

**OWEB Administrative Rules, Division 5  
Rulemaking Advisory Committee Meeting  
August 30, 2022**

- |      |   |
|------|---|
| 1:00 | Welcome & Introductions   |
| 1:15 | Public Comment  |
| 1:30 | Review Draft Rule Revisions ('Purpose,' 'Definitions,' Application Requirements,' and 'Application Processing' sections)  |
| 2:00 | Break   |
| 2:15 | Review Draft Rule Revisions ('Grant Agreement Conditions,' 'Distribution of Funds,' 'Waiver of Rules,' and 'Periodic Rules Review and Program Evaluation' sections) |
| 3:15 | Wrap-up and Next Steps  |
| 4:00 | Conclude  |

## Oregon Watershed Enhancement Board

Rulemaking Advisory Committee (RAC) Virtual Meeting July 12, 2022, 1:00pm-3:00pm

### *Proposed/Potential Policy Changes in [Division 5 Rules](#)*

Recording at: [https://www.youtube.com/channel/UC0dl-TOWlt4Sp--i1KEa\\_OA](https://www.youtube.com/channel/UC0dl-TOWlt4Sp--i1KEa_OA)

#### **OWEB STAFF PRESENT**

Coby Menton  
Denise Hoffert  
Eric Hartstein  
Eric Williams  
Liz Redon

#### **OTHER**

Amanda Gilbert  
Amanda Whitman  
Amy Horstman  
Brian Quick  
Haley Lutz  
Jason Kesling  
Sarah Reif  
Sarah Zwissler  
Shane Jimerfield

#### **1. OAR 695-005-0030(3), eliminating 25% match requirement**

- Required match would be announced at time of grant offering announcement
- Match requirement would not exceed 25%.
- For certain grant offerings (e.g., technical assistance, monitoring, stakeholder engagement, etc.), required match may be as little as \$1.
- Eliminating 25% match requirement on certain grant offerings provides more opportunities to apply as match funding for these offerings is often challenging to obtain.
- Support for changing the requirement for 25% match
- Caution to be consistent with match requirements (e.g., don't bounce around on what is being required for various grant types)
- Give plenty of lead time to applicants
- Will board or staff set the match requirements?

#### **2. OAR 695-005-0050(9), providing copy of permits to OWEB**

- [ORS 541.932\(10\)](#) provides statutory language on permits, "...the board may not disburse funds to the applicant for any part of the project that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body until the applicant presents evidence that the agency has granted the permit or license."
- Need for clarity on when OWEB funding is released for project elements that may not require a permit, but overall project will require a permit.
- At times, grantees struggle with covering cost of staging items while waiting for final permits
- Need to make clear what project elements funds can be released for without permits (i.e., those standalone activities that lead to restoration, like invasive species removal)

3. **OAR 695-005-0050(10)(a), landowner access for monitoring project after completion**
  - Need for clarity on timeline as it will help grantees and landowners understand commitment.
  - Firm dates would be challenging to implement.
  - Good to know what the purpose of “monitoring” post-project is
  - Post-implementation status reporting has cap (\$3,500) and involves photo-points and qualitative report on how project is performing.
  - If an actual monitoring grant, data can be reported to external agencies as noted in the grant agreement
  - Transparency is important for grantees and landowners regarding the data collected and who it is shared with
  - OWEB staff should communicate with grantee on best post-implementation timeline for restoration grants
  - Should investigate statute to learn more about genesis of this rule
  
4. **OAR 695-005-0060(3), Distribution of funds and landowner agreements**
  - “Certification” landowner agreements obtained vs. submitting landowner agreements
  - Difficulty in tracking landowner agreements if project has numerous landowners (e.g., large invasive species control projects, landscape forest restoration projects, etc.)
  - Varies considerably based on the type of project. Flexibility is nice and needed. One landowner missing in an invasives grant, still can meet ecological objectives. One landowner missing in a culvert project, project can’t move ahead.
  -
  
5. **OAR 695-005-0060(4), Distribution of funds and permits**
  - Discussed under bullet 2

