



OREGON
WATERSHED
ENHANCEMENT BOARD

Agenda Item D

Rules Revisions

Water Acquisitions Grant Program

Board Meeting July 28-29, 2026



Oregon

Tina Kotek, Governor



OREGON
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ENHANCEMENT BOARD

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July 28-29, 2026 OWEB Board Meeting

Staff report – Agenda Item D. Water Acquisition Grant Program Rulemaking

MEMORANDUM

To: Oregon Watershed Enhancement Board
From: Eric Hartstein, Senior Policy Coordinator
Brian Wolcott, Water Acquisitions and Capacity Coordinator
Renee Davis, Acquisitions and Special Programs Manager

Supports OWEB's Strategic Plan priority #6: Take bold and innovative action toward funding projects that advance climate resilience.

I. Introduction

This report provides the board an overview of proposed revisions to OWEB's Water Acquisition grant program rules (Division 46) and seeks board approval of the revised rules.

II. Background

OWEB's Water Acquisition grant program provides funding to acquire from willing sellers interests in water to maintain or restore streamflows for the benefit of watersheds and habitat for native fish or wildlife. The board last reviewed and adopted revisions to the Water Acquisition grant program in 2020, and following a five-year rule review, staff identified areas in the rules for refinement.

In July 2025, staff requested board input on the strategic direction of the program, including rulemaking. At the same board meeting, the board authorized rulemaking for the Water Acquisition grant program. Per ORS 183.333, a rulemaking advisory committee (RAC), made up of entities most likely to be impacted by the rules, was assembled to discuss all potential revisions to the Water Acquisition grant program rules. The RAC membership is found in Attachment A. The RAC met five times between November and March, working with staff to develop a draft set of Water Acquisition grant program rule revisions. Each RAC meeting was virtual and open to the public, with opportunities for written and verbal comments. A Water Acquisition grant program rulemaking update was provided to the board at the April 2026 board meeting, including a summary of proposed changes to the rules and a description of the opportunity to provide public comments.

III. Major Water Acquisition Grant Program Rulemaking Themes

In addition to minor updates, the draft rules to the Water Acquisition grant program include some substantive revisions, including but not limited to:

- Providing clarity on certain definitions in the rules and aligning language with existing statutes and rules;
- Clarifying eligibility for activities related to project planning and development, project design, and outreach;

- Clearly identifying how projects that use the Oregon Water Resources Department's Allocation of Conserved Water Program (or other Department-administered water conservation program to increase instream flow) may fit within the Water Acquisition grant program; and
- Refinements to the evaluation criteria and public involvement process.

While eligibility for grant applications proposing a groundwater project is not directly stated in the draft rules, the RAC did spend time discussing issues relating to potential groundwater projects. Given the complex nature of the groundwater topic—including considerations around science, regulatory frameworks, and measurement, among others—OWEB will identify a process for gathering additional information and creating space for learnings on this topic. Ultimately, this work could inform future guidance to applicants that are developing groundwater projects and interested in exploring eligibility and fit with OWEB's water acquisition grant program. These future discussions will occur subsequent to the rulemaking process. A process and timeline for this work have not yet been determined; however, staff will provide periodic updates to the board about these topics.

IV. Public Comment on Revisions to Water Acquisition Grant Program Rules

In addition to the public comment opportunities associated with each RAC meeting, OWEB released the draft rule revisions for formal public comment on May 1, 2026. The public comment period was open until June 1, 2026, with a virtual public hearing on May 21, 2026. Four written comments were received during the public comment period, and these comments are provided in Attachment B. A summary of the comments received, and OWEB staff response, are provided in Attachment C. There were no verbal comments provided at the public hearing.

OWEB solicited comments from the nine federally recognized Tribes in Oregon on the draft rule revisions. No comments from Tribes were received.

V. Final Draft Water Acquisition Grant Program Rules

The final draft of the Water Acquisition Program rules is provided as **Attachments D-1 and D-2** (redline and clean versions, respectively) to this staff report. During the board meeting, staff will walk through the proposed rule revisions with the board. As the public comment period on the rules has closed, the board will not consider additional comments on the draft rules during the July board meeting.

VI. Recommendation

Staff recommends the board approve the Water Acquisition Grant Program administrative rules found in Attachment D.

VII. Attachments

- A. Rulemaking Advisory Committee Members
- B. Comments Received
- C. Staff Summary and Response to Public Comments
- D-1. Proposed Water Acquisition Grant Program Rules – Redline
- D-2. Proposed Water Acquisition Grant Program Rules – Clean

Water Acquisition Grants (Division 46)

Rulemaking Advisory Committee

Name	Organization
Caylin Barter	outside counsel to Environmental Defense Fund
Anton Chiono	Confederated Tribes of the Umatilla Indian Reservation
Corey Courchane	Oregon Water Resources Department
Kate Fitzpatrick	Deschutes River Conservancy*
Jessica Humphreys	Trout Unlimited
Shilah Olson	Wasco Soil and Water Conservation District
Steve Parrett	Oregon Department of Environmental Quality
Spencer Sawaske	Oregon Department of Fish and Wildlife
April Snell	Oregon Water Resources Congress

*Gen Hubert Alternate for Kate Fitzpatrick – Deschutes River Conservancy



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

May 21, 2026

Eric Hartstein, eric.hartstein@oweb.oregon.gov
Oregon Watershed Enhancement Board
725 Summer St. NE, Suite 360
Salem, OR 97301

Re: Water Acquisition Grant Rulemaking, Draft Rule Comments

Dear Mr. Hartstein,

Thank you for the opportunity to provide public comments. WaterWatch is a river conservation group that works to restore and protect river flows statewide. WaterWatch drafted and championed the 1987 Instream Water Rights Act which provides the legal framework for much of the work that is funded by the OWEB Acquisition Grant Program. We also helped negotiate the Conserved Water Act. As such, we have a great interest in ensuring that state dollars in this fund are only spent on projects that result in legally protected instream flows and are in accordance with Section 4b of Article XV of the Oregon Constitution.

These comments supplement our comments submitted for consideration at the December 2025 and May 2026 RAC meetings.

Constitutional requirements of the Water Acquisition Fund: OWEB's Water Acquisition Grant Program is bound by Section 4b of Article XV of the Oregon Constitution. This section of law is clear: Funds must be used to (a) Protect and improve water quality in Oregon's rivers, lakes, and streams by restoring natural watershed functions or stream flows; (b) Secure long-term protection for lands and waters that provide significant habitats for native fish and wildlife; (c) Restore and maintain habitats needed to sustain healthy and resilient populations of native fish and wildlife; (d) Maintain the diversity of Oregon's plants, animals and ecosystems; (e) Involve people in voluntary actions to protect, restore and maintain the ecological health of Oregon's lands and waters; and (f) Remedy the conditions that limit the health of fish and wildlife, habitats and watershed functions in greatest need of conservation. In other words, the Water Acquisition Fund must be used to acquire waters that will result in water quality or quantity benefit to fish and wildlife. It does not allow funding projects that do not meet this end, nor does it allow for funding for projects that benefit private interests. We note this here as it ties into some of our comments on the draft rules.

OAR 695-046-0020, Definitions

Subsection (2), Conserved Water Project: The definition of "conserved water project" should be amended to clarify that it means a project that conserves "surface water" pursuant to Oregon's Conserved Water Act.

