

Division 601 Compilation of Public Comments Received

During the public comment period for the Division 601 Best Practices for Community Engagement on Water Projects (December 1, 2024, through January 15, 2025), the Department received both written comments and oral comments. The Department then extended the public comment period on February 14, 2025, through February 24, 2025.

Table 1 lists all written and oral comments received (tribal comments can be found in Attachment 5). Any stated affiliation is noted. Any stated support or opposition is noted as is any recommendation to revise the rules.

Table 1. Public Written and Oral Comments Received

Name	Stated Affiliation	Support / Oppose	Propose Rule Language Changes	Written (W) / Oral (O) Comments
Donna Beverage	Union County Commissioner	Support	Yes	(W) 12/01/24
Peggy Lynch	League of Oregon Women Voters	Support	Yes	(W) 12/01/24
Kimberley Prestley	Water Watch	Support	Yes	(W) 01/15/25
Chris Hall	Water Leage	Support	Yes	(O and W) 01/09/25
Ryan Webb	The Confederated Tribes of the Grand Ronde Community	Support	No	(W) 01/15/2025
Comments Received During the Extension				
April Snell	Oregon Water Resources Congress	Support	Yes	(W) 02/14/25
Chris Hall	Water Leage	Support	Yes	(W) 02/24/25

From: [MASHKOVSKAYA Margo A * WRD](#)
To: dbeverage@union-county.org
Subject: RE: OWRD Division 601 - Best Practices for Community Engagement Around Water Projects
Date: Thursday, December 5, 2024 8:22:00 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Good morning Commissioner Beverage,

Your comment has been added to the record.

Many thanks,

-

[Margo Mashkovskaya, Esq. \(She/Her\)](#)

Water Supply Rulemaking Operations & Policy Analyst

Office Hours 8am-4:30pm

725 Summer St NE Suite A | Salem OR 97301 | Phone 503-507-7313



[Integrity](#) | [Service](#) | [Technical Excellence](#) | [Teamwork](#) | [Forward-Looking](#)

From: Christopher Hall <chris@waterleague.org>

Sent: Wednesday, December 4, 2024 5:47 PM

To: Donna Beverage <dbeverage@union-county.org>

Cc: LYNCHOR Peggy <peggylynchor@gmail.com>; MASHKOVSKAYA Margo A * WRD <Margo.A.MASHKOVSKAYA@water.oregon.gov>; REGULA-WHITEFIELD Charlotte M * WRD <Charlotte.M.REGULA-WHITEFIELD@water.oregon.gov>; ADenlinger@srwd.org; Cheyenne Holliday <cheyenneholliday@verdenw.org>; Kimberley Priestley <kjp@waterwatch.org>; Margaret.Magruder@columbiacountyor.gov; mmartin@orcities.org; aprils@owrc.org; Harmony (Paulsen) Burright <harmonysimone@gmail.com>; FRITZ-OGREN Kim L * WRD <Kim.L.FRITZ-OGREN@water.oregon.gov>

Subject: Re: OWRD Division 601 - Best Practices for Community Engagement Around Water Projects

Hi Donna,

The Draft rules carry the definition of Community Engagement Plan word-for-word from the statute, which I hope resolves the concern about allowing all voices to be heard **[emphasis added]**:

(6) "Community Engagement Plan" means a plan to meaningfully engage and provide suitable access to decisionmaking processes for disproportionately impacted communities, underrepresented communities, tribal communities **and all persons regardless of race, color, national origin or income in planning for water projects**

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Hi Donna,

The Draft rules carry the definition of Community Engagement Plan word-for-word from the statute, which I hope resolves the concern about allowing all voices to be heard **[emphasis added]**:

(6) "Community Engagement Plan" means a plan to meaningfully engage and provide suitable access to decisionmaking processes for disproportionately impacted communities, underrepresented communities, tribal communities **and all persons regardless of race, color, national origin or income in planning for water projects**

using identified best practices.

All the best,

Chris Hall
Water League
(541) 415-8010

On Wed, Dec 4, 2024 at 3:40 PM Donna Beverage <dbeverage@union-county.org> wrote:

Please add my comments also and thank you.

Donna

Commissioner Beverage
Union County
1106 K Ave. La Grande, OR 97850
541-963-1001 cell 541-786-1492

Home of the Beautiful, Historic Grande Ronde Valley!!

From: Peggy Lynch <peggylynchor@gmail.com>

Sent: Monday, December 2, 2024 3:13 PM

To: MASHKOVSKAYA Margo A * WRD <Margo.A.MASHKOVSKAYA@water.oregon.gov>

Cc: Donna Beverage <dbeverage@union-county.org>; REGULA-WHITEFIELD Charlotte M * WRD <Charlotte.M.REGULA-WHITEFIELD@water.oregon.gov>; ADenlinger@srwd.org; Cheyenne Holliday <cheyenneholliday@verdenw.org>; Kimberley Priestley <kjp@waterwatch.org>; Margaret.Magruder@columbiacountyor.gov; mmartin@orcities.org; Christopher Hall <chris@waterleague.org>; aprils@owrc.org; Harmony (Paulsen) Burright <harmonysimone@gmail.com>; FRITZ-OGREN Kim L * WRD <Kim.L.FRITZ-OGREN@water.oregon.gov>

Subject: Re: OWRD Division 601 - Best Practices for Community Engagement Around Water Projects

Please add my email to the public comment record. This is very important since this rulemaking will be the basis for the other agencies as they do similar rulemaking.