### ***Proposed Technical Adjustments to Division 5 Rules***

1. **OAR 695-005-0010, Updating Purpose**
  - Ensure grant programs reflect current offerings
  - Adding “special grant” language to encompass new grant programs like drought relief and post-fire recovery
  
2. **OAR 695-005-0020, Updating Definitions**
  - Potential to add definitions on “Delegated Awards” (e.g., FIP project-level grants) and potentially “Board Awards” (e.g., Open Solicitation grants)
  - Change definition of “Regional Review Team” to “Technical Review Team” as many review teams are not regional review teams
  - While not changing definitions, ensure that “Board” and “OWEB” are being utilized correctly in rules
  - Need to revise language around “securing funding commitments from other sources”

**3. OAR 695-005-0030(5), Applications complete as submitted**

- Update to reflect that certain grant offerings allow for application revisions (e.g., those that are delegated awards like FIP project-level grants)
- For Open Solicitation grants, no new information can be included during grant application review and evaluation. Only during award new information can be included. Break this up in the definitions section. Applications can be revised during the award process. Nuance to this definition.
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**4. OAR 695-005-0030(6), Update Small Grant Program maximum request**

- Small Grant Program maximum amount now \$15,000, makes sense to strike out reference to dollar amount in these rules

**5. OAR 695-005-0040, Various technical changes to Application Processing**

- Remove reference to “regular”
- Revise language on state/federal agencies and partnering with eligible entities
- Adding, “and OWEB” after “The Board”
- Revise language on review teams from “regional” to “technical”

**6. OAR 695-005-0050(2), Update Grant Agreement Conditions to reflect delegated awards**

- Deadline for grant agreement to be fully executed within one year of Board or *Director approval*
- For delegated awards, determine how reallocation occurs (e.g., by the Board or back into holding account). Clarity in this section would be helpful.

Meeting adjourned – 2:51pm

## DIVISION 5 - OWEB GRANT PROGRAM

### 695-005-0010

#### Purpose

1 These rules guide the Oregon Watershed Enhancement Board in accepting applications and considering  
2 grant proposals for funding under the provisions of ORS 541.890, et seq. The Board grant program  
3 includes grants described in Chapter 695, Divisions 10-47695-005-0020 et seq. for watershed restoration,  
4 technical assistance, monitoring, ~~watershed assessment and action planning, watershed council~~  
5 ~~support~~ operating capacity, ~~watershed education and outreach~~ stakeholder engagement, land and water  
6 acquisition, and small grants, and other grant programs initiated by the Board. ~~In addition, the Board may~~  
7 ~~from time to time, as funds are available, request proposals for technical assistance and research.~~

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

#### History:

OWEB 1-2017, f. & cert. ef. 5-2-17

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

### 695-005-0020

#### 8 Definitions

9 (1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.

10 (2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the  
11 Executive Director's designee.

12 (3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It  
13 consists of the conditions specified in these rules, the notice of grant award, special conditions to the  
14 agreement, a certification to comply with applicable state and federal regulations, the project budget and  
15 the approved application for funding the project.

16 (4) "~~Technical~~ Regional Review Team" is a team, ~~appointed by the Director,~~ of designated personnel  
17 with ~~regional knowledge and~~ interdisciplinary expertise drawn from agencies represented on the  
18 Board and other entities to evaluate ~~regional~~ grant applications based on evaluation criteria. ~~The~~  
19 ~~Director may change the composition of regional review teams.~~

20 (5) "Partners" are non-governmental or governmental persons or entities that have committed funding,  
21 expertise, materials, labor, or other assistance to a proposed project.

22 (6) "Match" is any contribution to a project that is non-Board funds. Match may include:

23 (a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;

24 (b) Secured funding commitments from other sources;

25 (c) Pending commitments of funding from other sources. In such instances, Board funding will not be  
26 released prior to secured commitment of the other funds. ~~Pending commitments of the funding must be~~  
27 ~~secured within 12 months from the date of the award;~~ or

28 (d) The value of in-kind labor, equipment rental and materials essential to the project, based on local  
29 market rates.

30 (7) "OWEB" means the Oregon Watershed Enhancement Board state agency.

