) Address the conservation needs of habitats and species as determined by the Oregon Department of Fish and Wildlife and in consideration of needs identified by other federal, or tribal fish and wildlife agencies; or

(2) Improve water quality in a water-quality-limited area as defined in OAR 340-041-0002(70) and determined by the Oregon Department of Environmental Quality.

~~Stat. Auth.:~~ Statutory/Other Authority: ORS 541.906

~~Stats.~~

Statutes/Other Implemented: ORS 541.932(9) ~~Hist.:~~

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0196**

**695-046-0200**

~~Application-Evaluation~~ ProcessCriteria

~~(1) Grant applications for~~ Water acquisition ~~projects shall grant applications will~~ be evaluated ~~in accordance with guidance (including priorities, principles, and process) adopted and periodically reviewed by the Board and made available to the public via on~~ the ~~agency's website and Board meeting materials.~~

~~(2) The evaluation may be conducted in cooperation with other funders.~~

~~The grant~~ extent to which the application ~~evaluation process shall include reviews for~~describes:

~~(a) The consistency of the water acquisition project with the Board's established priorities and principles for water acquisitions.~~

~~(b) (1) The significance of the projected ecological outcomes.~~

~~(c) The business plan for the water acquisition project, including:~~

~~Socio-economic strategy, including the community impacts or benefits resulting from the project (including, but not limited to, description of both current and how the proposed Water uses, potential effects on existing water rights and uses, and other relevant socio-economic information).~~ Acquisition Project:

~~(A) The capacity of the grant applicant to complete the acquisition and to achieve and sustain the proposed ecological outcomes over time.~~

~~(B) The soundness of the planning and of the legal and financial terms of the proposed water acquisition project, and its feasibility to achieve the projected ecological outcomes.~~

~~Priority will be given to projects that are planned or implemented, or both, by grant applicants with a sound program to acquire interests~~(a) Achieves or helps to achieve any professionally accepted flow target during the period of use;

~~(b) Addresses limiting factors identified in water rights to address the professionally accepted conservation needs of habitats and plans for habitat conservation needs or water quality;~~

~~(c) Provides benefits to impacted species and improve water quality~~life stages;

~~(d) Monitors and tracks project impacts over time, as appropriate for the transaction type and duration;~~

~~(e) Monitors project compliance, as appropriate for the transaction type and duration; and~~

~~(f) Contributes to climate change resiliency.~~

~~(2) The alignment of proposed costs with the work necessary to accomplish the objectives described in a water~~the application, including:

~~(a) The ownership, use, validity, and reliability of the water right;~~

~~(b) How the proposed cost of the Legally Protected Instream Flow is consistent with local or regional market conditions; and~~

~~(c) How the term of the proposed Water Acquisition Project is appropriate to meet the habitat, species, or water quality limited area, as determined by the Oregon Department of needs.~~

~~(3) How the proposed activities are part of a strategic effort or long term vision for restoring instream flows in the watershed, including how the proposed Water Acquisition Project:~~

~~(a) Complements other habitat conservation actions and needs;~~

~~(b) Will lead to future expansion of instream flow restoration; and~~

~~(c) Addresses Oregon Department of Fish and Wildlife, or other federal or tribal fish and wildlife agency priorities for aquatic habitat, Oregon Department of Agriculture or Oregon Department of Forestry priorities for water quality, or Oregon Department of Environmental Quality water quality management or implementation plans, if established.~~

~~Stat. Auth.:~~ (4) The capacity and qualifications of the applicant, including staff or consultants to be retained, to accomplish the proposed Water Acquisition Project activities described in the application and to sustain the projected ecological outcomes over the project term.

Statutory/Other Authority: ORS 541.906



~~Stats.~~

**Statutes/Other Implemented:** ORS 541.932(9) ~~Hist.:~~

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0200**

**Application Evaluation Process**

(1) For Water acquisition applications s seeking grant funds that require the Board to make a funding decision:

(a) A Technical Review Team will be convened to review water acquisition grant applications.

(b) Prior to the Technical Review Team meeting, the Technical Review Team shall evaluate each application based on the information provided and the evaluation criteria as described in OAR 695-046-0196.