Peggy Lynch, LWVOR Natural Resources Coordinator

On Mon, Dec 2, 2024 at 3:09 PM MASHKOVSKAYA Margo A * WRD

<Margo.A.MASHKOVSKAYA@water.oregon.gov> wrote:

Good Afternoon,

Thank you, Peggy and Commissioner Beverage, for your comments. Due to the holiday weekend, the public comment period did not formally open until around 2 p.m. today (12/2/25) when the Secretary of State's office published their [December bulletin](#). Consequently, these comments were not included in the public comment record as they were submitted prior to the bulletin posting.

With your permission, I can add your comments to the public comment record, or you may submit them to wrd_dl_rule-coordinator@water.oregon.gov before January 15 at 5 p.m. to be included in the record.

If you have any questions about the rulemaking process, please feel free to contact me. Otherwise, all substantive comments on the rule should be submitted as a public comment to wrd_dl_rule-coordinator@water.oregon.gov.

For more information on this rulemaking please see our [rulemaking website](#). More information on public notice will be distributed via email shortly.

Many thanks,

-

[Margo Mashkovskaya, Esq. \(She/Her\)](#)

Water Supply Rulemaking Operations & Policy Analyst

Office Hours 8am-4:30pm

725 Summer St NE Suite A | Salem OR 97301 | Phone 503-507-7313



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From: Donna Beverage <dbeverage@union-county.org>

Sent: Monday, December 2, 2024 10:49 AM

To: LYNCHOR Peggy <peggylynchor@gmail.com>; REGULA-WHITEFIELD Charlotte M * WRD <Charlotte.M.REGULA-WHITEFIELD@water.oregon.gov>

Cc: ADenlinger@srwd.org; Cheyenne Holliday <cheyenneholliday@verdenw.org>; Kimberley Priestley <kjp@waterwatch.org>;

Margaret.Magruder@columbiacountyor.gov; mmartin@orcities.org; Christopher

Hall <chris@waterleague.org>; aprils@owrc.org; Harmony (Paulsen) Burright
<harmonysimone@gmail.com>; MASHKOVSKAYA Margo A * WRD
<Margo.A.MASHKOVSKAYA@water.oregon.gov>; FRITZ-OGREN Kim L * WRD
<Kim.L.FRITZ-OGREN@water.oregon.gov>

Subject: RE: OWRD Division 601 - Best Practices for Community Engagement
Around Water Projects

I agree with the statement from Peggy Lynch that we want to ensure that those that
have had a voice continue having a voice along with those that have not had a voice
in the past.

Thank you,

Donna

Commissioner Beverage
Union County
1106 K Ave. La Grande, OR 97850
541-963-1001 cell 541-786-1492

Home of the Beautiful, Historic Grande Ronde Valley!!

From: Peggy Lynch <peggylynchor@gmail.com>

Sent: Sunday, December 1, 2024 2:53 PM

To: REGULA-WHITEFIELD Charlotte M * WRD <Charlotte.M.REGULA-WHITEFIELD@water.oregon.gov>

Cc: ADenlinger@srwd.org; Cheyenne Holliday <cheyenneholliday@verdenw.org>;
Kimberley Priestley <kjp@waterwatch.org>;

Margaret.Magruder@columbiacountyor.gov; mmartin@orcities.org; Donna
Beverage <dbeverage@union-county.org>; Christopher Hall

<chris@waterleague.org>; aprils@owrc.org; Harmony (Paulsen) Burright
<harmonysimone@gmail.com>; MASHKOVSKAYA Margo A * WRD
<Margo.A.MASHKOVSKAYA@water.oregon.gov>; FRITZ-OGREN Kim L * WRD
<Kim.L.FRITZ-OGREN@water.oregon.gov>; Peggy Lynch
<peggylynchor@gmail.com>

Subject: Re: OWRD Division 601 - Best Practices for Community Engagement
Around Water Projects

Just wondering how the draft rules address this comment:

*RAC Member (Peggy Lynch): **All Oregonians not just disproportionately impacted communities** should be considered. Don't want to lose that everyone should be involved in engagement. Want to ensure that those that have had a voice continue having a voice along with those that have not had a voice in the past.*

It seems to me that these draft rules now assume that **ONLY** to invite and support meaningful involvement of disproportionately impacted communities in the development, implementation, or both, of community engagement plans for water projects supported by authorized Oregon Water Resources Department grants and loans.

Hope I read it wrong. Peggy Lynch, LWVOR (541-745-1025 landline/no text)

On Wed, Nov 27, 2024 at 1:51 PM REGULA-WHITEFIELD Charlotte M * WRD <Charlotte.M.REGULA-WHITEFIELD@water.oregon.gov> wrote:

Good afternoon,

Thank you all once again for your participation in the OWRD Division 601 RAC process. Using your thoughtful feedback and guidance we have updated the rules as attached. We anticipate starting public comment period on these rules on December 2nd, 2024, until January 15th, 2025. A hearing on these rules is anticipated to occur on January 9th.