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

#### History:

OWEB 3-2008, f. 11-14-08, cert. ef. 1-1-09

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

31 **695-005-0030**

32 **Application Requirements**

33 (1) Applications must be submitted on the most current form prescribed by ~~OWEBthe Board. Current~~  
34 ~~applications are available on the OWEB website.~~ An explanation must accompany the application if any of  
35 the information required on the application cannot be provided. ~~In addition to the information required~~  
36 ~~in the application, and the required attachments, an applicant may submit additional information that~~  
37 ~~will aid the Board in evaluating the project.~~

38 ~~(2) All applicants for Board grants shall supply the following information:~~

39 ~~(a) Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and~~  
40 ~~the fiscal officer(s);~~

41 ~~(b) Name and address of involved landowner(s);~~

42 ~~(c)(a) The name and location of the proposed project as directed in the application. The location~~  
43 ~~shall be described in reference to the public land survey, latitude and longitude using decimal degrees,~~  
44 ~~North American Datum 1983, county, watershed, and stream mile, if appropriate;~~

45 ~~(d) Estimated line item budget for the project using the most current budget form prescribed by the~~  
46 ~~Board. Current budget forms are available on the OWEB website;~~

47 ~~(e) Identification of specific project elements for which Board funds will be used;~~

48 ~~(f) A list of any non-Board funds, services or materials available or secured for the project and any~~  
49 ~~conditions which may affect the completion of the project;~~

50 ~~(g) If the project is part of a multi-year project, and a new funding request continues a previously Board-~~  
51 ~~funded activity, a description of the previous project accomplishments and results as well as an~~  
52 ~~accounting of past expenditures and revenues for the project;~~

53 ~~(h) Identification of volunteers and partners and the contribution they will make to the project;~~

54 ~~(i) A project schedule including times of project beginning and completion; and~~

55 ~~(j) Any information requested that is necessary to evaluate the project based on the evaluation criteria~~  
56 ~~for that project type.~~

57 ~~(3)(2) All applicants shall demonstrate a matching contribution ~~at least 25% match is being sought~~~~  
58 ~~at the time of application, on a form prescribed by the Board, based on the total Board grant~~  
59 ~~request, at the time of application. Match requirements will be included in the announcement for~~  
60 ~~each grant offering. Match requirements shall not exceed 25% of the application request.~~

61 ~~(4)(3) All applications that involve physical changes or monitoring on private land must include~~  
62 ~~certification from the applicant that the applicant has informed all landowners involved of the existence~~  
63 ~~of the application and has also advised all landowners that all monitoring information obtained on their~~  
64 ~~property and submitted to OWEB is a public record. If contact with all landowners was not possible at the~~  
65 ~~time of application, explain why.~~

66 ~~(5)(1) Applications will be considered complete as submitted. Clarification of information may be~~  
67 ~~sought by OWEB from the applicant during the evaluation process but additional, new information not~~  
68 ~~requested by OWEB will not be accepted after the application deadline.~~

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

*History:*

OWEB 1-2017, f. & cert. ef. 5-2-17

OWEB 3-2008, f. 11-14-08, cert. ef. 1-1-09

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

**695-005-0040**

69 **Application Processing**

70 (1) Project applications will be reviewed based on application completeness and the evaluation criteria  
71 adopted by the Board for each grant type in these rules.

72 (2) A ~~regular~~ grant applicant may be any tribe, watershed council, soil and water conservation district,  
73 not-for-profit institution, school, ~~Oregon community college, state~~ institution of higher education,  
74 independent not-for-profit institution of higher education, or political subdivision of this state that is  
75 not a state agency. A state agency or federal agency may ~~partner with an eligible entity~~ apply for funding  
76 ~~under this section only as a co-applicant with one of the other eligible entities. Any of these applicants~~  
77 ~~or co-applicants may also serve as a fiscal agent for grants.~~

78 ~~(3) The Board and OWEB may require additional information to aid in evaluating and considering~~  
79 ~~a proposed watershed project.~~

80 ~~(3) The Board and OWEB may use a regional technical review team or other technical team to review~~  
81 ~~grant applications and make funding recommendations to the staff or Board.~~

82 (4) Applications will be considered complete as submitted. Clarification of information may be sought by  
83 OWEB from the applicant during the evaluation process but additional, new information not requested  
84 by OWEB will not be accepted after the application deadline.

