

DISCLAIMER – DRAFT RULES PENDING ADDITIONAL INPUT FROM DAS AND DOJ

xxx-xx-xxxx

Purpose

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

- a. the acquisition of lands from willing sellers,
- b. entering into covenants, easements or similar agreements with willing landowners, or
- c. repaying a loan used to finance a project as described in a) or b) above.

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

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

Definitions

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

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

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

(4) “Drinking Water Source Area” has the meaning given in OAR 333-061-0020 (52) for Drinking Water Protection Area 333-061-0020 (52). “Drinking Water Protection Area” or “DWPA” means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake’s, reservoir’s or stream’s watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Authority. is an area delineated under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. This includes Drinking Water Protection Areas defined in OAR 333-061-0020 (52) that are certified by Department of Environmental Quality or the Oregon Health Authority and drinking water source areas delineated by Tribes or by Environmental Protection Agency (EPA) for Tribally owned water suppliers. For a surface water-supplied drinking water source the Drinking Water Source Area is a specifically determined part of a lake’s, reservoir’s or stream’s watershed that supplies water to the source. For a

Commented [SO1]: We added the OHA definitions of relevant water systems in order to streamline our eligibility section.

Commented [SO2]: Updated definition from federal rules to be inclusive of tribal entities.

groundwater-supplied drinking water source the Drinking Water Source Area is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring.

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

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

(7) "Holder" has the meaning given to it in ORS 271.715:

(a) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas County for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;

(b) A charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property; or

(c) An Indian tribe as defined in ORS 97.740.

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

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

(10) "Notice of Grant Requirements" is a legal recordable document that provides protection in perpetuity to Drinking Water Source Protection Program investments in fee simple title acquisitions.

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

(12) "Partnership" means a collaboration between an eligible Water Supplier and a Holder as that term is defined in ORS 271.715 that have formally committed via a documented agreement to coordinating funding, expertise, materials, labor, or other assistance to a proposed project. An eligible entity may form a Partnership for the acquisition of any Protective Instrument.

(13) "Profit" means a positive difference between the original purchase price for the Protective Instrument acquired with OWEB grant funds and a subsequent purchase price for the same Protective

Commented [SO3]: We will leave grant program name as is, but it will be distinguished from the OHA program with the same name by being called an OWEB program in external facing materials.

Commented [SO4]: Question for DOJ: what term makes the most sense: fee simple title, fee simple, fee title?

Commented [SO5R4]: DOJ response: Given the use of "fee simple" in the Land Acquisition rules I think it makes sense to stick with that.

Commented [SO6]: For consistency we have updated all occurrences of this term to "fee simple".

Instrument, minus the owner's property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.

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

Commented [S07]: Any references to OAR xxx-xxx-xxxx are a placeholder for these rules once they have a number.

(15) "Protective Instrument" means a legal document conveying fee simple, a Conservation Easement, covenant, equitable servitude or a deed restriction for the purposes of protecting, restoring, or enhancing lands where doing so will benefit a drinking water source.

(16) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day. Public water system also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community Water System," a "Transient Non-Community Water System," a "NTNC Water System" or an "Oregon Very Small Water System" as defined in OAR 333-061-0020 (109).

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

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

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

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

Protective Instrument Requirements

(1) A Protective Instrument, other than fee simple, acquired with funds awarded in a Drinking Water Source Protection Program grant shall include:

- (a) A legal description of the land subject to the Protective Instrument acquired;
- (b) The objectives of the grant and terms demonstrating how the Protective Instrument will meet those objectives;
- (c) Specific obligations of the Grantee including, but not limited to:
 - i. Requirement that the Grantee will monitor the property, at least annually, and enforce the terms in the Protective Instrument;