(c) At the Technical Review Team meeting, the Technical Review Team shall:

(A) Review and evaluate each project individually based on how well the proposed project meets the criteria as described in OAR 695-046-0196.

(B) Recommend the project as:

(i) Do fund;

(ii) Do fund with conditions:

(iii) Do not fund; or

(iv) Defer to staff or the Board with an explanation, if there is a policy issue or budget issue that needs to be addressed by the Board prior to a funding decision; and

(C) Rank order all projects recommended for funding based on how well the project meets the criteria established in OAR 695-046-0196.

(d) The project description, summary evaluation, and funding recommendation for all projects, and the rank order of projects recommended for funding shall be forwarded from the Technical Review Team to Board staff for their consideration. This information will be provided to all applicants and to the Board.

(4) For Water acquisition grant applications seeking grant funds that have been Delegated to the Director;

(a) A Technical Review Team will be convened to review grant applications.

(b) The Technical Review Team shall review and evaluate each project based on how well the proposed project meets the criteria in OAR 695-046-0196 and provide feedback and recommendations to OWEB staff.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

**695-046-0201**

Staff Funding Recommendation Process

(1) For water acquisition grant applications seeking grant funds that require the Board to make a funding decision:

(a) Staff shall review the recommendations from each Technical Review Team and make a statewide funding recommendation to the Board based on available resources for the grant offering and type. The recommendation shall include any conditions placed on individual projects and may include proposed budget adjustments. The staff recommendation, as represented in the staff report to the Board, shall be made available to applicants and members of the Technical Review Teams at least two weeks before the Board meeting where funding decisions are to be made.

(b) Applicants may provide written or oral comment to the Board on the staff recommendation prior to the Board decision.

(2) For grant applications seeking grant funds that have been Delegated to the Director, staff shall review the recommendations from each Technical Review Team and make a funding recommendation to the Director based on available resources for the grant offering and type. The recommendation shall include any conditions placed on individual projects and may include proposed budget adjustments. The staff recommendation shall be made available to the applicants.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

**695-046-0202**

**695-046-0205**

Funding Decision

(1) For water acquisition grant applications seeking grant funds that require the Board to make a funding decision:

(a) After considering recommendations from staff, and any community impacts from the proposed Water Acquisition Project, the Board may fund a project in whole or in part.

(b) Projects not funded may be resubmitted during future application submission periods.

(2) For water acquisition grant applications seeking grant funds that have been Delegated to the Director:

(a) After considering recommendations from staff, and any community impacts from the proposed Water Acquisition Project, the Director may fund a project in whole or in part.

(b) Projects not funded may be resubmitted during future application submission periods.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

#### **695-046-0205**

##### **Public Involvement**

The public shall be provided with opportunities to comment on grant applications for Water Acquisition Projects being considered by the Board. OWEB will provide written notice through its website of the Board's intent to consider water acquisition grant applications. The Board will accept:

(1) Comments made at public hearings, as described in ORS 271.735, held on grant applications seeking funding for Permanent Instream Transfers;

(2) Written comments received at least 14 days before the Board meeting at which the application is to be considered by the Board; and

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

Stat. Auth.: Statutory/Other Authority: ORS 541.906

Stats:

Statutes/Other Implemented: ORS 541.932(9)–Hist.:

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

#### **695-046-0210**

~~695-046-0210~~

##### **Board Approval and Delegation of Authority**

The Board shall conditionally approve grants ~~in accordance with guidance adopted by the Board and funding conditions~~ made available to the public. The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grant applicant.

Stat. Auth.: Statutory/Other Authority: ORS 541.906

Stats:

Statutes/Other Implemented: ORS 541.932(9)–Hist.:

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0215**~~695-046-0215~~

## Director's Funding Approval and Distribution of Funds

(1) The Director may approve the distribution of grant funds when:

(a) The funding conditions, if any, imposed by the Board are met to the full satisfaction of the Director;

(b) The legal and financial terms of the proposed acquisition of an interest in water Water Acquisition Project transaction are approved by the Director;

(c) A grant agreement is executed by the Director and either the grant applicant or the entity or entities identified under the Board prescribed process for other funders as referenced under OAR 695-046-0180. In the latter case, the other funder(s) must subsequently execute a grant agreement with the applicant to utilize OWEB funds in support of a water acquisition project; (d) The Director has reconciled conditionally ~~approved~~ funding with actual Water Acquisition Project costs; and

(d) The grant applicant has satisfied the match requirements under 695-046-0190.