85

86 ~~(4) The Board, OWEB, and technical review teams may rank projects in selecting projects for funding.~~

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

*History:*

OWEB 1-2017, f. & cert. ef. 5-2-17

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

**695-005-0050**

87 **Grant Agreement Conditions**

88 (1) ~~The Board~~ OWEB will enter into new agreements with prior Grantees only if all reporting  
89 obligations under earlier agreements have been met.

90 (2) If the grant agreement has not been fully executed by all the parties within one year of Board ~~or~~  
91 ~~Director~~ approval, funding shall be terminated. The money allocated to the grant shall be available for  
92 reallocation by the Board ~~or Director~~.

93 (3) The Director shall establish grant agreement conditions for each grant type. Grantees shall comply  
94 with all grant agreement conditions.

95 (4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work  
96 to be done under the agreement.

97 (5) All project activities must demonstrate, to the extent possible, consistency with local community  
98 workforce and economic development plans and policies.

99 (6) Following project completion, equipment purchased with Board funds shall reside with the Grantee or  
100 another approved entity. These entities will make the equipment available to others at no cost, other

101 than nominal operation and maintenance costs.  
102 (7) Upon notice to the Grantee in writing, the Director may terminate funding for projects not completed  
103 in the prescribed time and manner. The money allocated to the project but not used will be available for  
104 reallocation by the Board.

105 (8) The Grantee will account for funds distributed by the Board, using project expense forms provided.

106 (9) The Grantee will obtain the necessary permits, ~~approvals, or and~~ licenses from local, state or  
107 federal agencies or governing bodies and provide ~~a copy~~ evidence to ~~the Board~~ OWEB.

108 (10) ~~The Board~~ OWEB may place additional conditions in the Grant Agreement as necessary to carry  
109 out the purpose of the watershed enhancement program. Such conditions ~~may~~ include, but are not  
110 limited to:

111 (a) A commitment by the landowner for continued access for monitoring the project after completion, not  
112 to exceed five years following OWEB approval of a final project completion report;

113 (b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate ~~by the Board~~  
114 for the practice to be effective;

115 (c) A commitment to supply future reports on the project as required; and

116 (d) Such other conditions as ~~the Board~~ OWEB deems appropriate to the particular circumstances of the  
117 project.

118 *Statutory/Other Authority:* ORS 541.906

119 *Statutes/Other Implemented:* ORS 541.890 - 541.969

120 *History:*

121 OWEB 1-2017, f. & cert. ef. 5-2-17

122 OWEB 3-2008, f. 11-14-08, cert. ef. 1-1-09

123 OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

#### 695-005-0060

#### 124 **Distribution of Funds**

125 (1) The Director may withhold payments to a Grantee in a situation where there are significant and  
126 persistent difficulties with satisfying ~~Board~~ OWEB requirements.

127 (2) Prior to disbursement of Board funds, the Grantee must provide proof that the ~~25%~~ required match,  
128 ~~based on the total Board award,~~ has been secured.

129 (3) Prior to disbursement of Board funds for projects involving a private property private lands, the  
130 ~~Board~~ OWEB must receive ~~certification from the Grantee that they will obtain,~~ prior to expending  
131 ~~Board funds on a property,~~ a cooperative agreement from the landowner that, at a minimum,  
132 includes:

133 ~~(a) Permission to access the private land, at times agreeable to the landowner, to implement the project,~~  
134 ~~inspect the project, track the status of the project, or perform repairs or maintenance;~~

135 ~~(b) Permission for the Board or its representatives to access the private land for inspection and evaluation~~  
136 ~~of the project; and~~

137 (a) Identification of the party responsible for repairs and maintenance of the project. Landowner's certification  
138 that the landowner owns the land where the work will be carried out;

139 (b) Landowner's agreement to allow Grantee to carry out the work, or a portion of the work on the  
140 Landowner's property;

141



142 (c) Landowner's agreement to maintain the Project, or allow maintenance of the Project, over a time  
143 period consistent with the grant application;

144 (d) Landowner's agreement to allow the OWEB Board and its representatives access to the site where  
145 the work is being carried out for inspection and evaluation; and

146 ~~(e)~~(e) Landowner's acknowledgment that he/she is aware of the application to OWEB and that information  
147 relating to the work, including effectiveness monitoring data, is a public record.