The clarification that ties the funding of Conserved Water Act projects to “surface water” is needed because public commentors have requested that OWEB expand use to acquisition of groundwater, and, in response, OWEB put together a draft guidance document that would allow this. As noted in our March comments, WaterWatch objects to the use of these very targeted state funds for groundwater conservation and/or ground water purchase for the following reasons:

- **The state cannot legally protect the saved and/or retired groundwater from other groundwater or surface water appropriators.** While groundwater and surface water are hydraulically connected in most areas of the state, and groundwater is critically important to many groundwater dependent ecosystems, Oregon’s water laws do not allow protection of retired groundwater as either groundwater or surface flow. No mechanism exists to achieve this. In other words, the state lacks the ability to protect either “conserved” or “purchased” groundwater either in the ground or in the stream. Public funds should not be used for projects that will result in water that will just be picked up by other water right holders.
- **Without legal protection of saved water, expansion to groundwater would not align with the purposes of the acquisition fund:** We do not believe the acquisition of groundwater rights, absent the ability to protect that water against other water right users, aligns with the purposes set forth in ORS 541.956, which focuses on funding projects that will protect or restore native fish or wildlife habitats and/or projects that will protect or restore natural watershed or ecosystem functions in order to improve water quality or stream flows. Absent securing legislation that would allow the state to protect saved/retired groundwater as against other ground/surface water appropriators, the groundwater dependent ecosystem benefits hoped for could likely not be realized.
- **State funds should not be used to purchase groundwater rights that are subject to regulation:** OWEB’s draft guidance anticipates that funds could be used for groundwater projects (including purchasing water rights) in restricted groundwater areas. The language is very broad and presumably includes water rights that will be regulated off. It is bad public policy to pay people to not use water that they could not use regardless. Water belongs to the public and while water users can obtain rights to use that water, those rights come conditions of use, including the risk of regulation based on interference, lack of water, etc
- **State funding of groundwater conservation projects could increase consumptive use to the detriment of the very values the Water Acquisition Fund is supposed to enhance.** To the extent OWEB is considering allowing state funding of groundwater efficiency projects that attempt to use the state’s Conserved Water Act (ACW), there are a number of concerns. First the legal efficacy of this is questionable. Our reading of the ACW is that it is directed at surface water projects. And while true that OWRD has allowed a handful of groundwater ACW projects to move forward, that does not mean the legal question is settled. Second, as noted previously, the state does not have the ability to protect any saved water from other groundwater or surface water appropriators. And third, in many cases, the “face value” of a groundwater right may exceed the actual amount of water that can be beneficially applied to the existing place of use. However, because water savings are self-reported under the ACW program, and savings are allowed to be “spread” to a larger place of use, enrolling a groundwater project in the ACW program may actually increase water use. Any efficiency projects that allow an increase in consumptive use (which is what the ACW allows) could make already bad situations worse for groundwater-dependent ecosystems (GDEs).

Subsection (6), Legally Protected Instream Flow: Please remove the term “time-limited instream transfer”, see comments on subsection (9) for the explanation.

Subsection (9), Time limited instream transfer: This definition needs to be struck. There is nothing in ORS 537.348(1) that allows a “time limited” instream transfer. The statutes allow instream leases, but those are capped at five years. If a user wants to extend a lease beyond five years, there is a renewal process. Deleting this is of critical importance to other instream flow programs, where water right holders are seeking to gain “time limited transfers” to get around important environmental requirements (for example, conversion of hydroelectric rights to instream rights). Agency rules must conform to statute; OWRD does not have the authority or discretion to issue time limited transfers, nor does OWEB have the authority or discretion to fund projects that are not grounded in the law. To the extent rule language allowed this previously, OWEB was in error for allowing this.

OAR 695-046-0035 Eligibility

We would suggest this section be reworked to more clearly articulate the eligibility criteria that is found in ORS 541.956(4)¹. As is, the rules seem to veer somewhat from the purposes of the fund and allow funding for work/projects not contemplated by the governing statute/constitution.

OAR 695-046-0185 Use of Grant Funds

Subsection (2): WaterWatch has significant concerns with the newly proposed language. Unless an efficiency project proposes to put 100% of the saved water instream via use of the Conserved Water Act, then the new language will allow use of funds to benefit districts and/or private individuals without a commensurate benefit to river/fish. For example, under this proposed allowance, a district that uses OWEB water acquisition funds to fund 100%² of its project, would only have to put 75% of the saved water instream (under the ACW). This does not align with the statutory sideboards of the fund, which only allow the funds to be used for projects that improve fish/wildlife habitat and/or water quality for ecosystem function. If you are going to keep this section in, it needs to be qualified that it will only cover these costs if the project puts 100% of the saved water instream.

Further rule language needed: The rules should make clear that this fund cannot be used for projects that provide mitigation water and/or mitigation credits (e.g. Deschutes Groundwater Mitigation Program). While we assume this is the intent, for clarity’s sake this should be written into the rules so that OWEB and/or the Technical Team do not waste staff time and/or state resources evaluating projects that do not meet the requirements of the Fund.

¹(1)Acquiring from willing owners interests in land or water that will protect or restore native fish or wildlife habitats. The interests may include, but need not be limited to, fee interests, conservation easements or leases.

(2)Projects to protect or restore native fish habitat or wildlife habitat.

(3)Projects to protect or restore natural watershed or ecosystem functions in order to improve water quality or stream flows.

(4)Resource assessment, planning, design and engineering, technical assistance, monitoring and outreach activities necessary for carrying out subsections (1) to (3) of this section.

² Note: The rule propose striking the 25% match. While the statute still requires a match, without a minimum it is entirely conceivable that a district or other water right holder could provide as little as a 1% match, and, per the rules, this does not even need to be funding but could be in-kind work.

OAR 695-046-0190, Matching Contributions:

Subsection (1): It is unclear why the 25% match language has been deleted. To the extent it was to incentivize instream transfers, we do not object. But if OWEB is going to allow the funds to be used to fund irrigation efficiency projects, then, unless the Project commits to putting 100% of the water instream, there should be a minimum 25% match. We would suggest that OWEB parse out the match requirements for different types of projects.

OAR 695-046-019, Coordinating and Partnering with Other Funders (proposed deletion): The draft rules note that this section is proposed for deletion because “relevant content” has been incorporated into the application evaluation process (OAR 695-046-0195). The full language of this section is not captured in draft OAR 695-046-0195, which raises questions as to whether the new placement opens the door to OWEB funding partnerships that do not align fully with Section 4(b) of Article XV of the Oregon Constitution (e.g. irrigation efficiency funding sources that do not require a public benefit).

OAR 695-046-0196 Evaluation Criteria:

Subsection (1)(f): It is unclear why the criteria related to climate change has been deleted, especially given Governor Kotek’s Ex Order 25-26. We would encourage OWEB to re-insert this provision and amend it so that it states “resilience and/or adaptation” to better align with Ex Order 25-26.

Subsection (2): We strongly support this new language; this is critical to the efficacy of the project that funding be tied to senior water rights. Moreover, requiring that ACW instream rights be at least of equal priority of the existing right ensures that in times of shortage it will not be completely regulated off against the original water right holder but rather share any reduction proportionally; that said, given these are public funds meant to restore water, we would encourage OWEB to go even further and require that the instream portion be one minute senior to the underlying right.

Subsection (3)(c): We strongly support the proposed amendments. That said, we would urge that OWEB funds for ACW projects be limited to projects that propose to put 100% of the saved water instream. Otherwise, again, this fund could end up serving private interests over the environment, which is not allowed by the fund purposes.

Subsection (4)(c): We strongly support the proposed amendments.