~~Stat. Auth.:~~ (2) For grants established under these rules, the Director is authorized to reimburse the grant applicant for allowable costs identified in OAR 695-046-0185 and to recognize matching contributions under OAR 695-046-0190 that were incurred no earlier than 18 months before the applicable grant application deadline.

(3) Notwithstanding OAR 659-046-0215(1)(a), funds may be distributed prior to Water Acquisition Project transaction closing for due diligence activities specified in OAR 659-046-0185(5) and included in the application budget.

Statutory/Other Authority: ORS 541.906

Stats:

Statutes/Other Implemented: ORS 541.932(9) ~~Hist.:~~

History:

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0220**~~695-046-0220~~

## Compliance and Enforcement

(1) The ongoing use of the water ~~interest~~ interests acquired with OWEB water acquisition grant funds shall be consistent with the purposes specified in section ~~4(b)~~ 4b Article XV of the Oregon Constitution. If significant compliance issues cannot be resolved to the full satisfaction of the Director, the Director, after informing the Board and providing reasonable written notice to the

recipient of the grant, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OWEB grant funds that were used to purchase the water interest, and reasonable interest and penalties at the option of the Director.

(2) OWEB, its grantees, contractors and cooperating agencies must be provided sufficient legal access to property to which the water interest acquired with OWEB funds is appurtenant, for the purpose of monitoring to certify that the water interest is being used and managed consistent with Section 4(b), 4b, Article XV of the Oregon Constitution.

~~Stat. Auth.:~~ [Statutory/Other Authority:](#) ORS 541.906

~~Stats:~~

[Statutes/Other Implemented:](#) ORS 541.932(9) ~~History:~~

[History:](#)

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0225**

~~695-046-0225~~

Subsequent Conveyances

A water interest acquired with OWEB grant funds shall not be conveyed to another party unless the conveyance is approved by the Board, and may not be conveyed for the purpose of consumptive uses.

~~Stat. Auth.:~~ [Statutory/Other Authority:](#) ORS 541.906

~~Stats:~~

[Statutes/Other Implemented:](#) ORS 541.932(9) ~~History:~~

[History:](#)

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0230**

~~695-046-0230~~

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 46 for individual grant applications, not including mandatory [constitutional or](#) statutory requirements, when doing so is reasonably calculated to result in more efficient or effective implementation of the Board's water acquisition grant program. Any waiver must be in writing and included in the grant file to which the waiver applies. The administrative rules for water acquisition grants shall be periodically reviewed by the Board and revised as necessary and appropriate.

~~Stat. Auth.:~~ [Statutory/Other Authority:](#) ORS 541.906

~~Stats:~~

[Statutes/Other Implemented:](#) ORS 541.932(9) ~~History:~~

[History:](#)

OWEB 2-2013, f. & cert. ef. 6-19-13

## Chapter 695

### Division 46

#### WATER ACQUISITION GRANTS

##### **695-046-0010**

##### **Purpose**

In accordance with Section 4b of Article XV of the Oregon Constitution and ORS 541.956, OWEB may consider grant applications that propose to acquire from willing sellers interests in water that result in Legally Protected Instream Flow to maintain or restore streamflows for the benefit of watersheds and habitats for native fish or wildlife. This division supplements the OWEB Grant Program rules under OAR 695-005 and provides specific requirements for the OWEB water acquisition grant program. In the event of any conflict between these requirements and requirements identified in OAR 695-005, the water acquisition grant requirements in this division will take precedence. OWEB does not itself hold an interest in water rights in grants authorized under these rules, but rather allocates funding for Water Acquisition Projects to other entities, which may result in the State of Oregon or other entities holding the interest in water rights.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

##### **History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

OWEB 2-2005, f. & cert. ef. 2-1-05

##### **695-046-0020**

##### **Definitions**

- (1) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:
  - (a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
  - (b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.
- (2) "Conserved Water Project" means a project that conserves water pursuant to Oregon's Conserved Water Act, ORS 537.455 to 537.500.
- (3) "Delegated to the Director" means the grant funds that the Board has authorized to the Director to award and enter into appropriate agreements.

