



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

December 15, 2025

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

Re: Public Comments, Water Acquisition Grant Rulemaking, RAC meeting #2

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 that provides the legal framework for much of the work funded by the OWEB Acquisition Grant Program to take place. We also helped negotiate the Conserved Water Act. As such, we have a great interest in ensuring that state dollars are only spent on projects that result in legally protected instream flows. We have three primary comments today, as well as some proposed edits to the definitions.

Expanding eligibility to groundwater: It has come to our attention that the RAC is discussing expanding eligible funds to groundwater right acquisitions. It is unclear if the proponents are focusing just on transfers or are also envisioning that this would also extend to conserved water act projects or other mechanisms. Regardless, WaterWatch has significant concerns with any expansion of the acquisition program to include groundwater rights.

We do not believe the acquisition of groundwater rights 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.

While groundwater and surface water are hydraulically connected in most areas of the state, and are 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 "purchased" groundwater either in the ground or in the stream. As such, there would be no protectable public benefit for expenditures to purchase groundwater rights. Given this, we urge the RAC to reject the request to expand the program to groundwater.

Evaluation Criteria: The draft rules (-0196) add an evaluation criterion of "Promotes collaborative basin planning efforts...." Leaving aside our position on the efficacy of the criteria, it seems to us this is backwards. If the intent is to fund projects that have arisen from collaborative planning efforts, then the language should be changed to something akin to "has resulted from collaborative basin planning efforts". We do not support an evaluation criterion that would somehow encourage "planning" under the OWEB Water Acquisition Fund. That is not the purpose of this fund.

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That said, semantics aside, we would urge that this evaluative criterion be removed in whole. While likely not the intent, it could count against pure restoration projects (e.g. instream transfers) that are not supported by a collaborative. Not every landowner lives in a basin with a collaborative planning process, nor are all conservation and restoration needs located in such basins. This could elevate projects of less ecological value simply because they have collaborative support, while withholding funding from other needed and effective projects. There are other funding sources that consider this criterion; we would urge this RAC to focus these rules on the resource gains intended to be gleaned by this fund.

Conserved Water Projects: If OWEB is going to allow water acquisition funds to pay for ACW projects, we request that the agency consider providing more detail to evaluate what benefits public funds dedicated to Conserved Water Projects are buying.

OWEB's Water Acquisition Fund are statutorily directed to be used for projects to restore and protect instream flows. They cannot, in our read, pay for benefits that accrue to a landowner. In other words, if the project is 100% funded by OWEB water acquisition funds, then 100% of the water should go instream (as opposed to 75% which tops the mandatory percentage scale but is allowed if the water right holder directs it). Similarly, for partial funding, the public benefit portion of the "saved water" should be additive to the 25% that the user would have to return instream if no public funds were used. Absent that, the public benefit technically derived from public funds could be zero (e.g. a project that is 25% publicly funded would only put 25% of the water instream, which is exactly what the users would have to do anyway in order to capture any "saved water" under the Conserved Water Act). Absent that, a user could get public funds to pay only for the portion that s/he would be legally required to provide anyway. While we understand this deviates from other funding sources, given the water acquisition fund is limited to "acquiring" instream benefit this seems appropriate for this particular fund. If applicants are not interested in this, they could utilize other funds that start the public benefit calculation at zero.

We would also recommend OWEB develop process/standards to evaluate the instream benefits of a conservation project against the negative impacts. While conservation is generally viewed as a positive undertaking, projects under the Conserved Water Act, which allows an increase of consumptive use of water that would otherwise return to the system, can result in a net negative (especially if only 25% of the water is returned instream). This needs to be accounted for in any funding decision.

Definitions:

Split rate/split duty instream lease: We would request that the title be changed to "Walla Walla split rate/split duty instream lease". While we recognize that the Walla Walla is called out in the body of the definition, given this is a legal tool that is specific to the Walla Walla, we think that it needs to be crystal clear in the title to protect against mischief.

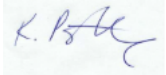
We would also ask that "as authorized" be changed to "in accordance with" to ensure that the standards and conditions required by the Act apply. While we assume that is the intent, we feel the rule language would be clearer with this change.

As to the question in the comments about expanding this definition to the Deschutes Water Bank, that program is both a pilot and also a bank. As such, it does not seem appropriate to include in the OWEB Water Acquisition Grant rules.

Interests in water: The words “interests in water” are used throughout but is not defined. While I appreciate most could infer the meaning, it might be prudent to spell out that this means an interest in a water right, and what that means to purchase/lease/contract that interest.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Priestley", on a light blue rectangular background.

Kimberley Priestley
Sr Policy Analyst