New evaluation criteria needed: We would suggest that evaluation criteria be added that gives greater weight to permanent instream transfers over temporary transfers or contractual agreements. Permanent transfers are much more aligned with purposes of the fund and should be weighed accordingly. Instream leases, on the other hand, are often utilized simply to stave off forfeiture and/or other water management measures to benefit the water right holder over time rather than provide a pathway to long term restoration of flows. We would suggest the following weighted order: (1) permanent transfers, (2) instream leases that are part of a larger basin strategy to restore flows over the long term (e.g. Walla Walla split duty leases), (3) instream leases.

OAR 695-046-0200 Application Evaluation Process

Subsections (1)(b), (1)(c)(A), (1)(c)(C) and (2)(b): Please include the statutory cites (e.g. ORS 541.956(4)) in addition to the rule cites. This is critical, because as noted elsewhere in these comments, the rules do not capture all the statutory requirements that govern use of the fund. Without the inclusion of either the full requirements of the statute and/or the statutory cite, the Technical Review team and/or the Board risk running afoul of statutory requirements.

Subsection (3): As we understand it, this section is an attempt to reconcile the proposed deletion of OAR 695-046-019 (Coordinating and Partnering with Other Funders) with the opportunity provided in the Consitution to partner with other funders. Our suggestion is that the original stand-alone subsection on this topic be retained, rather than incorporate it as screen in the application review. Our concern is that if this is embedded in this section, it could result in prioritization of irrigation efficiency projects (that tend to get funding from multiple sources) over single sourced (OWEB) instream transfers. While presumably not the intent, this could result in some valuable projects scoring less favorably only for lack of “funding partnerships”.

OAR 695-046-0201, Staff Funding Recommendation Process:

Subsection (1)(a): The proposed language “as suggested by the Technical Review Team” appears to take away OWEB’s discretion to evaluate the Technical Review Team’s proposed conditions and also limit the ability of OWEB to place additional conditions (beyond the Technical Review Team’s) on the project.

We do not object to the former **if** the Technical Review Team is made up of State and Federal Agencies and Oregon Tribes, however, given the definition of “Technical Review Team” was struck, it is unclear what the effect on the ground will be absent knowledge of who will be doing application review. We would suggest that Technical Review team be qualified as “State and Federal Agencies and Oregon Tribes” somewhere in the rules. Absent that, we would urge that OWEB change “shall” to “may” to give OWEB discretion to evaluate proposed conditions. As to the latter, it would also seem prudent for the rules to retain OWEB’s current ability to impose conditions independently. Public comments, which come after the Technical Review Team review, might warrant additional conditions. With the new rule language, it is questionable whether OWEB would have the authority to impose them.

Additional conditions for “contractually protected instream flows”: As noted in our May 2026 comments, the rules should include remedies for failure to abide by a contract. The state has no ability to enforce or regulate private contracts. Given public monies are being spent on these types of “alternate” instream agreements, it would seem prudent to include directives on enforcement/remedy, including refunding the state if the agreement goes awry. This should have a stand-alone section in the rules but should also be included as a condition of the project.

Public Notice and Comment: We would urge OWEB to amend this section of the rules to require a public notice and comment period before OWEB’s staff recommendation to the Board. As is, the rules are limited to public comment at the Board meeting.

OWEB’s current public comment opportunities are very confusing and seem unnecessarily limited. Given these are public funds, it is very important to have a transparent and inclusive public comment process. To that end, we would urge that the rules be amended to require: (1) public notice of the

technical review team evaluation of the application, (2) a set time period for public to comment to be received by OWEB, (3) OWEB consideration of public comments prior to OWEB's recommendations to the Board. This would be in addition to the public notice/comment opportunities for the Board meeting noted in OAR 695-046-0205. Moreover, related to our comments on Subsection (1)(a), the rules should also allow discretion to OWEB to recommend additional conditions in response to public comment. Under the hearing draft of the rules, the only conditions allowed are those recommended by the Technical Team.

OAR 695-046-0202, Funding Decisions: We would urge that the rules be amended to make clear that the Board's decision must include a determination that the project meets statutory requirements.

OAR 695-046-0205, Public Involvement: As noted in our comments to proposed OAR 695-046-0201 (Staff Funding Recommendation Process) we believe the OWEB Water Acquisition Grant program would benefit from more transparent and inclusive public notice and comment process, including providing the opportunity for public comment prior to the OWEB staff report and also the Board meeting. We will repeat those recommendations here and also fold in additional recommendations specific to the OWEB Board meeting. To that end, the full suite of our public notice and comment recommendations are: (1) public notice of the Technical Review Team evaluation of the application, (2) a set time period in rule for the public to provide written comments on the Technical Review Team evaluations, (3) OWEB consideration of public comments prior to OWEB's recommendations to the Board (including discretion granted to OWEB to further condition the project based on public comment), and (4) public notice of the OWEB Staff Report for the Board and opportunities for written and verbal comment for the Board meeting (including a set time period for written comment).

In closing, WaterWatch is very supportive and appreciative of OWEB's Water Acquisition Funding program. However, we urge you to address our comments to ensure that the program fully aligns with its intended purposes and also includes robust public notice and comment for use of these public funds.

Thank you for your consideration of our comments.

Sincerely,



Kimberley Priestley
Sr Policy Analyst



public comments to OWEB water acquisition grant program rules

From nunzie@pacifier.com <nunzie@pacifier.com>

Date Mon 6/1/2026 4:21 PM

To HARTSTEIN Eric * OWEB <eric.hartstein@oweb.oregon.gov>

[You don't often get email from nunzie@pacifier.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Hello Mr. Hartstein

Kindly enter this public comment email into the record on proposed rule changes to OWEB's water acquisition grant program rules.

<<https://records.sos.state.or.us/ORSOSCMSearch/Search/RecordViewer.aspx?uri=15779266>>

I would like to echo and endorse the comments made by Water Watch of Oregon dated 5-21-2026.

I would echo that OWEB's water acquisition fund grants should specify surface water and only apply to the acquisition of surface water.

To section 695-046-0185 Use of Grant Funds please add (10) The purchase and/or installation of river gage(s) that measure flow and temperature.

The objective of increasing surface waters in rivers for habitat enhancement both quantity and quality is ever more critical in our Oregon's climate changed, glacier depleting and record breaking high temperatures across the state. For instance in the middle Deschutes river there is a dire need for at minimum 4 additional river gages without which additional protected surface water flows achieved thru OWEB's water acquisition grant program would not be measurable, would not be able to be monitored and would not be able to be enforced.

River temperature and river flow are critical to fish and aquatic habitat that support fish. It is my opinion that ad neuseam basin planning might not actually add one more drop of wet water to our rivers and therefore I believe there needs to be added to the OWEB grant program a methodology for measuring flow achievements thru river gages to assure that public funds used to conserve wet water instream need to also enhance the river temperature to support fish and aquatic habitat.

I also believe that if a grant is not perfected, that river reach to be

benefited still be benefited and not just put the grant to the entirety of a particular basin.

695-046-0215(3)

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

Is this the original application budget? or an adjusted application budget?

694-046-0225 doesn't show to be stricken from rule, yet it doesn't appear in the rule in the link at top of my email:

"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."

I believe the above quoted "..." language should remain in rule and that the following language "and/or for the purpose of mitigation" should be added after 'consumptive uses'.

I do believe it's important for the Technical Review team to have expertise in surface to ground water evaluation because not all surface water modernizations are devoid of harm to groundwater. It's important that conserved wet surface water placed in stream not harm groundwater.