- (4) "Instream Lease" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right for a specified time-period as authorized by ORS 537.348(2).
- (5) "Legally Protected Instream Flow" means the amount of water secured through a Water Acquisition Project that includes Instream Leases, Split-Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water Projects, Permanent Instream Transfers, and other Water Use Agreements.
- (6) "Permanent Instream Transfer" means the permanent conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1).
- (7) "Split-Season Use Instream Lease" means an Instream Lease in which the water right can be exercised in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that the water is not used for the existing purpose during the period in which water is to be protected instream as authorized under ORS 537.348(3).
- (8) "Technical Review Teams" means a team of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities organized to evaluate water acquisition grant applications.
- (9) "Time-limited Instream Transfer" means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the water right will revert back to its original use:
  - (a) Without further action by the Oregon Water Resources Department at the end of the period of time specified in the final order approving the instream transfer; or
  - (b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met.
- (10) "Water Acquisition Project" means a voluntary transaction that results in a Legally Protected Instream Flow through Oregon Water Resources Department or other legally recognized agreements.
- (11) "Water Use Agreement" means a legal agreement between a water right holder and an eligible grant applicant to conserve water or curtail the beneficial use of water under a water right subject to transfer during specified periods or under specified conditions to achieve Legally Protected Instream Flow



**695-046-0035**

**Eligibility**

- (1) The Board will only consider Water Acquisition Projects involving legal water rights not subject to forfeiture that will result in Legally Protected Instream Flows to address:
  - (a) The identified conservation needs of habitats and species as determined by the Oregon Department of Fish and Wildlife and in consideration of needs identified by other federal or tribal fish and wildlife agencies; or
  - (b) Improving water quality in a water-quality-limited area, as defined in OAR 340-041-0002(70) and determined by the Oregon Department of Environmental Quality.
- (2) The Board will also only consider projects that include written notice to irrigation districts where the proposed Water Acquisition Project is within the boundary of an irrigation district.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

OWEB 2-2005, f. & cert. ef. 2-1-05

**695-046-0185**

**Use of Grant Funds**

Water acquisition grant funds may be applied toward reasonable costs, as determined by OWEB, related to the implementation of Water Acquisition Projects, including:

- (1) The purchase price and the purchase option fees associated with acquisition of an interest in water.
- (2) The monetary interest on bridge loans needed to secure the interest in water prior to when funding will be available for distribution through the program.
- (3) The staff costs incurred as part of acquiring the interest in water.
- (4) The cost of outreach activities necessary for the funded Water Acquisition Project.
- (5) The cost of due diligence activities, including appraisal or valuation of the interest to be acquired, title report, assessment of the timing and extent of water use and regulation associated with the interest in water, and other customary due diligence activities.
- (6) The closing fees related to the acquisition of an interest in water.
- (7) The cost of monitoring the Water Acquisition Project to certify that the water interest is being used and managed consistent with Section 4b, Article XV of the Oregon Constitution.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0190**

**Matching Contributions**

- (1) All applicants shall demonstrate at least 25% of the Water Acquisition Project cost is being sought as match, with the grant applicant required to provide matching funds and efforts necessary to complete the purchase. The following costs and activities will qualify as match:
  - (a) All costs listed under OAR 695-046-0185, including in-kind contributions of those costs.
  - (b) Funding commitments made by others as a result of grant applicant efforts (including funding to be secured from other funders as part of a Board-prescribed process conducted in cooperation with other funders).
  - (c) Any donated portion of the interest in water.
- (2) OWEB funds shall not qualify as matching contributions.
- (3) The Director retains the discretion to determine whether matching costs are reasonable and will be recognized as qualifying matching costs.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0195**

**Coordinating and Partnering with Other Funders**

In accordance with Section 4b of Article XV of the Oregon Constitution, OWEB may consider grant applications in partnership with other funders for the purposes of creating operational efficiencies and coordinating investments in projects designed to result in legally protected water instream and to do one or both of the following:

- (1) Address the conservation needs of habitats and species as determined by the Oregon Department of Fish and Wildlife and in consideration of needs identified by other federal, or tribal fish and wildlife agencies; or
- (2) Improve water quality in a water-quality-limited area as defined in OAR 340-041-0002(70) and determined by the Oregon Department of Environmental Quality.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-1

**695-046-0196**

**Evaluation Criteria**

Water acquisition grant applications will be evaluated on the extent to which the application describes:

- (1) The significance of the projected ecological outcomes, including how the proposed Water Acquisition Project:
  - (a) Achieves or helps to achieve any professionally accepted flow target during the period of use;
  - (b) Addresses limiting factors identified in professionally accepted conservation plans for habitat conservation needs or water quality;
  - (c) Provides benefits to impacted species and life stages;
  - (d) Monitors and tracks project impacts over time, as appropriate for the transaction type and duration;
  - (e) Monitors project compliance, as appropriate for the transaction type and duration; and
  - (f) Contributes to climate change resiliency.
- (2) The alignment of proposed costs with the work necessary to accomplish the objectives described in the application, including:
  - (a) The ownership, use, validity, and reliability of the water right;
  - (b) How the proposed cost of the Legally Protected Instream Flow is consistent with local or regional market conditions; and
  - (c) How the term of the proposed Water Acquisition Project is appropriate to meet the habitat, species, or water quality needs.
- (3) How the proposed activities are part of a strategic effort or long term vision for restoring instream flows in the watershed, including how the proposed Water Acquisition Project:
  - (a) Complements other habitat conservation actions and needs;
  - (b) Will lead to future expansion of instream flow restoration; and
  - (c) Addresses Oregon Department of Fish and Wildlife, or other federal or tribal fish and wildlife agency priorities for aquatic habitat, Oregon Department of Agriculture or Oregon

Department of Forestry priorities for water quality, or Oregon Department of Environmental Quality water quality management or implementation plans, if established.

- (4) The capacity and qualifications of the applicant, including staff or consultants to be retained, to accomplish the proposed Water Acquisition Project activities described in the application and to sustain the projected ecological outcomes over the project term.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

### **695-046-0200**

#### **Application Evaluation Process**

- (1) For Water acquisition applications seeking grant funds that require the Board to make a funding decision:
  - (a) A Technical Review Team will be convened to review water acquisition grant applications.
  - (b) Prior to the Technical Review Team meeting, the Technical Review Team shall evaluate each application based on the information provided and the evaluation criteria as described in OAR 695-046-0196.
  - (c) At the Technical Review Team meeting, the Technical Review Team shall:
    - (A) Review and evaluate each project individually based on how well the proposed project meets the criteria as described in OAR 695-046-0196.
    - (B) Recommend the project as:
      - (i) Do fund;
      - (ii) Do fund with conditions:
      - (iii) Do not fund; or
      - (iv) Defer to staff or the Board with an explanation, if there is a policy issue or budget issue that needs to be addressed by the Board prior to a funding decision; and
    - (C) Rank order all projects recommended for funding based on how well the project meets the criteria established in OAR 695-046-0196.
  - (d) The project description, summary evaluation, and funding recommendation for all projects, and the rank order of projects recommended for funding shall be forwarded from the Technical Review Team to Board staff for their consideration. This information will be provided to all applicants and to the Board.

- (4) For Water acquisition grant applications seeking grant funds that have been Delegated to the Director;
  - (a) A Technical Review Team will be convened to review grant applications.
  - (b) The Technical Review Team shall review and evaluate each project based on how well the proposed project meets the criteria in OAR 695-046-0196 and provide feedback and recommendations to OWEB staff.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

#### **695-046-0201**

#### **Staff Funding Recommendation Process**

- (1) For water acquisition grant applications seeking grant funds that require the Board to make a funding decision:
  - (a) Staff shall review the recommendations from each Technical Review Team and make a statewide funding recommendation to the Board based on available resources for the grant offering and type. The recommendation shall include any conditions placed on individual projects and may include proposed budget adjustments. The staff recommendation, as represented in the staff report to the Board, shall be made available to applicants and members of the Technical Review Teams at least two weeks before the Board meeting where funding decisions are to be made.
  - (b) Applicants may provide written or oral comment to the Board on the staff recommendation prior to the Board decision.
- (2) For grant applications seeking grant funds that have been Delegated to the Director, staff shall review the recommendations from each Technical Review Team and make a funding recommendation to the Director based on available resources for the grant offering and type. The recommendation shall include any conditions placed on individual projects and may include proposed budget adjustments. The staff recommendation shall be made available to the applicants.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