- ii. Requirement that the Grantee will repay the grant funds to OWEB (or provide some other remedy) if Grantee fails to enforce the terms of the Protective Instrument;
 - iii. Statement that the Grantee will not assign or convey the Protective Instrument without the consent of OWEB and, if applicable, the Department of Administrative Services;
 - iv. Terms that provide for the obligations to run with the land and inure to any successor in interest; and
 - v. Grantee will require any assignee to enter into a similar agreement with OWEB.
- (d) Requirement that OWEB and its designees will be provided sufficient legal access to the land affected by the Protective Instrument acquired with Drinking Water Source Protection Grants, given reasonable notice, for the purpose of compliance inspections.
- (e) The duration of the Protective Instrument
- i. A Conservation Easement shall last in perpetuity.
 - ii. Any other Protective Instrument, except for fee simple, may last for a term unlimited in duration unless the instrument creating it otherwise provides. The covenant term shall be set at 12-month increments only and not partial years.
- (2) If the Project includes a Partnership with a Holder, and the Grantee will not hold the Protective Instrument, the Holder will be required to execute any Protective Instrument so that it meets the requirements above.
- (3) If a Grantee, or a Holder in Partnership with the Grantee, acquires fee simple, the Grantee or the Holder, shall record on title a Notice of Grant Requirements that includes (1)a – e above.

~~(4) Subsequent Conveyances~~

- ~~(a) If a Protective Instrument, including fee simple title, is subsequently transferred, it must:

 - ~~i. Be transferred to an eligible applicant;~~
 - ~~ii. Be made subject to prior approval by the Board and, if applicable, the Department of Administrative Services; and~~
 - ~~iii. Strictly comply with the requirements of ORS XXX.XXX and OAR xxx-xx and OAR xxx-xx.~~~~

Commented [S08]: This section merged with Subsequent Conveyances section at the end of the doc.

Eligibility

Eligible Applicants

- 1) Eligible applicants include Water Suppliers as defined in ORS 448.115. Applicants defined in OAR 695-005-0040(2) are not eligible for this grant type unless they are defined as Water Suppliers.
- 2) Eligible Water Suppliers must have service populations at or below 25,000 users.
- 3) Eligible Water Suppliers may form Partnerships with eligible Holders as defined in ORS 271.715.

Eligible Properties

- 1) Eligible properties for Drinking Water Source Protection Grants are lands where the acquisition of a Protective Instrument will result in the protection, restoration or

enhancement of those lands and will benefit a drinking water source used by the Water Supplier.

- 2) Eligible properties must be partially or fully within a delineated ~~G~~groundwater-supplied Drinking Water Source Area or ~~S~~surface ~~W~~water-supplied Drinking Water Source Area, ~~or Tribally delineated source area.~~

Eligible Systems

1) Eligible Water Systems include:

- a. Public Water Systems, specifically including: Water Systems, also defined by OAR 333-061-0020:
 - i. Community Water Systems including those operated by Tribally owned Water Suppliers
 - ii. Transient Non-Community Water Systems operated by non-profit or Tribally owned Water Suppliers
 - iii. Non-Transient Non-Community Water Systems operated by non-profit or Tribally owned Water Suppliers
 - ~~b-iv. Oregon Very Small Water Systems~~
 - ~~c. Tribal Water Systems with delineated.~~

2) Federally owned Water Systems are not eligible.

Eligible Maximum Funding Request

Each Drinking Water Source Protection Grant request shall not exceed three million dollars (\$3 million).

Matching Contributions

(1) Notwithstanding anything to the contrary in OAR 695-005, all applicants shall demonstrate that at least five percent (5%) match is being sought, based on the total Drinking Water Source Protection Grant request for the Project. Match is any contribution to a Project that is non-OWEB funds.

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

- (a) In-kind contributions to activities listed under OAR XXX-XX-XXXX;
- (b) Funding commitments made by others as a result of grant applicant efforts;
- (c) The forgiven portion of a loan that which was used to acquire the Protective Instrument;
- (d) Interest paid on a loan that which was used to acquire the Protective Instrument; and
- (e) A donated portion of a sale.
- ~~(d) Funds deposited in a stewardship fund before the time that OWEB funds are released for acquisition of the covenant or easement.~~

(3) The OWEB Director retains the discretion to determine whether specific proposed match contributions not specifically identified above can be recognized as qualifying match.