Since water is owned by the public in Oregon, it's imperative that the results of instream wet water have a priority date that secures it permanently. I concur with Water Watch's comment about issuing a priority date of 1 minute earlier to assure that wet water placed in our rivers is not subject to being stripped out of the river for human justification if/when for instance drought is declared.

It is the 2nd quarter of this century: it's time for new policies to restore the waters and water qualities of Oregon's rivers.

Thank you for considering my views. Kindly add my email to your outreach list when the final version is out for public comments.
<nunzie@pacifier.com>

Cheers,

6/23/26, 8:23 AM

Inbox - HARTSTEIN Eric * OWEB - Outlook

Nunzie Gould
541 420-3325

First and Last Name	David Filippi
I wish to provide (select one):	written comment
I want to provide comment at (select one):	OWEB Rule Revisions
Program (required)	OWEB Water Acquisition Grant Program
Type Comment Here (comments may also be uploaded below):	June 1, 2026 VIA EMAIL (eric.harstein@oweb.oregon.gov) Eric Harstein Rules Coordinator Oregon Watershed Enhancement Board 775 Summer St. NE, Suite 360 Salem, OR 97301 RE: Comments on Proposed Rules for Oregon Watershed Enhancement Board Water Acquisition Grant Program Rules Dear Mr. Harstein, The Deschutes Basin Board of Control (DBBC) is comprised of eight Central Oregon irrigation districts, including Arnold, Central Oregon, North Unit, Ochoco, Swalley, Three Sisters, Tumalo and Lone Pine (Districts). Through the DBBC, formed in January 2002, the Districts coordinate and share their respective resources and management assets to conserve water, improve their services for farm and ranch families, and enhance river conditions for salmon, steelhead, other fish and wildlife species, and recreational opportunities. We appreciate the opportunity to comment on the recently proposed rules associated with the Oregon Watershed Enhancement Board's (OWEB) Water Acquisition Grant Program. As background for our comments, OWEB's water acquisition grant rules, codified at OAR 695-046, specify the process and criteria for OWEB to award grants for Water Acquisition Projects. (All citations below are to the new rules.) A "Water Acquisition Project" is a voluntary transaction that results in Legally Protected Instream Flow or Contractually Protected Instream Flow. OAR 695-046-0020(10). Relevant here, "Contractually Protected Instream Flow" is the amount of water secured through a Water Use Agreement, OAR 695-046-0020(3), while "Water Use Agreement" is defined to mean a contractual agreement between a water right holder and grant applicant to change or forgo use of water during specified periods or under specified conditions, such as forbearance agreements, minimum flow agreements, and other private agreements, OAR 695-046-0020(11). Finally, "Legally Protected Instream Flow" is the "amount of water secured through Instream Leases, Split-Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water projects, Permanent Instream Transfers, or other mechanisms administered by the Oregon Water Resources Department." OAR 695-046-0020(6). During the rulemaking process, there was a

	fair amount of discussion regarding the Deschutes Basin alternative pathway and the need to ensure that alternative pathway projects are eligible for grant funding. We understand that the outcome of the discussion is reflected in OAR 695-046-0185, which specifies how grant funds may be used. As relevant to the DBBC and the Deschutes Basin alternative pathway, OAR 695-046-0185(2) states that funds may be applied toward: “The cost of water conveyance or water use efficiency project elements, such as equipment, supplies, and contracted services for installation, that result in Legally Protected Instream Flow using Oregon Water Resources Department’s Allocation of Conserved Water program, or other Department-administered instream flow water conservation program.” (Emphases added.) OAR 695-046-0185(2) is a new provision. Based on the discussion in the RAC meetings, alternative pathway projects are intended to fall within the category of projects using “other Department-administered instream flow water conservation program.” The DBBC understands that this provision is intended to preserve the ability to use program funds for alternative pathway project including, among other things, the alternative pathway for protecting water that is set forth in the Oregon Water Resources Department’s Memorandum entitled “Water Conservation and Protection Pathway for Irrigation Modernization Projects in the Upper Deschutes Basin,” dated December 18, 2024. This pathway for protecting instream flow is critical to the DBBC and its member districts, as it provides a way of conserving water and protecting instream flows in the winter months, as set forth in the Deschutes Basin Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Meanwhile, due to restrictions inherent to the Allocation of Conserved Water program (where conserved water must be protected in the same season it is conserved), the Allocation of Conserved Water program is not available for many DBBC conservation projects. In the event that the Department has a different understanding of the language in OAR 695-046-0185(2), we would appreciate a further discussion. We appreciate the work of the Department and the rules advisory committee during the rulemaking process to recognize and preserve alternative pathways for protecting water instream in order to qualify under the Water Acquisition Grant Program. Sincerely, Craig Horrell DBBC President
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Submission Date: 06/01/2026 05:24 PM CST

Submission ID: ea447d6f-396d-4411-847e-8f7ea85c2536

Record ID: 52756



Oregon Water Resources Congress

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June 1, 2026

Eric Hartstein, Rules Coordinator
Oregon Watershed Enhancement Board
775 Summer St. NE, Suite 360
Salem, OR 97301
Submitted via e-mail: eric.hartstein@oweb.oregon.gov

RE: Comments on OWEB's Proposed Revisions to Water Acquisitions Grants Program

Dear Mr. Hartstein,

On behalf of the Oregon Water Resources Congress (OWRC), I am providing comments on the Oregon Watershed Enhancement Board's (OWEB) proposed revisions to the rules for the Water Acquisition Grants Program under OAR Chapter 695, Division 46. OWRC served on the Rules Advisory Committee (RAC) for this rulemaking effort and appreciates the opportunity to provide formal public comment.

OWRC is a nonprofit trade association representing irrigation districts, water control districts, drainage districts, water improvement districts, and other local government entities delivering agricultural water supplies throughout Oregon. Our members are quasi-municipal local government entities charged with operating and maintaining complex water management systems, including water supply reservoirs, canals, pipelines, pump stations, hydropower facilities, fish screens, and fish passage. OWRC members deliver water to approximately 600,000 acres of farmland in Oregon—more than one-third of the irrigated land in the state. Several of our members and their patrons have used OWEB grants.

OWEB's Water Acquisition Grant program is important funding mechanism for water conservation and efficiency projects that directly result in benefits for fish and wildlife habitat. This grant program is fairly unique by providing funding to projects that will voluntarily transfer, lease, or otherwise contractually protect, all or part of their water rights instream. This helps incentivize projects with instream components that might not otherwise occur and provides a win-win solution for both the water user and the environment. There are many mechanisms for maintaining or restoring streamflows through voluntary transactions and OWEB's rules properly recognize the value of each, whether it is temporary or permanent, and whether it is protected through an instream water right or a water use agreement.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

OWRC actively participated in the RAC and provided comments throughout the rulemaking process. The proposed rule revisions are generally minor, provide process improvements for the agency and the applicants, and are aligned with the RAC discussions we participated in. We mentioned this during the RAC process but want to reiterate in our formal comments the importance of having updated guidance for applicants once the rulemaking is finalized, which OWEB staff have committed to doing. It is crucial that the materials online are updated to match the final rules in advance of the next grant application cycle.

There are several modest language changes that will help provide applicants with greater clarity on what the grant program does or does not apply to. All of these changes were discussed extensively by the RAC, particularly definitions and new language. While a modest change, one important provision to highlight, OAR 695-046-0035, ensures that irrigation districts receive notice of any proposed water acquisition project inside their district boundaries. The language has been reworded for clarity and does not change the intent or process, which prevents inadvertent involvement of district water rights and that the transactions are only with willing water right holders.