**695-046-0202****Funding Decision**

- (1) For water acquisition grant applications seeking grant funds that require the Board to make a funding decision:
  - (a) After considering recommendations from staff, and any community impacts from the proposed Water Acquisition Project, the Board may fund a project in whole or in part.
  - (b) Projects not funded may be resubmitted during future application submission periods.
- (2) For water acquisition grant applications seeking grant funds that have been Delegated to the Director:
  - (a) After considering recommendations from staff, and any community impacts from the proposed Water Acquisition Project, the Director may fund a project in whole or in part.
  - (b) Projects not funded may be resubmitted during future application submission periods.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

**695-046-0205****Public Involvement**

The public shall be provided with opportunities to comment on grant applications for Water Acquisition Projects being considered by the Board. OWEB will provide written notice through its website of the Board's intent to consider water acquisition grant applications. The Board will accept:

- (1) Comments made at public hearings, as described in ORS 271.735, held on grant applications seeking funding for Permanent Instream Transfers;
- (2) Written comments received at least 14 days before the Board meeting at which the application is to be considered by the Board; and
- (3) Oral comments made at the Board meeting at which the grant application is considered.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0210****Board Approval and Delegation of Authority**

The Board shall conditionally approve grants with funding conditions made available to the public. The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grant applicant.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0215**

**Director's Funding Approval and Distribution of Funds**

- (1) The Director may approve the distribution of grant funds when:
  - (a) The funding conditions, if any, imposed by the Board are met to the full satisfaction of the Director;
  - (b) The legal and financial terms of the proposed Water Acquisition Project transaction are approved by the Director;
  - (c) A grant agreement is executed by the Director and the grant applicant; (d) The Director has reconciled conditionally approved funding with actual Water Acquisition Project costs; and
  - (d) The grant applicant has satisfied the match requirements under 695-046-0190.
- (2) For grants established under these rules, the Director is authorized to reimburse the grant applicant for allowable costs identified in OAR 695-046-0185 and to recognize matching contributions under OAR 695-046-0190 that were incurred no earlier than 18 months before the applicable grant application deadline.
- (3) Notwithstanding OAR 659-046-0215(1)(a), funds may be distributed prior to Water Acquisition Project transaction closing for due diligence activities specified in OAR 659-046-0185(5) and included in the application budget.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

**695-046-0220**

**Compliance and Enforcement**

- (1) The ongoing use of the water interests acquired with OWEB water acquisition grant funds shall be consistent with the purposes specified in section 4b Article XV of the Oregon Constitution. If significant compliance issues cannot be resolved to the full satisfaction of the Director, the Director, after informing the Board and providing reasonable written notice to the recipient of the grant, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OWEB grant funds that were used to purchase the water interest, and reasonable interest and penalties at the option of the Director.

- (2) OWEB, its grantees, contractors and cooperating agencies must be provided sufficient legal access to property to which the water interest acquired with OWEB funds is appurtenant, for the purpose of monitoring to certify that the water interest is being used and managed consistent with Section 4b, Article XV of the Oregon Constitution.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

#### **695-046-0225**

##### **Subsequent Conveyances**

A water interest acquired with OWEB grant funds shall not be conveyed to another party unless the conveyance is approved by the Board and may not be conveyed for the purpose of consumptive uses.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13

#### **695-046-0230**

##### **Waiver and Periodic Review of Rules**

The Director may waive the requirements of Division 46 for individual grant applications, not including mandatory constitutional or statutory requirements, when doing so is reasonably calculated to result in more efficient or effective implementation of the Board's water acquisition grant program. Any waiver must be in writing and included in the grant file to which the waiver applies. The administrative rules for water acquisition grants shall be periodically reviewed by the Board and revised as necessary and appropriate.

**Statutory/Other Authority:** ORS 541.906

**Statutes/Other Implemented:** ORS 541.932(9)

**History:**

OWEB 2-2013, f. & cert. ef. 6-19-13