Charlotte Whitefield

Charlotte Regula-Whitefield, Ph.D.
North Central Community Engagement Coordinator

Planning, Collaborative, and Investments Section
Director's Office
725 Summer Street NE, Suite A Salem, OR 97301 | Phone 971-375-3481
Pronouns: she/her/hers



Integrity | Service | Technical Excellence | Teamwork | Forward-Looking



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

January 15, 2025

Margo Mashkovskaya
 Oregon Water Resources Department
 725 Summer St. NE, STE A
 Salem, OR 97301
 Sent via email to: WRD_DL_rule-coordinator@water.oregon.gov.

Dear Ms. Mashkovskaya:

Thank you for the opportunity to comment on the proposed Division 601 rules pertaining to Community Engagement Plans. As a member of the Rules Advisory Committee (RAC), WaterWatch appreciates the work of the Oregon Water Resources Department in developing these rules and in considering the input provided by the RAC.

We have attached a track/edit review of the rules which includes comments/suggestions specific to select rule sections. In addition, we offer a few of general comments below.

First, we would suggest that the sections related to application requirements, review and approval be further clarified. We appreciate that OWRD added language to align these sections with the processes in OAR 690-600 or OAR 690-093, but we think it would be clearer to include the relevant language from those rules in this rule so the reader can understand the process without having to toggle back and forth between rules. Also, it is unclear if OWRD is anticipating following all the provisions in those rules or a subset. Given those rules are specific to grants for feasibility studies and/or projects, it does not seem like all requirements would overlay here. Regardless, the clarity provided by including specific language would be helpful.

Second, we would ask that a public notice and comment period be explicitly included. Given concerns raised by a number of RAC members that this process could be used by savvy project proponents and/or their consultants to manufacture consent, it is critical that the public have the opportunity to both review and provide comments for consideration by OWRD on applications before the OWRD approves and grants state funds to these endeavors. And while OAR 690-600 and OAR 690-093 do include public comment periods, so presumably it was anticipated it would be provided for these grants, it would be much easier for the public to understand this requirement if it were spelled out in the rule language.

Third, we do share concerns raised by other RAC members that the rules limit the applicants to those who are applying for a grant or loan under OAR 690-600 or OAR 690-093. While we appreciate the OWRD's decision to tie this engagement to water projects funded by the OWRD's grant and loan funds, the statute does not go as far as limiting the applicants to those developing the projects. In fact, the definition of local organization would lead to a different interpretation.

WaterWatch of Oregon
Main Office: 213 SW Ash St. Suite 208, Portland, OR 97204
Southern Oregon Office: PO Box 261, Ashland, OR 97520

www.waterwatch.org
Main Office: 503.295.4039
S. OR Office: 541.708.0048

This has been raised by RAC members at different junctures of the rulemaking, but it does not appear the rules have addressed some of the concerns raised on this point.

Thank you for your consideration of our comments.

Sincerely,

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

Kimberley Priestley
Sr. Policy Analyst

Chapter 690: Water Resources Department

Division 601: Best Practices in Community Engagement for Water Projects

690-601-0001

Purpose

- (1) OAR 690-601-0001 to OAR 690-601-0006 establishes rules to invite and support meaningful involvement of disproportionately impacted communities in the development, implementation, or both, of community engagement plans for water projects supported by authorized Oregon Water Resources Department grants and loans.

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551

690-601-0002

Definitions

For the purposes of Oregon Administrative Rules Chapter 690, Division 601:

- (1) “Disproportionately Impacted Communities” ~~may include~~ **includes**:
 - A. Rural communities;
 - B. Communities of color;
 - C. Tribal communities;
 - D. Coastal communities;
 - E. Areas with above-average concentrations of:
 - a. historically disadvantaged households,
 - b. residents with low levels of educational attainment,
 - c. high unemployment,
 - d. high linguistic isolation,
 - e. low levels of homeownership or high rent burden,
 - f. sensitive populations;
 - F. Other communities that face barriers to meaningful involvement in public processes.
- (2) “Meaningful Involvement” means that members of disproportionately impacted communities have appropriate opportunities to participate in and impact the outcomes of water projects that will likely affect their communities’ environment, economy, or health
- (3) “Community Engagement Plan Grantee” means eligible local governments or local organizations that receive funding for a Community Engagement Plan for water projects that are supported by grants or loans pursuant to OAR 690-600 or OAR 690-093.
- (4) “Community Engagement Plan Applicant” means eligible local governments or local organizations that apply to receive grants or loans from OAR 690-600 or OAR 690-093 for a water project Community Engagement Plan.

Commented [KP1]: Statute is a “may”, rules should mimic that. RE: not all rural and/or coastal communities meet generally accepted definitions of a disproportionately impacted community.

Commented [KP2]: The statute does not clearly limit applicants to those who are applying to receive grants and loans. As raised by RAC members, limiting to project proponents could stifle the intent of the statute to generate meaningful community engagement around water projects and/or worse could be used by savvy developers to manufacture consent and/or otherwise thwart the intent of this statute

- (5) "Department" means the Oregon Water Resources Department.
- (6) "Community Engagement Plan" means a plan to meaningfully engage and provide suitable access to decision-making processes for disproportionately impacted communities, underrepresented communities, tribal communities and all persons regardless of race, color, national origin or income in planning for water projects using identified best practices.
- (7) "Water Project" mean projects eligible for funding by grants or loans through OAR 690-600 or OAR 690-093.
- (8) "Best Practices" include goals, approaches, and strategies used in the development and implementation of a community engagement plan to increase meaningful involvement of disproportionately impacted communities in decisions related to the identification, scoping, design, or implementation of a water project.
- (9) "Local Government" has the meaning given to that term in ORS 174.116.
- (10) "Local Organization" means a special government body as defined in ORS 174.117, a federally recognized Indian tribe, a nonprofit organization, or other organization identified who operates in an area affected by a water project and is eligible to receive grants or loans pursuant to OAR 690-600 or OAR 690-093.