There were also a few items discussed during the RAC process that did not make it into the final rule and we agree with OWEB staff on leaving those rule changes out, specifically related to Allocation of Conserved Water projects and groundwater projects. However, our agreement on these provisions not being included should not be construed as our support or opposition to the changes, but more indicative of the issues being more substantive than what the RAC had time to discuss. It is important to note that at some point OWEB will likely need to revisit the rules (perhaps at the next five-year rule review) and potentially make additional revisions once the Oregon Water Resources Department (OWRD) has clarified their own related rules and guidance related to groundwater. There have also been stakeholder suggestions for OWRD to update its rules related to the ACW program as well. It is also worth noting that the absence of rule language does not necessarily preclude OWEB from funding eligible projects as it has in the past, so long as it still aligns with the agency's existing statutory authority.

Overall, OWEB staff did a commendable job in keeping the RAC process focused and on track, while still providing time and space for new ideas and suggestions. Proposed rule changes and various materials were provided in advance to RAC members and meeting materials are posted online in a transparent and accessible manner. We look forward to participating in future rule update processes and appreciate your time and consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Snell', is written over the word 'Sincerely,'.

April Snell
OWRC Executive Director

Summary of Public Comments: Water Acquisition Grants Rules

Attachment C

Rule: 695-046-0020(2), Definitions

Commenter(s)	Comments	Response	Rule Change
Kimberley Priestley, Senior Policy Analyst on behalf of WaterWatch of Oregon	Recommends amending the definition of “Conserved Water Project” to clarify that it means a project that conserves “surface water” pursuant to Oregon’s Conserved Water Act.	Oregon’s Conserved Water Act (ORS 537.455 to 537.500) does not provide a distinction between surface water and groundwater. As noted in the Water Acquisition Rulemaking Update staff report to the OWEB Board at the April 2026 meeting (Agenda Item N): While eligibility for grant applications proposing a groundwater project is not directly provided for in the draft rules, the RAC did spend time discussing issues relating to potential groundwater projects. Given the complex nature of the groundwater topic - including considerations around science, regulatory frameworks, and measurement, among others - OWEB will identify a process for gathering additional information and creating space for learnings on this topic. Ultimately, this work could inform any future guidance to applicants that are developing groundwater projects, or otherwise interested in exploring eligibility and fit with OWEB’s water acquisition grant program. These discussions will occur subsequent to the rulemaking process.	No
Nunzie Gould	Supports the comments made by Water Watch of Oregon dated 5-21-2026, including that OWEB's water acquisition program only fund grants that acquire surface water.	See response to comments above on OAR 695-046-0020(2)	No

Rule: 695-046-0020(6) & (9), Definitions

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends removing the term “Time-limited instream transfer” from subsection (6) and striking the definition altogether in subsection (9).	“Time-limited instream transfer” is the terminology that OWRD uses for instream transfers that are not permanent and are longer than instream leases, which are leases of up to five years. See OAR 690-077-0070 and OAR 690-077-0075.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0035, Eligibility

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends revising the eligibility criteria to better align with the eligible activities described in ORS 541.956(4).	Consistent with other OWEB grant programs, programmatic activities (i.e., project planning/development, project design, and outreach) that will lead to future instream water transactions are eligible for OWEB funding. To be eligible in the Water Acquisition grant program, the activities may occur only when happening in conjunction with a water acquisition project.	No
April Snell, Executive Director, on behalf of Oregon Water Resources Congress	Notes that proposed rule revision in subsection (2) ensures that irrigation districts receive notice of any proposed water acquisition project inside their district boundaries. The language has been revised for clarity and does not change intent or process.	OWEB staff agree that the proposed rule revision provides clarity and does not change the intent of process of notification of irrigation districts.	No

Rule: 695-046-0185(2), Use of Grant Funds

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that only an efficiency project (utilizing the Oregon Water Resource Department's Allocation of Conserved Water program or similar instream flow water conservation program) that proposes putting 100% of the saved water instream via use of the Conserved Water Act should be considered.	The Water Acquisition grant program requires a 25% match. Projects submitted that are proposing to utilize the ACW program can choose to allocate 100% of the conserved water for instream flow. If a project utilizing ACW has secured additional public funding, which may allow for less than 100% of the water saved to go instream, evaluation criteria have been adjusted to address cost in relation to amount and percentage of water to be protected instream. See OAR 695-046-0196(3)(c).	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0185, Use of Grant Funds

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends clarification that this fund cannot be used for projects that provide mitigation water and/or mitigation credits (e.g. Deschutes Groundwater Mitigation Program).	OWEB's mitigation policy currently prohibits the use of OWEB funds for mitigation purposes, which are defined as, "activities designed specifically to compensate for the adverse ecological effects of a project or development activities, or to resolve violations of law." The policy will be incorporated into guidance for the Water Acquisition grant program to ensure that grant applicants are clear that the program will not provide funding for mitigation purposes as described in the mitigation policy.	No
Deschutes Basin Board of Control	Requests clarity regarding projects using Oregon Water Resources Department's Allocation of Conserved Water program, or "other Department-administered instream flow water conservation program", to confirm that this clearly states inclusion of projects that are utilizing the Oregon Water Resources Department's Memorandum entitled "Water Conservation and Protection Pathway for Irrigation Modernization Projects in the Upper Deschutes Basin," dated December 18, 2024.	The Deschutes Alternative Pathway was discussed by the RAC and specifically considered when the statement, "other Department-administered instream flow conservation programs," was included in rule. The language also allows for other similar programs that may be developed by OWRD prior to the next Water Acquisition Grants rules update.	No
Nunzie Gould	Recommends that the purchase and/or installation of river gage(s) that measure flow and temperature be an eligible use of grant funds.	The Use of Grant Funds section includes the cost of monitoring the implementation of the Water Acquisition Project to certify that the water interest is being used and managed consistently with the intent of grant application, allowing for any conditions listed in the Grant Agreement. This allowable cost would include equipment, among other costs. However, projects that are requesting only funding for flow measurement, absent an on-the-ground transaction that the monitoring equipment would support, would not be considered eligible for a Water Acquisition grant.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0190, Matching Contributions

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Notes that it is unclear why 25% match requirement has been deleted and recommends that a 25% match requirement be retained for irrigation efficiency projects.	Match requirements for OWEB grants, consistent with ORS 541.958, are addressed in the overarching grant program rules in OAR chapter 695, division 5. OAR 695-005-0030(2) provides that match requirements will be included in the announcement for each grant offering. For the Water Acquisition grant program, the match requirement is currently 25%. Any proposed reduction in the match requirement for this program would be brought to the board for approval as a part of the adoption of the biennial spending plan, in preparation for Water Acquisition grant cycles that biennium.	No

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

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Notes that this rule is proposed for repeal, and that the language has not been fully incorporated into the proposed revisions in OAR 695-046-200(3) and raises a question about whether that may lead to funding partnerships that do not align with Constitutional requirements for OWEB lottery funding.	The OWEB Water Acquisition program will only consider coordinating and partnering with other funders with the intent of projects resulting in legally or contractually protected instream water. Learnings from past efforts to explore proactive pooling of funding from various water acquisition funders found that individual program missions and requirements made this difficult. The intent of the remaining reference is to encourage coordination with other programs without a pooling of funds. By continuing to administer OWEB's water acquisition grant program as a stand-alone, the agency ensures Water Acquisition investments align with Constitutional directives. Evaluation criteria for the Water Acquisition program require clear demonstration of species benefits, habitat benefits, and water quantity and/or water quality benefits.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0196 Evaluation Criteria(1)(f)