Commented [SO9]: "Tribally delineated source area" is not needed with the new Drinking Water Source Area definition that is inclusive of tribal entities.

Commented [SO10]: Added water system definitions from OHA above so that this section could be more clear and to the point.

Commented [SO11]: These water system categories are inclusive of all tribal water suppliers in Oregon, therefore, we can remove (b) about Tribal Water Systems.

Commented [SO12]: We did not add adjacent property as match as we think (b) is broad enough to include this.

Application Requirements

- (1) In accordance with ORS 448.370, OWEB will accept on a regular basis Drinking Water Source Protection grant applications for the acquisitions of Protective Instruments that lead to the protection, restoration, or enhancement of drinking water sources.
- (2) In addition to (3) - (9) below, Drinking Water Source Protection grant applications shall be consistent with OAR 695-005-0030;
- (3) If a Water Supplier will form a Partnership with a Holder, as defined in ORS 271.715, the application must include, at a minimum, the following information about the Partnership:

- (a) Description of Partnership resources to assist with the long-term protection, restoration, or enhancement of drinking water sources.
- (b) Whether the Partnership's and the Holder's missions support the protection or restoration of natural resources.
- (c) Documentation of formal commitment between Water Supplier and Holder.

(4) The application must describe the timeline for acquiring the Protective Instrument within the period established by OWEB.

(5) The application must include a demonstration of Water System and/or well ownership and authority to use the water (i.e., holder of pertinent water right or legal access to pertinent water right).

(6) The application must show property proximity to drinking water intake and/or wells and confirmation of location fully or partially within a Drinking Water Source Area.

~~(5) For dDwWsSource surface water aAreas, grant applications shall include:~~

- ~~(a) Demonstration of Water System ownership or authority to use the water.~~
- ~~(b) Property proximity to drinking water intake and confirmation of location within Drinking Water Source Area.~~
- ~~(c) of a Drinking Water Source AreaDescription of land uses or activities that pose significant threat to water quality. of a Drinking Water Source Area~~

~~(6) For groundwaterdDwW sSource aAreas, grant applications shall include:~~

- ~~(a) Demonstration of well ownership or authority to use the water.~~
- ~~(b) Property proximity to wells and confirmation of location within a groundwater Drinking Water Source Area.~~
- ~~(c) of a Drinking Water Source AreaOccurrence of land uses or activities that release contamination.~~
 - ~~(i) Location of release.~~
 - ~~(i) The hydrologic or soil characteristics in the source area that allow the transport of the contaminants to the well. of a Drinking Water Source Area~~

Commented [SO13]: We have made significant updates to the Application Requirements and Evaluation Criteria sections. Please review these two sections closely and let us know if the level of detail and information requested are appropriate, and if the evaluative criteria match what applicants will be providing in their application materials.

(7) Applicants must provide the Source Water Assessment of the ~~drinking water supply~~ Drinking Water Source Area and explain how the proposed project will address the risk(s) identified in the Source Water Assessment, including:

(a) Description of land uses or activities that potentially result in release pollution and may pose significant threat to water quality.

(b) Description of which priority pollutant(s) will be addressed.

(c) Description of how the proposed Protective Instrument will reduce risk or pollutant load to the drinking water source.

(d) Map of the proximity of the land parcel and potential sources of pollution to sensitive areas for the drinking water source.

(e) For groundwater-supplied Drinking Water Source Areas, description of the hydrologic or soil characteristics of the source area that potentially allow the transport of contaminants to the well.

(8) For Projects focused on water quantity protections of a Drinking Water Source Area, description of how the proposed Protective Instrument will protect, restore, or enhance water storage capacity and/or water flow for the drinking water source.

(9) Applications must include description of community characteristics of the population served by the Water Supplier system user base including information on the following:

(a) whether there are seasonal variations in the number of users (e.g., ~~temporary higher rates of users due to seasonal tourism or due to drought~~) and the impacts that has on the Water System;

(b) whether drought or low water supply has impacted the Water System; and

(c) information that demonstrates whether the Water Supplier has a limited budget rate payer base due to small population size, the population served by the Water Supplier is experiencing lower incomes, or other disadvantages experienced by the ~~water users~~ population served by the Water Supplier.