Commented [KP3]: Cite should be to the statutes not the rules. This comment carries throughout, except for the reference to evaluation of grant applications

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551

690-601-0003

Funding for Community Engagement Plans

- (1) The Department may provide funding for community engagement plan development, implementation, or both to invite and support meaningful involvement by representatives of disproportionately impacted communities in water projects supported by grants or loans through OAR 690-600 or OAR 690-093.
 - A. For the purposes of grants and loans pursuant to OAR 690-093, Water Supply Development Account, a community engagement plan for a water project may be funded if the plan is used to inform the identification, planning, development, or implementation of a water resource projects funded by the account.
 - B. For the purposes of OAR 690-600, Water Conservation, Reuse, and Storage Grant Program, a community engagement plan for a water project may be funded if the plan is used to inform project identification and project planning studies funded by the program that are performed to evaluate the feasibility of developing a water conservation, reuse, or storage project.
- (2) Community engagement grantees shall follow all laws and guidelines for water projects that are supported by grants or loans issued pursuant to OAR 690-600 or OAR 690-093.

(3) Community engagement grantees, using Department recognized best practices, and approved alternative best practices, shall expend grant or loan funds for the purposes of inviting and supporting meaningful involvement of disproportionately impacted communities in decisions related to the identification, scoping, design, and implementation of water projects.

(4) Community engagement grantees shall follow all applicable state and federal funding and procurement laws and guidelines for reimbursable costs and activities.

A. Ineligible costs and activities are not reimbursable, these include but are not limited to, spending funds on the acts of lobbying and fundraising.

B. Eligible costs and activities that may be reimbursable, if conditions of the granting agreements are met, include but are not limited to, design and facilitation of meetings and eligible associated costs, development and distribution of outreach and meeting materials, and compensation of disproportionately impacted communities for meaningful involvement in community engagement opportunities.

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551

690-601-0004

Best Practices of Water Projects for use in Community Engagement Plans

(1) The Department recognizes ten best practices to invite and support meaningful involvement of disproportionately impacted communities in water projects supported by grants or loans pursuant to OAR 690-600 or OAR 690-093. Department recognized best practices for use in the development, implementation, or both, of community engagement plans include:

A. Identifying and inviting disproportionately impacted communities interested in engaging in water project planning.

B. Defining the water project's purpose and goals, including what will be done to meaningfully involve disproportionately impacted communities.

C. Developing new, or assessing current, decision-making processes to identify opportunities to enhance access to the project decision-making process for disproportionately impacted communities.

D. Inviting tribal communities in Oregon to participate in the water project, acknowledging their preferences and capacity for collaboration, regardless of whether tribal members are represented in the community demographics.

E. Co-creating water project capacity opportunities that are inclusive, including to disproportionately impacted communities, with the community and across water project participants.

F. Building collaborative relationships with disproportionately impacted communities.

Commented [KP4]: Isn't that the best practices are meant to invite and support disproportionately impacted communities "in decisions related to the identification, scoping, design, or implementation of a water project" rather than just "water projects"?

- G. Coordinating with the community and across water project participants to leverage resources, staff, and data.
 - H. Ensuring water project communications and information are shared in a timely, transparent manner, and in languages, and formats commonly used or preferred by disproportionately impacted communities.
 - I. Evaluating the effectiveness of community engagement before, during, and after the water project, based on the purposes, goals, and capacities of communities' and projects.
 - J. Striving to monitor and document the positive and negative impacts of the water project on disproportionately impacted communities and their environments.
- (2) Community engagement plans for water projects supported by grants or loans pursuant to OAR 690-600 or OAR 690-093 shall:
- A. Be designed to promote meaningful involvement of disproportionately impacted communities. Plans shall include, but are not limited to, the following components:
 - a. A description of how disproportionately impacted communities will be identified using established systems.
 - b. A framework for how the water project will engage with communities including disproportionately impacted communities, which includes:
 - i. Goals for equitable participation of disproportionately impacted communities in water projects.
 - ii. Realistic and achievable approaches for use in meeting those goals.
 - iii. Consideration and inclusion of recommendations of disproportionately impacted communities.
 - c. A set of metrics and timelines to evaluate the community engagement plan progress and success in increasing meaningful participation of disproportionately impacted community in water projects.
 - B. Be conducted using the Departments recognized best practices.

Commented [KP5]: This is a bit awkward. Who is the "who" here? The grantee, the water project proponent, ?

Commented [KP6]: Would suggest a requirement that the input is actually considered and/or used.

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551

690-601-0005
Application Requirements and Evaluation of Community Engagement Plans

- (1) Community engagement plan applicants shall comply with all the application requirements pursuant to OAR 690-600 or OAR 690-093.

Commented [KP7]: Would recommend the OWRD lay out exactly which components you are referring to so the reader does not have to toggle back and forth between rules. And/or at the very least identify the exact section in rule.