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that criteria related to climate change remain in Rules and that the criteria wording include the phrase “resilience and/or adaptation” to better align with Governor Kotek’s Executive Order 25-26.	The OWEB Board has adopted Climate-Related Evaluation Criteria (OAR 695-005-0045) in the Grant Program Rules that apply across OWEB grant programs, including Water Acquisition grants. Those criteria include a specific criterion that applications shall be evaluated on how changing climate conditions are incorporated into the project and how the project will contribute to durable adaptation and resilience for ecosystems, including human communities.	No

Rule: 695-046-0196(2), Evaluation Criteria

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Supports new language requiring that Allocation of Conserved Water instream rights be at least of equal priority date as the existing right and encourages OWEB to require that the instream portion be one minute senior to the underlying right.	OWEB appreciates the support for the proposed revision. This comment refers to assigning the same priority date, and same minute, to conserved water going instream. The ACW program no longer allows the instream portion of the conserved water to be 1 minute senior to what is used out of stream. See OAR 690-018-0040(10)	No
Nunzie Gould	Recommends that water conserved instream using the ACW program have a priority date of 1 minute earlier to ensure that wet water placed in our rivers is not subject to regulation if/when a drought is declared.	See comments above on OAR 695-046-0196(2).	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0196(3)(c), Evaluation Criteria

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Support the proposed amendments to evaluation criteria relative to ACW projects but would like it to be limited to projects that propose to put 100% of the saved water instream.	OWEB appreciates the support for the proposed revision. In addition to this revised language, existing and new evaluation criteria ensure that all Water Acquisition grants meet Constitutional requirements and result in instream flow improvements.	No

Rule: 695-046-0196(4)(c), Evaluation Criteria

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Support the proposed amendments.	OWEB appreciates the support for the proposed revision.	No

Rule: 695-046-0196, Evaluation Criteria (General)

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that evaluation criteria be added that gives greater weight to permanent instream transfers over temporary transfers or contractual agreements.	The evaluation criterion for the term of the transaction addresses this topic and will factor into the technical review team recommendations in relation to the other criteria.	No

Rule: 695-046-0200(1)(b), (1)(c)(A), (1)(c)(C) and (2)(b), Application Evaluation Process

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends including statutory cites (e.g. ORS 541.956(4)) in addition to the rule cites.	The Water Acquisition Grants Purpose (OAR 695-046-0010) states that the grant program will be operated in accordance with ORS 541.956, which provides the purposes of the Watershed Conservation Grant Fund. These purposes provide appropriate uses for the fund.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0200(3), Application Evaluation Process

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that the original stand-alone subsection on Coordinating and Partnering with Other Funders be retained.	See response to comment above on OAR 695-046-0195. In addition, funding partnerships are not part of the evaluation criteria, so a project without one would not be viewed less favorably. Separately, all OWEB grants require match contributions, as described in the response to comments on 695-046-0190 provided above.	No

Rule: 695-046-0201(1)(a), Staff Funding Recommendation Process

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Concern that the proposed language appears to take away OWEB's discretion to evaluate proposed conditions on a grant from a technical review team, and also limits the ability of OWEB to place additional conditions beyond those proposed by the review team on a grant. Encourages a definition of 'Technical Review Team' and language that provides OWEB discretion on conditions.	OWEB's Grant Program Rules, OAR 695-005-0020(4), provide a definition for technical review teams that applies across OWEB's grant programs: "Technical Review Team is a team of designated persons with interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate grant applications based on evaluation criteria." OAR 695-005-0050(3) provides discretion for the OWEB Director to establish grant agreement conditions for each grant type. OWEB agrees that the language in OAR 695-046-0201 should be revised to provide that clarification. The second sentence of subsection (1)(a) has been revised to change the "shall" to "may" after the word "recommendation".	Yes

Rule: 695-046-0201, Staff Funding Recommendation Process

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that the rules include remedies for failure to abide by a contract.	OAR 695-046-0220 provides rules for compliance and enforcement for water acquisition grants. In addition, OWEB grant agreements contain provisions for disbursement of grant funds and for the recovery of funds if certain conditions are not met.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0201, Staff Funding Recommendation Process

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that the rules require a public notice and comment period before OWEB's staff recommendation to the Board.	Prior to OWEB Board meetings, a GovDelivery notice (with a circulation in the thousands) is sent. The notice provides the meeting agenda, items where the Board will be making funding decisions, and process for providing written and/or verbal comments on decision items. There are also opportunities to provide written and verbal comments associated with board committee meetings.	No

Rule: 695-046-0202, Funding Decision

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends that the rules be amended to make clear that the Board's decision must include determination to ensure that the project meets statutory requirements.	The Water Acquisition Grants Purpose (OAR 695-046-0010) states that the grant program will be operated in accordance with ORS 541.956, specifying the purposes of the Watershed Conservation Grant Fund. Grant applications are reviewed by staff for eligibility in relation to statutory requirements and Water Acquisition Program Rules. If determined to be eligible, project applications then are sent to technical review team members for their review in relation to the evaluation criteria. In addition, each grant agreement cites ORS 541.956 and Section 4b of Article XV of the Oregon Constitution as OWEB's authority for funding the activities.	No

Rule: 695-046-0205, Public Involvement

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	Recommends OWEB provide an opportunity for public comment prior to the OWEB staff report and board meeting and include a process for consideration of public comments on the application evaluations prior to OWEB's recommendations to the Board.	See response to comments above on OAR 695-046-0201 regarding the process for providing comments on grant applications being considered for funding by the OWEB Board. Unless otherwise required by statute (i.e., fee-title transactions in land acquisition grants), this process is consistent across OWEB grant programs.	No

Summary of Public Comments: Water Acquisition Grants Rules

Rule: 695-046-0215(3), Directors Funding Approval and Distribution of Funds

Commenter(s)	Comment	Response	Rule Change
Nunzie Gould	Requests clarity regarding how funds may be distributed prior to Water Acquisition Project transaction closing for eligible activities specified in OAR 659-046-0185 and included in the application budget.	The budget referred to here is the final application budget, or budget submitted with edits based on revisions requested by staff following technical review and prior to board decision, such that the application budget referenced in rule aligns with the budget presented to and approved by the OWEB Board.	No

Rule: General Comment

Commenter(s)	Comment	Response	Rule Change
Kimberley Priestley, WaterWatch	WaterWatch is supportive and appreciative of OWEB's Water Acquisition Funding program. Urges OWEB to address comments to ensure that the program fully aligns with its intended purposes and also includes robust public notice and comment for use of these public funds.	OWEB appreciates these thoughtful comments and will consider them as we continually work to improve how the agency's grant programs are administered.	No
April Snell, the Oregon Water Resources Congress	Notes that some issues discussed during RAC process were not included in final rules. Agrees with leaving issues out of rules, specifically related to the Allocation of Conserved Water projects and groundwater projects, but notes that as OWRD updates related rules, that it may be important to revisit the issues in a future rulemaking.	OWEB staff agree that future rulemaking may be necessary to incorporate OWRD updates to rules that have a nexus with the Water Acquisition grant program.	No
April Snell, Oregon Water Resources Congress	Appreciated RAC process and noted meeting materials were provided in advance and made available to public in a transparent manner. Wishes to participate in future rulemaking processes.	OWEB appreciates these thoughtful comments and will consider them as we continually work to improve how the agency's grant programs are administered.	No