(10) If a Conservation Easement or fee simple transaction is not proposed, the applications must explain the reasoning for the Protective Instrument proposed and the reasoning for the project duration if less than perpetual.

Use of Grant Funds

Funding for the Community Drinking Water Enhancement and Protection Fund comes from the General Fund and from Lottery Revenue Bonds. Eligible costs for each fund source are specified in this section. Lottery Revenue Bonds shall not be used for (1)(c) loan repayment.

- 1) Drinking Water Source Protection Grants may be applied towards costs related to:
 - a. acquiring lands from willing sellers for the purposes in ORS 448.370;
 - b. entering into covenants, Conservation Easements or similar agreements for the purposes of ORS 448.370; and
 - c. repaying a loan used to finance a project to protect, restore, or enhance lands consistent with (a) or (b).

Commented [SO14]: The EPA confirmed that all Tribally owned Water Systems in Oregon have a SWA, so this requirement will not result in their exclusion from the program.

Commented [SO15]: We did some streamlining and combining in #5-8.

Commented [SAL*O16]: Is the differentiation between lottery revenue bonds and general fund clear in this section? We will provide additional guidance in program materials.

2) Use of Lottery Revenue Bond funds deposited into the Community Drinking Water Enhancement and Protection Fund may only be applied to a Project for acquisition of Protective Instruments that include: fee simple, Conservation Easement, or other legal agreements drafted to run with the land and last in perpetuity.

3) Eligible costs for projects under subsection (1) that are funded with Lottery Revenue Bonds deposited into the Community Drinking Water Enhancement and Protection Fund must be only "capital expenditures" for federal income tax purposes as defined by 26 C.F.R. § 1.150-1(b) of the IRS Tax Code in effect as of 1986. This term includes both capitalized and capitalizable expenditures. Eligible costs include:

(1) The purchase price associated with the Protective Instrument.

a. The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice for fee simple and conservation easement acquisitions.

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

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

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

(4) The cost of baseline inventory preparation; for the specific property that has been chosen for acquisition and that is capitalizable to the asset.

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

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

(7) For the above costs in (1) - (6) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 60 days prior to the Lottery Revenue Bond sale.

4) Eligible costs for Projects under subsection (1) that are funded with General Funds deposited into the Community Drinking Water Enhancement and Protection Fund includes:

(1) The purchase price associated with the Protective Instrument.

Commented [SO17]: DAS and DOJ both provided this reference to tax code for defining capital expenditures. DAS did not provide any specific references for the accounting process of capitalization (i.e., capitalized/capitalizable expenditures).

- a. The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including but not limited to the Uniform Standards of Professional Appraisal Practice ~~for fee simple and conservation easement acquisitions.~~
- b. Other methods of substantiating the purchase price conducted by an independent third-party entity may be accepted at the discretion of OWEB for all other Protective Instruments
- (2) The interest on bridge loans needed to secure closure on the Protective Instrument prior to when funding will be available for distribution through the program.
- (3) The staff ~~and contractor~~ costs incurred as part of the ~~covenant or easement~~ Protective Instrument acquisition process related to the property.
- (4) The cost of due diligence activities, including appraisal ~~or other method of substantiating the purchase price~~, environmental site assessment, survey, title review, ~~consultant fees~~, and other customary due diligence activities. ~~This includes both personnel costs incurred by the Grantee or the Holder, and the cost of contracted services for due diligence activities.~~
- (5) The cost of baseline inventory preparation.
- (6) The legal fees incurred by the Water Supplier related to the Project. ~~General in-house legal costs that are related to the overall management or policy of the entity are not eligible.~~
- (7) The closing fees, including recording and title insurance costs.
- (8) The cost of developing a Long-Term Management Plan to meet program requirements.
- (9) Indirect costs of the Grantee, dependent on available funding.
- (10) For the above costs in (1) - (9) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 18 months prior to the date of submitting a Drinking Water Source Protection Grant application to OWEB.