148 (4) Prior to disbursement of Board funds for projects involving a public property OWEB must receive  
149 evidence from the public agency that it concurs with the project.

150 ~~(4)~~(5) Funds shall not be disbursed on project elements that require permits or licenses until the Board  
151 OWEB receives satisfactory evidence that the necessary permits or and licenses have been granted and  
152 documents required by the Board have been submitted.

153 ~~(5)~~(6) Funds will be released upon presentation of a completed fund release request form, as  
154 prescribed by OWEB, accompanied by documents as determined by the Director, and proof of  
155 completion of specific work elements of the project as identified in the Grant Agreement.

156 ~~(6)~~(7) Advance funds may be released upon presentation of a detailed estimate of expenses for up to  
157 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance  
158 must be submitted, a justification to extend the advance must be approved, or the unexpended  
159 advance funds must be returned to the Board. Additional funds will not be released until receipts for  
160 expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by  
161 the Director.

162 ~~(7)~~(8) All grant agreements authorized by the Board shall have a clause that requires the retention of  
163 up to ten percent of project funds until the final report, as required in the grant agreement, has been  
164 approved. Final reports are due within 60 days of project completion. Any unexpended Board funds must  
165 be returned to the Board with the final report. Upon receipt of the final report, the Board shall have 90  
166 days to approve the completed report or notify the Grantee of any concerns that must be addressed or  
167 missing information that must be submitted before the report is considered complete and reviewed for  
168 approval. Once the final report has been approved the final payment shall be promptly processed.

169 ~~(8)~~(9) All Grantees shall account for at least the required 25% in actual match, or at least \$1 in actual  
170 match for pass through grants, on a form prescribed by the Board, based on the total Board grant  
171 expenditures, upon project conclusion and final reporting.

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

*History:*

OWEB 1-2017, f. & cert. ef. 5-2-17

OWEB 3-2008, f. 11-14-08, cert. ef. 1-1-09

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

### **695-005-0070**

#### **172 Waiver of Rules**

173 The Director may waive the requirements of Division 5, unless they are required by statute, for individual  
174 grants, when doing so will result in more efficient or effective implementation of the Board's grant  
175 program. Any waiver granted shall be in writing and included in the permanent file of the individual grant  
176 for which the waiver was granted.

177 *Statutory/Other Authority:* ORS 541.906

178 *Statutes/Other Implemented:* ORS 541.890 - 541.969

179 *History:*  
180 OWEB 3-2008, f. 11-14-08, cert. ef. 1-1-09  
181 OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

182 **695-005-0080**

183 **Periodic Rules Review and Program Evaluation**

184 OWEB and The Board shall review the grant program and rules at least once every five years and make  
185 changes as needed to carry out a high quality and effective program.

*Statutory/Other Authority:* ORS 541.906

*Statutes/Other Implemented:* ORS 541.890 - 541.969

*History:*

OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05



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795 Winter St. NE | Salem, OR 97301 | Phone: 503-363-0121 | Fax: 503-371-4926 | [www.owrc.org](http://www.owrc.org)

August 26, 2022

Eric Harstein  
Oregon Watershed Enhancement Board  
775 Summer St NE #360  
Salem OR 97301  
*Submitted electronically*

RE: Proposed Revisions to Division 5

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On behalf of the Oregon Water Resources Congress (OWRC), I am submitting brief comments on the proposed revisions to OAR Division 5, OWEB Grant Program. We appreciate the opportunity to provide comment on the sections up for discussion at the scheduled for discussion at the upcoming Rules Advisory Committee (RAC) meeting on August 30<sup>th</sup>.