Summary of Public Comments: Water Acquisition Grants Rules

Commenter(s)	Comment	Response	Rule Change
Nunzie Gould	Recommends that if a grant is not perfected, that river reach to be benefited still be benefited and not just put the grant to the entirety of a particular basin.	This comment is unclear but may be referring to programmatic funding that can be funded as part of a water acquisition project. The programmatic funding can be related to development of the proposed Water Acquisition Project or future eligible Water Acquisition Projects in the same basin, or a portion thereof.	No
Nunzie Gould	Requests clarity on a section of the rules (OAR 695-046-0225) that was not posted in the public notice regarding the rule changes.	The version of the Water Acquisition Rules posted with the request for public comments only shows those sections of the Program's Rules in which changes (amendments) are proposed. OAR 695-046-0225 has no proposed revisions and will remain a part of the Water Acquisition Grants rule division.	No
Nunzie Gould	Recommends that the Technical Review Team have expertise in surface to ground water evaluation because not all surface water modernizations are devoid of harm to groundwater.	The Water Acquisition application technical review team has expertise in both surface water and groundwater. In addition to technical review as part of the OWEB grantmaking process, several types of eligible water acquisitions are subject to a review process conducted by OWRD staff that includes an injury review. Those include instream leases, instream transfers, and the Allocation of Conserved Water Program or other Department-administered instream flow water conservation programs, such as Deschutes Alternative Pathway projects. Contractual instream water agreements are not subject to an OWRD injury review process.	No

Oregon Watershed Enhancement Board

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 from willing sellers that result in Legally or Contractually 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 2-2020, amend filed 04/27/2020, effective 05/01/2020

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.~~

(2) "Conserved Water" project means a project that conserves water pursuant to Oregon's Conserved Water Act, ORS 537.455 to 537.500 and OAR 690-018.

(3) "Contractually Protected Instream Flow" means the amount of water secured through a Water Use Agreement.

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

(5) "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 Oregon Water Resources Department under ORS 537.348(2).

(6) “Legally Protected Instream Flow” means the amount of water secured through Instream Leases, Split-Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water ~~P~~rojects, Permanent Instream Transfers, or other mechanisms administered by Oregon Water Resources Department.

(7) “Permanent Instream Transfer” means the permanent conversion of all or a portion of an existing ~~W~~water ~~U~~se ~~S~~ubject to ~~T~~ransfer to an instream water right as authorized by ~~the Oregon Water Resources Department under~~ ORS 537.348(1).

(8) “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).

~~(9) “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.~~

~~(109)~~ “Time-limited Instream Transfer” means an instream transfer authorized ~~by Oregon Water Resources Department~~ 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 ~~Oregon Water Resources Department~~ ~~the Department~~ that other conditions, specified in the final order approving the instream transfer, for termination have been met.

~~(140)~~ “Water Acquisition Project” means a voluntary transaction that results in a Legally or Contractually Protected Instream Flow.

~~(121)~~ “Water Use Agreement” means a contractual agreement between a ~~water right holder~~ ~~of a W~~water ~~U~~se ~~S~~ubject to ~~T~~ransfer and an eligible grant applicant to ~~conserve water or curtail the beneficial use of~~ ~~manage change or forgo use~~ of water under a ~~W~~water ~~U~~se ~~r~~ight ~~S~~ubject to ~~T~~ransfer during specified periods or under specified conditions to achieve Contractually Protected Instream Flow, such as forbearance agreements, minimum flow agreements, and other private agreements between a ~~water right holder~~ ~~of a W~~water ~~U~~se ~~S~~ubject to ~~T~~ransfer and an eligible grant applicant, ~~intended to address the Purpose described in OAR 695-046-0010.~~

~~(132)~~ “Water ~~U~~se ~~S~~ubject to ~~T~~ransfer” means a water use established by:

~~(a) An adjudication under ORS chapter 539 as evidenced by a court decree;~~

~~(b) A water right certificate;~~

~~(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or~~

~~(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission. [1991 c.957 §2; 1995 c.274 §1; 1997 c.42 §2]~~

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

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

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 or Contractually Protected Instream Flows to ~~address~~:

(a) ~~Address 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~~ tribal fish and wildlife agencies; or

(b) Improveing 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 w~~where the proposed Water Acquisition Project is within the boundaryies of an irrigation district, the Board will only consider the project if that irrigation district has received written notice of the proposed project.

(3) Within grant applications for Water Acquisition Projects as described in this section(1), the Board will consider funding requests for activities such as project planning and development, project design, and outreach with water right holders of a Wwater Use Ssubject to Ttransfer that directly relate to the proposed Water Acquisition Project or will lead to future eligible Water Acquisition Projects in the same basin, or a other defined area-portion thereof, as the proposed Water Acquisition Project. Grant applications requesting funding for project planning and development, project design, and outreach only are ineligible.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020

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 cost of a Water Acquisition Project for water conveyance or water use efficiency project elements, such as equipment, supplies, and contracted services for parts, and installation labor, that results in L~~egally Pprotected linstream water rights Fflow using Oregon Water Resources Department's Allocation of Conserved Water program, or other ~~OWRDD~~Department-administered instream flow water conservation program.

(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 ~~and contracting~~ costs incurred as part of designing the project and 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, water right review, title report, permitting, 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,~~consistent with intent of grant application, allowing for any conditions listed in the Grant Agreement.

(8) Other reasonable costs, as determined by OWEB, for project planning and outreach with ~~water right~~ holders of a ~~Wwater Uuse S~~subject to ~~Ttransfer~~, related to development of the proposed Water Acquisition Project or future eligible Water Acquisition Projects in the same basin, or a ~~otherther defined area~~ portion thereof. These costs must be necessary for carrying out eligible programs that lead to development of eligible ~~Wwater A~~acquisition ~~P~~projects. ~~TheA~~ maximum amount that may be requested for these costs will be included in the announcement for the grant offering.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

695-046-0190

Matching Contributions

(1) ~~Consistent with OAR 695-005-0030, a~~All applicants shall demonstrate ~~at least 25%that some portion~~ 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. Match requirements will be included in the announcement for the grant offering. The following costs and activities will qualify as Mmatch:

(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, [ORS 541.958](#)

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 or Contractually Protected 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.~~

~~Statutory/Other Authority:~~ ORS 541.906

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

~~History:~~

~~OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020~~

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

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~~state, federally, or tribally-accepted supported flow target ~~during the period of use, including dry year or drought conditions;~~

(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; and

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

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

~~Targets water rights of adequate seniority to ensure reliability of "wet water" instream in all water year conditions (wet, average, dry).~~

(2) How the water right's ownership, demonstration and quantification of use, validity, reliability, protectability, and seniority will result in instream flow improvements. ~~(a) If the project is utilizing the Oregon Water Resources Department's Allocation of Conserved Water program, or other OWRD-administered instream flow water conservation program,~~ the priority date of the conserved instream water right shall be the same as the original right.

~~(3)~~ 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 or Contractually 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; and

~~(c) If the project is utilizing the Oregon Water Resources Department's Allocation of Conserved Water program, or other OWRD-administered instream flow water conservation program, the project cost relative to the amount of water, and the amount of conserved water over the required percentage, that will be protected instream, with a higher percentage of water transferred instream being preferred.~~ with a preference for projects with a higher percentage of water transferred instream than what is required by the Allocation of Conserved Water program.

~~(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) Building on OAR 695-046-0196(1), 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.

~~(d) Ensures water in drought and/or dry water years, and/or,~~

(45) 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 2-2020, adopt filed 04/27/2020, effective 05/01/2020

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 and OAR 695-005-0045.