- (2) Community engagement plan applicants, within loan or grant applications, may propose not to incorporate one or more of the Department recognized best practices in community engagement plans for a water project. If a community engagement plan applicant seeks not to incorporate one or more Department recognized best practices, then:

Commented [KP8]: This again raises concerns relating to limiting applicants to those who are applying for a grant or loan.

- A. The community engagement plan applicant shall provide evidence to the Department explaining why the recognized best practice does not meet the community engagement plans desired outcomes or advance disproportionately impacted community involvement.
- B. The Department shall determine whether the recognized best practice should be used, waived, or replaced with an alternative best practice proposed by the community engagement plan applicant. If the Department determines that the recognized best practice shall be replaced by an alternative best practice, then:
 - a. The community engagement plan applicant shall provide evidence to the Department showing that the proposed alternative meets the community engagement plans desired outcomes or advances disproportionately impacted community involvement.
 - b. The Department shall determine whether these alternative practices can replace a Department recognized best practice in the community engagement plan. In assessing alternatives, the Department may consider, but is not limited to, size and scope of the water project and the identified needs of the disproportionately impacted community.

- (3) The Department shall evaluate the community engagement plan applications according to evaluation criteria in OAR 690-600 or OAR 690-093, and community engagement plan components described in OAR 690-601-0004(1) and OAR 690-601-0004(2).

Commented [KP9]: I would suggest spelling this out so the reader understands precisely how the applications will be evaluated, what the PUBLIC NOTICE AND COMMENT PERIOD will be (missing from these rules), how the OWRD will make decisions to fund, etc

- (4) The Department may evaluate the community engagement plan applications on additional criteria including but not limited to:

Also, it is unclear if "evaluate" extends to authorize. The rules should clearly

- A. Significance and impact of the water project and community engagement plan on local communities and disproportionately impacted communities.
- B. Appropriateness of the budget and the resources involved in the community engagement plan to increase meaningful involvement on local communities and disproportionately impacted communities in the water project.
- C. Expertise, qualifications, and level of community connections held by the local governments or local organizations involved in the community engagement plan.

- (5) The Department may deny funding of a community engagement plan if the Community Engagement Plan Applicant fails to comply with any item described in OAR 690-601-0004(1) and OAR 690-601-0004(2).

Commented [KP10]: This need more refinement. For example, this does not allow denial based on the review parameters laid out in sub sections (3) and (4) of this section, or the OAR 690-600 and OAR 690-093 rules referred to previously.

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551

PUBLIC NOTICE AND COMMENT: Please add a section

690-601-0006

Funding Agreement and Reporting on Community Engagement Plans

- (1) Community engagement plan grantees shall comply with all grant agreement conditions and reporting requirements associated with OAR 690-600 or OAR 690-093.
- (2) Community engagement plan grantees shall submit progress and final reports to the Department on a form provided by the Department. The reporting frequency will be specified in the grant agreement and will align with the timing of OAR 690-600 or OAR 690-093 funding program reporting requirements. Reports shall include but are not limited to the following:
 - A. Progress made toward the use of Department recognized best practices and approved alternative best practices, and the success or failure of these best practices in increasing meaningful involvement of disproportionately impacted communities in water projects. Progress should include specific updates on plan metrics and timelines that have been achieved by the community engagement plan grantee and a justification for unachieved framework goals, timelines, or evaluation metrics.
 - B. Specific information on when and how disproportionately impacted communities were involved the development, implementation, or both of the community engagement plans and water project.
 - C. Any feedback received from disproportionately impacted communities through their involvement in a community engagement plan development, implementation, or both, and how the feedback has been or will be incorporated into the community engagement plan and water project.
- (3) The Department may impose other community engagement plan specific conditions onto the grantee by noting the conditions during plan evaluation and including the condition in the funding agreement for the community engagement plan.
- (4) The Department may terminate, reduce, or delay funding for a community engagement plan if the Community Engagement Plan Grantee fails to comply with any provision of subsections (1), (2), and (3) of this section.

Commented [KP11]: There are also conditions related specifically to this program that need to be added here.

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551



*Water League engages the public
in water stewardship.*

P.O. Box 1033
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97523

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Gordon Lyford

Executive Director
Christopher Hall

In Memoriam
John L. Gardiner

July 30, 2024

Charlotte Regula-Whitefield
Community Engagement Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Dear Ms. Regula-Whitefield,

Water League submits our comments to the 2024 Draft document titled "The 10 Best Practices in Community Engagement Around Water Projects" on the following pages. We appreciate the opportunity to share our thoughts.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall".

Christopher Hall
Executive Director

House Bill 3293 – ORS 541.551 Community Engagement Planning for Water Projects

Testimony by Christopher Hall, Water League
July 30, 2024

Introduction

Ostensibly, legislators passed HB 3293 to ensure communities have a meaningful voice in water project planning. The law, ORS 541.551, includes a focus on ensuring that the people whom water projects disproportionately affect have a say in how the state and localities develop water projects. Our testimony herein strongly supports the excellent conceptual ideas in ORS 541.551 and the DRAFT document titled “The 10 Best Practices in Community Engagement Around Water Projects;” however, we also critique serious concerns about how public engagement could become a state-sponsored process to *manufacture consent* for unwanted water projects and that the community engagement will continue until the water projects reach their inevitable completion despite community opposition.

Our first recommendation, which we strongly suggest, is to seek the support of Oregon's Kitchen Table in the rulemaking process because they excel at community engagement and can assist OWRD staff in writing the rules to ensure they serve the public interest and don't become corrupted.