The Oregon Water Resources Congress (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. The water stewards we represent operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities. OWRC's members deliver water to nearly 600,000 acres of farmland in Oregon, which is over one-third of all the irrigated land in Oregon. Many of our members are planning or implementing canal lining, piping, and other irrigation modernization projects.

We have reviewed the proposed rule changes that will be the focus of the August 30, 2022 RAC meeting, and we have the following comments:

In the proposed revisions to OAR 695-005-0060(3) (Distribution of Funds), the current proposed language reads as follows:

“Prior to disbursement of Board funds for projects involving a private party OWEB must receive a cooperative agreement from the landowner that, at a minimum, includes:

“(a) Landowner’s certification that the landowner owns the land where the work will be carried out;

“(b) Landowner’s agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner’s property;

“(c) Landowner’s agreement to maintain the Project, or allow maintenance of the Project, over a time period consistent with the grant application;

“(d) Landowner’s agreement to allow the OWEB Board and its representatives access to the site where the work is being carried out for inspection and evaluation; and

***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.***

“(e) Landowner’s acknowledgement that he/she is aware of the application to OWEB and that information relating to the work, including effectiveness monitoring data, is a public record.”

OWRC is concerned that this language fails to recognize that our member districts (irrigation districts and similar entities), along with most other types of water conveyance entities in Oregon, hold easements, or utilize easements held by others (such as the U.S. Bureau of Reclamation), to convey water across private lands. Pursuant to these easements, districts are already authorized to perform work within the easement areas, consistent with the terms and conditions of the easements and applicable case law. To the extent that districts are awarded grant funds by OWEB that are subject to the Division 5 rules, districts should not be required to provide individual landowner certifications or agreements that expressly allow each to carry out the work and maintain the OWEB-funded projects where the individual district holds easements for the areas in which the work will occur. Rather, the easements already provide districts with the very authorities that would otherwise be obtained through the certifications and agreements. Given that district piping projects within district-held easements often involve dozens if not hundreds or even thousands of landowners (as even single properties often involve multiple joint owners that are often difficult to locate), to require certifications and authorizations with every landowner is both unnecessary and impractical.

This issue has arisen with other funding programs and has been resolved by the district providing evidence that the district has the authority to perform the work, through an easement covering the private land involved or other landowner agreement. As an example, a recent grant agreement between the Oregon Water Resources Department (OWRD) and the Deschutes Basin Board of Control (Grantee) for funding from the Water Supply Development Account. The language from that agreement is provided below as an example of how this issue can be addressed without creating unintended roadblocks to infrastructure modernization projects.

“For Project tasks that take place on private land(s), Grantee has submitted to the Grantor:

“1) Evidence that landowner(s) are aware of and agree to the task. Evidence shall include, but is not limited to: (i) landowner(s) certification that the landowner owns the land where the work will be carried out, (ii) landowner’s agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner’s property, and (iii) evidence that landowner(s) are aware that monitoring information associated with the Project is a public record; or

“2) Evidence documenting legal easement on all lands where the work will be carried out. Evidence shall include, but is not limited to (i) documentation of easement, (ii) [servient estate(s)] agreement to allow Grantee to carry out the work, or a portion of the work on the servient estate[(s)], and (iii) evidence that [the servient estate(s)] are aware that monitoring information associated with the Project is a public record.” (Water Supply Development Account, Grant Agreement #WPG-D-0003-21, section 2.05(g), at p. 4).

The documentation described in paragraph (2) above should also be sufficient to address OWEB's concerns around notification and authorization for construction and maintenance projects funded by OWEB. We respectfully request that the RAC incorporate into the proposed revisions to OAR 695-005-0060(3) the documentation described in paragraph (2) above, as an alternative to the currently described landowner certifications and agreements.

Thank you for the opportunity to provide comment to help guide the RAC discussion. We will likely have additional comments during the formal comment period and look forward to further discussions about the proposed rule changes.

Please contact me if you need any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Snell', with a stylized flourish at the end.