~~For Projects funded with General Funds deposited into the Community Drinking Water Enhancement and Protection Fund and requesting funding for repaying a loan, the land transaction must have been recorded no more than:~~

~~— 18XX months prior to from the date of submitting a Drinking Water Source Protection grant application to the agency.~~

~~a. Notwithstanding (4)(a) of this Section, the transaction may have closed no more than 48 months prior to the date of submitting a Drinking Water Source Protection Grant application during the initial grant solicitation for the Program.~~

First Grant Solicitation Cycle

Notwithstanding anything to the contrary in other sections of this rule set, the following shall be allowed for applications submitted during the first grant solicitation cycle of the Drinking Water Source

Commented [SO18]: Please review this new section closely.

Protection Program. These allowances shall not be applicable for applications submitted in subsequent grant cycles.

- 1) Loan repayment and associated eligible costs are eligible activities that can be funded by General Funds for transactions that have closed no more than 50 months prior to the date of submitting a Drinking Water Source Protection Grant application.
- 2) Eligible match for projects described in (1) above can date back to 50 months prior to the date of submitting a Drinking Water Source Protection Grant application.
- 3) A third-party demonstration of market value of the Protective Instrument is not required.

Evaluation Criteria

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

- 1) Significance of the acquisition of the Protective Instrument to the protection, restoration, or enhancement of drinking water sources with respect to sensitive areas, potential pollutants, and potential sources of pollution identified in the Source Water Assessment for the Drinking Water Source Area.
- 2) The capacity and experience of the applicant and, if a Partnership is proposed, the Holder, to achieve the ongoing management and stewardship of the Protective Instrument as the long-term owner.
- 3) The soundness of the legal and financial terms of the real estate transaction.
- 4) Project readiness, including but not limited to the applicant's capacity, and if a Partnership is proposed, the Holder's capacity, to complete acquisition transaction and due diligence steps within OWEB established timelines, and due diligence information provided by the applicant.
- 5) The Climate Related Evaluation Criteria described in OAR 695-005-0045.
- ~~6) The consistency of the Project with the applicable technical criteria for drinking water source areas including~~
 - ~~a.~~
- ~~7)6) For applicants that form Partnerships with eligible Holders:~~
 - a. Demonstrated capacity and resources for long-term protection, restoration, or enhancement of drinking water sources.
 - b. Partnership mission is in support of protection or restoration of natural resources.
 - ~~b.c.~~ Clearly defined and documented Partnership including respective roles and responsibilities.
- ~~8)7) Demonstrated benefit of how the acquisition will have to address that the Water System benefiting from the proposed project is faced with~~ at least one of the following limiting factors of the Water System:
 - a. Capacity Sufficiency challenges in the Water System due to seasonal variations in users.

- b. Capacity Sufficiency challenges in the Water System due to drought conditions or low water supply.
- c. Limited rate payer base of the Water System due to population, economic, or other disadvantages experienced by the water users.

- 8) The duration and type of the Protective Instrument, with a preference for longer term agreements.
- 9) Implementation of a Long-Term Management Plan or the intent to develop a Long-Term Management Plan that incorporates measures targeted at maintaining or enhancing drinking water quality. If the acquisition is for a Protective Instrument other than fee simple title or a Conservation Easement and a Long-Term Management Plan is not proposed, required justification and rationale about why a Long-Term Management Plan is not necessary given the type of Protective Instrument proposed.
- 9)10) The degree and urgency of risk to the land and the associated Drinking Water Source Area if the proposed protection is not implemented.

Commented [MRM*O19]: RAC: Please consider whether this meets the intent of the discussion on preference of perpetual agreements.

Grant Agreement Conditions

Such other conditions as the Board deems appropriate to the particular circumstances of the Project, including but not limited to:

- 1) The Grantee agrees to develop a Long-Term Management Plan if deemed appropriate and necessary by the Board. In all cases for acquired lands, that includes, but is not limited to:
 - a. Stewardship, monitoring, and uses of the Property intended to carry out the purposes of ORS Chapter 448.370, developed in accordance with Long-Term Management Plan content described in the grant agreement with OWEB.
- 2) Review and approval of the agreement between the Grantee and the Holder.
- 3) Subsequent conveyances requirements per OAR xxx-xx-xxxx.