Background of ORS 541.551 to Set the Stage for Rulemaking

ORS 541.551 requires local organizations receiving water project support from state agency providers to develop and implement community engagement plans. The law mandates the use of best practices for community engagement planning to ensure that effective outreach methods are uniform across the state's diverse array of communities, each of which will have different, if not unique, needs. We imagine there will be statewide community engagement standards that localities shall adopt as their own. The administrative rules should guide this adoption.

Specifically, ORS 541.551 says that selected local organizations under section 1(d) must use the forthcoming best practices under section 2(c) if the activity is to be a community engagement plan funded by a state agency provider under section 2(a) & (b). There are optional conditions in section 3 that a provider may set on local organizations and governments, which appear to be guidelines on forthcoming administrative rules, required under section 4.

The 10 Best Practices (effective outreach methods), which would be tailored for each community, rely on:

- 1) the voluntary nature of community engagement and the ability to sustain community engagement, though some participants could be paid honorariums to participate, and

2) funding resource availability – there's no mention of any funding appropriations for provider grants to local organizations, so it's unclear if funds have been already appropriated or how much will be appropriated in the future, continuously, or otherwise. Securing sustainability among the communities and funding sources is a priority for the law and administrative rules to be effective.

Corruptibility of ORS 541.551 and the related Administrative Rules

While ORS 541.551 and the DRAFT document titled “The 10 Best Practices in Community Engagement Around Water Projects” (DRAFT) are well-intentioned and well-conceived, they risk becoming co-opted and abused. This section is a critique of how over-exposed the law and rules could become to manipulation if vigilance and diligence are not constantly pressed at all times. The administrative rules must attempt to prevent the corruption of ORS 541.551. Herein, we discuss the risk of the community engagement process becoming a systematic effort to *manufacture the consent* of the public to support (or oppose) water projects instead of empowering communities to experience agency, independent thinking, and to make free, prior, and informed decisions that are in their best interests. We know the legislative intent is to benefit communities; however, we do not believe that intent has been safeguarded. OWRD rulemaking has the opportunity to protect ORS 541.551 from becoming corrupted.

ORS 541.551(1)(b) identifies various communities that may be disproportionately impacted by water projects, such as rural, coastal, and several other criteria that track with low-income communities. Section 1(d)(B) defines a local organization as one that “operates in an area impacted by a water project.” The use of the term *impacted* does not mean or imply *benefitted*.

In the law and the DRAFT, there is no mention or representation of “disproportionally impacted communities” as being a good thing – as being understood or defined by the law as people who are *disproportionally benefitting* from water projects. There is no reasonable interpretation of ORS 541.551 that suggests community engagement planning is necessary to address the problems of water projects benefitting disproportionately impacted communities, or any of the other people envisioned in the law who would participate in community engagement planning because they are impacted. Impacted implies harm, not benefit, especially when the law modifies the verb “impacted” with the word “disproportionally.”

We argue that it is self-evident that “disproportionately impacted” is a euphemism for communities opposed to being harmed by water projects. By extension, the very purpose of ORS 541.551 envisions the need to address community concerns about water projects that are not inherently deemed by some of the community as a public good that is in their public interest. What would be the need for “Best Practices,” indeed, even mediocre practices, if water projects were uniformly regarded by communities as in their interest? That best practices are needed suggests that only the best community engagement efforts will do with projects that some communities may regard as harmful. The purpose of “best practices” is to ensure the voices of the most impacted are heard – that is the entire basis of ORS 541.551 and the DRAFT.

The DRAFT states on page 8 under the question “Why Conduct Community Engagement?” that:

It is important to consider that some water projects are not suitable for all communities, and this may result in some projects needing to be placed on hold or delayed achieving the best interests of the larger community.

We suggest that there will be some water projects that must be halted from moving forward to completion, not just delayed until community engagement has been resolved into consent for the project. Some communities may hold that certain water projects cannot ever receive their consent no matter the community engagement process that uses the very best of the “Best practices.”

While we acknowledge and support the need for community engagement on water projects to prevent harm to communities, we are concerned that state agency provider funding could be misused by forcing projects through completion more often than halting unwanted projects. We are also concerned that provider funding could be used to compel disproportionately impacted communities to accept minor revisions instead of acceding to their more comprehensive requests for reform or halting the project altogether. Omissions of text asserting *agency* among community members in ORS 541.551 highlight that community members may only offer advisory input. The DRAFT speaks highly of the notion that community members should be heard and included, but when proponents wish to advance a water project, especially if the proponents are government or powerful private investors, there are no laws ensuring community input will resolve in the disproportionately impacted community's favor.

We envision numerous scenarios; here is one possible scenario where:

- 1) The state or political subdivision of the state, acting on its own behalf or that of a private sector entity, proposes a water project, passes a law or resolution, and funds it;
- 2) A relevant state agency provider supports a local organization in the development and articulation of a community engagement plan to address complaints and views of the impacted community;
- 3) During the process, there is a chance a minority or majority of the community opposes the water project;
- 4) Despite this opposition, the project proceeds forward with minor changes that do not reasonably address the community's concerns;
- 5) There is the possibility of the public outreach becoming a *community disengagement process* that drives a wedge between those who stand to benefit from the water project and those who fear harm;
- 6) If a minority or majority were to protest that their input was ignored, there's nothing in ORS 541.551 that would compel the authorities to respond or change course – all community input is limited to advisory status. At this point, disaffected community members feel alienated and subject to 'politics as usual,' with the community engagement process perceived as a highly engineered system designed to provide political cover for the end result that felt inevitable.