(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 and OAR 695-005-0045.

(B) Recommend the project as:

(i) Do fund;

(ii) Do fund with conditions; ~~or~~

(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 and OAR 695-005-0045.

(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.

(2) 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 OAR 695-005-0045 and provide feedback and recommendations to OWEB staff.

(3) To the extent practicable, OWEB's application evaluation process will create operational efficiencies and complementary investments by coordinating with other agencies and funders that sponsor water acquisition grant programs. may consider grant applications in partnership with other funders for the purposes of creating operational efficiencies and coordinating investments

OWEB may consider grant applications in partnership with other funders for the purposes of creating operational efficiencies and coordinating investments

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020

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

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 may include any conditions placed on individual projects as suggested by the Technical Review Team 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 as suggested by the Technical Review Team 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:

OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020

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~~ and any public comments received, 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~~ and any public comments received, 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:

[OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020](#)

[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~~

~~(1) Written comments received by OWEB before the publicized deadline prior to the Board meeting at which the Board will consider the application; 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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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)~~ ~~A Grant Agreement is executed by the Director and the grant applicant;~~

~~(a)~~ The funding conditions, if any, imposed by the Board and Director 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

~~(ed)~~ The grant applicant has satisfied the ~~M~~match requirements under [OAR 695-046-0190](#) and [OAR 695-005-0030\(2\)](#).

(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 695-046-0215(1)~~(a)~~, funds may be distributed prior to Water Acquisition Project transaction closing for ~~eligible~~~~due diligence~~ activities specified in OAR 695-046-0185~~(5)~~ and included in the application budget.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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~~~~their~~ 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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 [OWEB and](#) the Board and revised as necessary and appropriate.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

Oregon Watershed Enhancement Board

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 interests in water from willing sellers that result in Legally or Contractually 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.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 and OAR 690-018.

(3) "Contractually Protected Instream Flow" means the amount of water secured through a Water Use Agreement.

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

(5) "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).

(6) "Legally Protected Instream Flow" means the amount of water secured through Instream Leases, Split-Season Use Instream Leases, Time-limited Instream Transfers, Conserved Water projects, Permanent Instream Transfers, or other mechanisms administered by Oregon Water Resources Department.

(7) "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).

(8) “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).

(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 Oregon Water Resources 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 or Contractually Protected Instream Flow.

(11) “Water Use Agreement” means a contractual agreement between a holder of a Water Use Subject to Transfer and an eligible grant applicant to change or forgo use of water under a Water Use Subject to Transfer during specified periods or under specified conditions to achieve Contractually Protected Instream Flow, such as forbearance agreements, minimum flow agreements, and other private agreements between a holder of a Water Use Subject to Transfer and an eligible grant applicant, intended to address the Purpose described in OAR 695-046-0010.

(12) “Water Use Subject to Transfer” means a water use established by:

(a) An adjudication under ORS chapter 539 as evidenced by a court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission. [1991 c.957 §2; 1995 c.274 §1; 1997 c.42 §2]

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

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

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 or Contractually Protected Instream Flows to:

(a) Address 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) 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.

(2) Where the proposed Water Acquisition Project is within the boundaries of an irrigation district, the Board will only consider the project if that irrigation district has received written notice of the proposed project.

(3) Within grant applications for Water Acquisition Projects as described in this section, the Board will consider funding requests for activities such as project planning and development, project design, and outreach with holders of a Water Use Subject to Transfer that directly relate to the proposed Water Acquisition Project or will lead to future eligible Water Acquisition Projects in the same basin, or a portion thereof, as the proposed Water Acquisition Project. Grant applications requesting funding for project planning and development, project design, and outreach only are ineligible.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020](#)

[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 cost of water conveyance or water use efficiency project elements, such as equipment, supplies, and contracted services for installation, that result in Legally Protected Instream Flow using Oregon Water Resources Department's Allocation of Conserved Water program, or other Department-administered instream flow water conservation program.
- (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 and contracting costs incurred as part of designing the project and 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, water right review, title report, permitting, 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 intent of grant application, allowing for any conditions listed in the Grant Agreement.
- (8) Other reasonable costs, as determined by OWEB, for project planning and outreach with holders of a Water Use Subject to Transfer, related to development of the proposed Water Acquisition Project or future eligible Water Acquisition Projects in the same basin, or a portion thereof. These costs must be necessary for carrying out eligible programs that lead to development of eligible Water Acquisition Projects. The maximum amount that may be requested for these costs will be included in the announcement for the grant offering.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

695-046-0190

Matching Contributions

(1) 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.

(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, ORS 541.958

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

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 state, federally, or Tribally supported flow target.

(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; and

(e) Monitors project compliance and project outcomes, as appropriate for the transaction type and duration.

(2) How the water right's ownership, demonstration and quantification of use, validity, reliability, protectability, and seniority will result in instream flow improvements. If the project is utilizing the Oregon Water Resources Department's Allocation of Conserved Water program-the priority date of the conserved instream water right shall be the same as the original right.

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

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

(b) How the term of the proposed Water Acquisition Project is appropriate to meet the habitat, species, or water quality needs; and

(c) If the project is utilizing the Oregon Water Resources Department's Allocation of Conserved Water program, or other Department-administered instream flow water conservation program, the project cost relative to the amount of water that will be protected instream, with a preference for projects with a higher percentage of water transferred instream than what is required by the Allocation of Conserved Water program.

(4) 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) Building on OAR 695-046-0196(1), addresses Oregon Department of Fish and Wildlife, or other federal or Tribal fish and wildlife agency priorities for aquatic habitat or Oregon Department of Environmental Quality water quality management or implementation plans, if established.

(5) 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 2-2020, adopt filed 04/27/2020, effective 05/01/2020](#)

[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 and OAR 695-005-0045.

(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 and OAR 695-005-0045.

(B) Recommend the project as:

(i) Do fund;

(ii) Do fund with conditions: or

(iii) Do not fund.

(C) Rank order all projects recommended for funding based on how well the project meets the criteria established in OAR 695-046-0196 and OAR 695-005-0045.

(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.

(2) 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 OAR 695-005-0045 and provide feedback and recommendations to OWEB staff.

(3) To the extent practicable, OWEB's application evaluation process will create operational efficiencies and complementary investments by coordinating with other agencies and funders that sponsor water acquisition grant programs.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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

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 may include any conditions placed on individual projects as suggested by the Technical Review Team 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 as suggested by the Technical Review Team 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:

[OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020](#)

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 public comments received, 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 public comments received, 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:

[OWEB 2-2020, adopt filed 04/27/2020, effective 05/01/2020](#)

[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) Written comments received by OWEB before the publicized deadline prior to the Board meeting at which the Board will consider the application; and
- (2) 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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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) A Grant Agreement is executed by the Director and the grant applicant;
- (b) The funding conditions, if any, imposed by the Board and Director are met to the full satisfaction of the Director;
- (c) The legal and financial terms of the proposed Water Acquisition Project transaction are approved by the Director;
- (d) The Director has reconciled conditionally approved funding with actual Water Acquisition Project costs; and
- (e) The grant applicant has satisfied the Match requirements under OAR 695-046-0190 and OAR 695-005-0030(2).

(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), funds may be distributed prior to Water Acquisition Project transaction closing for eligible activities specified in OAR 659-046-0185 and included in the application budget.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 their 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 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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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 OWEB and the Board and revised as necessary and appropriate.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.932(9)

History:

[OWEB 2-2020, amend filed 04/27/2020, effective 05/01/2020](#)

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