April Snell  
Executive Director



# Deschutes Basin Board of Control



August 26, 2022

April Mack

[April.mack@OWEB.oregon.gov](mailto:April.mack@OWEB.oregon.gov)

Dear Ms. Mack,

The Deschutes Basin Board of Control (DBBC) is an entity made up of eight irrigation districts in the Deschutes River Basin, including the Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo irrigation districts. These eight Districts withdraw water from the Deschutes River Basin, and have come together as an intergovernmental entity pursuant to ORS 190.124. This organizational structure allows the Districts to work together as a unit in implementing water conservation projects, providing educational resources, utilizing equipment, and other joint purposes. As relevant here, the DBBC and its member Districts depend on OWEB funding to implement water conservation projects, including the piping of District canals and ditches that convey irrigation water.

We have reviewed the proposed rule changes that will be the focus of the August 30, 2022 Rules Advisory Committee (RAC) meeting, and we have the following comments:

In the proposed revisions to OAR 695-005-0060(3) (Distribution of Funds), the current proposed language reads as follows:

“Prior to disbursement of Board funds for projects involving a private party OWEB must receive a cooperative agreement from the landowner that, at a minimum, includes:

“(a) Landowner’s certification that the landowner owns the land where the work will be carried out;

“(b) Landowner’s agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner’s property;

“(c) Landowner’s agreement to maintain the Project, or allow maintenance of the Project, over a time period consistent with the grant application;

“(d) Landowner’s agreement to allow the OWEB Board and its representatives access to the site where the work is being carried out for inspection and evaluation; and

“(e) Landowner’s acknowledgement that he/she is aware of the application to OWEB and that information relating to the work, including effectiveness monitoring data, is a public record.”

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PO Box 919 - Madras, OR 97741

*DBBC Member Districts*

*Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District  
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District  
DBBC President -Craig Horrell, 541-548-6047; chorrell@cod.org*

The DBBC is concerned that this language fails to recognize that the DBBC Districts, along with most other water conveyance entities in Oregon, hold easements, or utilize easements held by others (such as the U.S. Bureau of Reclamation), to convey water across private lands. Pursuant to these easements, the Districts are already authorized to perform work within the easement areas, consistent with the terms and conditions of the easements and applicable case law. To the extent that the Districts are awarded grant funds by OWEB that are subject to the Division 5 rules, the Districts should not be required to provide Landowner certifications or agreements that expressly allow the Districts to carry out the work and maintain the OWEB-funded projects where the Districts hold easements for the areas in which the work will occur. Rather, the easements provide the Districts with the very authorities that would otherwise be obtained through the certifications and agreements. Given that District piping projects within District easements often involve dozens if not hundreds or even thousands of landowners (as even single properties often involve multiple joint owners that are often difficult to locate), to require certifications and authorizations with every landowner is both unnecessary and impractical.

We would note that in a recent grant agreement between the DBBC (Grantee) and the Oregon Water Resources Department (Grantor) involving the Water Supply Development Account, this very issue was addressed in the agreement with the following language:

“For Project tasks that take place on private land(s), Grantee has submitted to the Grantor:

“1) Evidence that landowner(s) are aware of and agree to the task. Evidence shall include, but is not limited to: (i) landowner(s) certification that the landowner owns the land where the work will be carried out, (ii) landowner’s agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner’s property, and (iii) evidence that landowner(s) are aware that monitoring information associated with the Project is a public record; or

“2) Evidence documenting legal easement on all lands where the work will be carried out. Evidence shall include, but is not limited to (i) documentation of easement, (ii) [servient estate(s)] agreement to allow Grantee to carry out the work, or a portion of the work on the servient estate[(s)], and (iii) evidence that [the servient estate(s)] are aware that monitoring information associated with the Project is a public record.” (Water Supply Development Account, Grant Agreement #WPG-D-0003-21, section 2.05(g), at p. 4).

The documentation described in paragraph (2) above should also be sufficient to address OWEB’s concerns around notification and authorization for construction and maintenance projects funded by OWEB. We respectfully request that the RAC incorporate into the proposed revisions to OAR 695-005-0060(3) the documentation described in paragraph (2) above, as an alternative to the currently described landowner certifications and agreements.

Thank you for the opportunity to provide comments. We look forward to participating in this rulemaking process as it moves forward.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Horrell', with a stylized flourish at the end.

Craig Horrell

DBBC President