We offer the following questions about accountability because ORS 541.551 is vague and

administrative rules will have to address them:

1) Will local organizations that receive funds from providers be required to have paid staff who hold professional qualifications in conflict and dispute resolution practices, and will the administrative rules set standards for what those qualifications are? Will the state agency providers monitor the activities and “10 Best Practices” to ensure compliance with ORS 541.551(2)(c)? If so, how will the monitoring take place?

2) Will the administrative rules require local organizations that accept financial or other support from providers to sign an affidavit that they neither support nor oppose the water projects and that they will maintain clear neutrality at all times during the contract period? Will bias in favor of or opposition to the water project by the local organization be cause for breach of contract and possible fines and violations of the law? Will there be “grant reporting” required of local organizations following the dispersal of funds by providers to prove neutrality and strict adherence to the “10 Best Practices?” Will providers require videos of all public meetings in the event providers request a review of activities? Will videos of public meetings be hosted by providers on YouTube?

3) Will there be requirements of “adaptive management” that local organizations must practice as a condition of the funding? If so, what would that look like? If not, is there a built-in assumption that all community engagement efforts do not need to reflect on progress and course-correct – for any reason? Would adaptive management be exposed to special interest corruption, where, in one possible scenario, a local organization is not adequately manufacturing the consent of the disproportionately impacted communities to get on board with the water project? With big-money projects, the power politics increase exponentially; how will big-time investors and special interests be prevented from pressuring local organizations to drive the public into submission?

4) Will local organizations be exposed to liability or tort claims by proponents of water projects if provider-supported local organizations lead community engagement activities that increase opposition to the water projects regardless of the intent or bias among the staff at the local organizations? Will professional qualifications in conflict and dispute resolution minimize this liability risk?

5) And for the obverse, will local organizations be exposed to liability or tort claims by opponents of water projects if those local organizations lead community engagement activities that increase support for the water projects regardless of the intent or bias among the staff at the local organizations?

6) Will volunteers be permitted to lead community engagement activities that are funded by providers (e.g.: will they be allowed to lead entire events or participate as assistants leading break-out groups)? To what degree do professionalism and liability interact and intersect in this context? Are there controls over whether community engagement becomes propaganda events? What happens if volunteers are moles for proponents and opponents (e.g.: lobbyists) and they misrepresent who they are and their true intentions? To what extent may some practice subterfuge to corrupt the community engagement process as 'harmless volunteers'? Would it rise to the level of a crime if they were local organization staff paid by the state agency providers?

With big-money projects, are these questions reasonable?

7) Will the state providers, defined under section 1(f), fund local organizations that clearly state they support the proposed (or funded) water project in their community and seek to press for project completion?

8) Will the same providers be as equally inclined to give support to local organizations who articulate up front that they oppose or are skeptical of certain water projects and align with members of the public who are disproportionately impacted by certain proposed water projects and oppose them? To what degree is professional neutrality required of provider-supported local organizations when working with the public?

9) What if the local organization is closely aligned with an impacted community, disproportionately, or otherwise, will they be automatically disqualified from being supported (e.g.: funded) by providers due to such privileged access or bias? Is there the possibility of providers funding quasi-seditious activities; where is the line drawn for acceptable community organizing? (So-called “water wars” and other histrionics have played out in the past and will do so in the future. What will happen if the state-sponsored agency providers inadvertently support belligerents such as those who occupied the Malheur National Wildlife Refuge?)

10) In the case of identifying disproportionately impacted people – are those people identified by the state agency providers as disproportionately impacted in advance of approving support for local organizations, or only after announcing the water projects and determining their status afterward? Who determines funding priorities for various sectors of the community under section 1(b)? What if there is only funding for some members of the community but not others? What if competing local organizations seek funding for support of community engagement plans and limited funding prevents equal or equitable funding for all? Is there a possibility the state agency providers will select the local organization that is shown to support the water project over others that may be more ambiguous, skeptical, or oppose the water project? Is there a need to determine the scale of disproportion in access to the public process of community engagement and prioritize funding that way? Do communities define their level of disproportionately impacted status or does the state agency provider?

11) Will provider-supported local organizations be required to track the evolution of impacts communities experience at the beginning, middle, and end of the community engagement processes? Would such impact-tracking be part of an adaptive management regime? Will the rules plan for what to do if water project progress worsens the impacts that a community experiences as the project inexorably moves forward given that it is a large project with a lot of investors and powerful political interests involved? Will the impacts be documents for all to see as a form of consolation for the harmed community members, or will the impacts be hidden to the greatest extent possible? To this point, will state agency providers require local organizations to fully document the community engagement process to ensure justice in the event something goes wrong or legal liabilities accumulate?

12) There is no mention of the possible conflict arising from organizations that act independently of the state-sponsored local organizations – would the local organizations be required to engage with these unaffiliated groups or address potential conflicts? What if the

disproportionally impacted community members feel like they have been alienated, or they disfavor the local organization to which they have been assigned by the state agency providers that selected which local organizations get funded – what if community members defect to a more representative organization, would that organization get funding from the state agency providers? How flexible is the funding model?

