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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