Board Approval and Delegation of Authority

(1) The Director is delegated all necessary authority to ensure that funding conditions required by the Board are fully satisfied by the Grantee.

(2) Notwithstanding xxx-xxx-xxxx(4) (Distribution of Funds) conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, unless approved by the Board.

Public Comment on Grant Applications ~~Involvement~~

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

- (1) Written comments received prior to the Board meeting at which the Board will consider the application;
- (2) Comments made at public hearings held and publicized in accordance with ORS 271.735; and
- (3) Comments made at the Board meeting at which the grant application is considered.

Distribution of Funds

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

- (a) A grant agreement is executed by the Director and the Grantee;
- (b) The funding conditions applicable to the allowable cost, if any, imposed by the Board are satisfied to the full satisfaction of the Director;
- (c) The legal and financial terms of the proposed real estate transaction are approved by the Director;
- (d) The Protective Instrument and any required title restrictions are approved by the Director;
- (e) The Director has reconciled conditionally approved funding with actual project costs; and
- (f) The Grantee has satisfied the match requirements under OAR xxx-xx-xxxx.

(2) For grants established under these rules, the Director is authorized to reimburse the Grantee for allowable costs as identified in OAR xxx-xx-xxxx.

(a) Costs incurred in a Project by a Holder may be reimbursed if they have a Partnership established with the Grantee and reimbursements are requested through the Grantee.

(b) For Projects funded with General Funds deposited into the Community Drinking Water Enhancement and Protection Fund, the Director is authorized to reimburse the Grantee for allowable costs that were incurred no earlier than 18 months before the applicable grant application deadline.

(c) For Projects funded with Lottery Revenue Bonds deposited into the Community Drinking Water Enhancement and Protection Fund, the Director is authorized to reimburse the Grantee for allowable costs that were incurred no earlier than 60 days prior to the lottery bond sale.

(3) The Director is authorized to recognize match contributions under OAR xxx-xx-xxxx that were incurred no earlier than 18 months before the applicable grant application deadline. For those projects requesting grant funds for reimbursement of already incurred expenses, eligible match must align with the timing of the Project for which grant funds are being requested.

(4) Notwithstanding OAR 6xx-xxx-xxxx(1)(a) and (b), funds may be distributed prior to transaction closing for staff costs and due diligence activities specified in OAR xxx-xxx-xxxx and included in the application budget.

Compliance and Enforcement

- (1) The ongoing use of the Protective Instrument acquired with Drinking Water Source Protection Grants shall be consistent with the purposes specified in ORS Chapter 448.370. OWEB may initiate any and all legal remedies available to OWEB to address compliance issues, including but not limited to recovery of the OWEB grant funds used to purchase the Protective Instrument, and reasonable interest and penalties at the option of the Director.
- (2) A Grantee is responsible for fulfilling the terms and conditions of any agreement
 - a. between the Grantee and the Board;
 - b. between the Grantee and a landowner, or other person or entity, necessary for the Grantee to carry out the project for which a grant has been awarded; and
 - c. if a Partnership is proposed, between the Grantee and the Holder.
- (3) OWEB and the Board are not liable to any landowner, person, or entity for the failure of a Grantee to fulfill the terms or conditions of any agreement between the person or entity and the Grantee.

Subsequent Conveyances

Any subsequent transfer, conveyance, or assignment of a Protective Instrument acquired with Community Drinking Water Enhancement and Protection Fund funds must:

- (1) Strictly comply with the requirements of ORS 541.960 as applicable; be made subject to Board approval and, if applicable, Department of Administrative Services approval; and ensure that they shall not result in a Profit.
- (2) For fee simple and conservation easements, be transferred, conveyed, or assigned only to eligible applicants or eligible Holders.
- (3) Strictly comply with the requirements of ORS 448.370 and OAR xxx-xxx-xxxx.

Waiver of Rules

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