13) What are grounds for a local organization to breach the support contract they would necessarily have with the state agency providers? There could be a number of criteria that could lead to a breach of contract – what are those criteria? (Many of the above questions relate to such criteria.) What would the contracts look like? What civil or criminal penalties would apply for breach of contract? Are there scenarios where the local organization sues the state agency provider for breach of contract, or if one or more community members sue the local organization for corruption of the community engagement process and name the state agency providers as well? If the potential for manufacturing of consent of the public were a real act, how exposed would the state be to litigation?

14) ORS 541.551 defines water projects in section 1(e) [**emphasis added**]:

“Water project” includes watershed enhancement, in-stream flow protection or enhancement, **water resource conservation or development**, or water supply and wastewater treatment and disposal projects.

Water development projects typically consist of construction of new reservoirs or dams, expansion of existing water storage facilities, development of groundwater resources through new well fields, implementation of aquifer storage and recovery systems, construction of water diversion structures, development of water reuse or recycling systems, desalination projects in coastal areas, stormwater capture and use projects, and construction of new water treatment facilities to make previously unusable water sources available.

Will the administrative rules exclude certain water projects from the definition of “water project” on the basis that the state does not want community engagement involvement in certain water projects? If so, what will be the reasoning for the exclusion? Does the state believe that some projects are too risky, either because they are financially precarious and need all the help they can get to succeed (e.g.: affirmative action subsidies, biased media articles, public relations campaigns, etc.), or because they are so environmentally destructive, community engagement might lead to unwanted opposition and must be suppressed from the start?

Are there some water development projects the state believes the public is incompetent to understand and must not encourage community engagement through state agency provider funding? Will powerful special interests be allowed to control which water project types may be considered in the definition of “water development project” because they have the political power to do so? Will the public interest, as articulated by disproportionately impacted communities or even others that form a majoritarian view, take a back seat in the rulemaking process over the definition of what is and is not a water development project in the context of ORS 541.551 and the administrative rules?

15) Will organizations that have paid lobbyists on staff be eligible for support as a local

organization? If so, would the state-sponsored support of lobbyists cross any lines, legal, ethical, or otherwise? Are there any protocols envisioned by the forthcoming administrative rules on how to address the potential use or abuse of ORS 541.551 by the lobbying sector? How will the state avoid the unseemly prospect of paying lobbyists to carry out public relations campaigns that impact the progress of water projects or Oregon's water laws and administrative rules?

These questions address accountability: professional standards and qualifications, neutrality requirements, liability concerns, funding criteria/ fairness, monitoring and compliance, potential conflicts of interest, transparency in decision-making, equitable representation, and oversight mechanisms. The administrative rules required by ORS 541.551(4) will have to address these concerns to ensure that the so-called “10 Best Practices in Community Engagement Around Water Projects” remain incorruptible.

A potential feature of ORS 541.551 and the DRAFT is that community engagement will assist the most disproportionately impacted in coming to terms with the inexorable progress of water projects, one way or the other. The unmistakable message, which must not be made, is that community engagement will continue from the beginning, middle, to the end as needed to ensure project completion.

So much of the DRAFT is Excellent

Were the *manufacturing of consent* and the other noted concerns addressed (controlled for) in the administrative rules, then the precepts of ORS 541.551 and the DRAFT stand as visionary community engagement protocols we strongly support. We believe that if the benevolent precepts of ORS 541.551 and the DRAFT hold fast, the ideas and practices for community engagement could stand as an example for other states to follow.

The purpose of community engagement is well-stated in the DRAFT and makes an excellent case for getting the rulemaking process right:

This involvement between local communities and projects facilitates the exchange of invaluable local knowledge and insights, enriching the effectiveness and relevance of each water project. Additionally, fostering local community trust encourages transparency and cooperation among project organizers, regulatory agencies, and those impacted, thus promoting a sustainable and reliable water future for Oregon. (Pg. 3)

The point is made again, shortly after:

The success of Oregon's long-term water solutions hinges on broad community support, amplifying engagement across various water sectors, and promoting initiatives that benefit the environment, economy, and Oregon's diverse communities. (Pg.3)

Both statements make community engagement an integral feature of securing water for the future. The who, what, where, when, why, and how section of the DRAFT is an excellent, if brief, discussion on the most important facets of community engagement. The administrative rules should incorporate this information in a manner that captures the intent while properly fitting within the formal rules language

and format. This is one area where Oregon's Kitchen Table (OKT) excels, and we can see how their involvement would be very helpful. We urge the comprehensive involvement of OKT throughout the rulemaking process.

OKT would also be helpful in shaping the excellent “10 Best Practices” into rules-based language. We assume that OWRD intends to include the practices directly into the administrative rules, and OKT can help ensure they are worded well. Ironically, some of the draft language of the 10 best practices is impenetrable and would be inaccessible to many people. The language should be more accessible and use less jargon. Best practices #3, #5, and #7 are most in need of rewriting. OKT could do a much better job than our sample efforts below.

Please consider these examples:

Changing #3 from: “Develop new, or assess current, decision-making frameworks to identify opportunities to enhance access to the decision-making process for disproportionately impacted communities. Engagement should be designed to inform water project processes and outcomes and incorporate communities’ perspectives and needs. Frameworks should be scaled to the water project goals.”

To: #3 “Create or evaluate decision-making guidelines to improve access for disproportionately impacted communities. Design engagement to shape water project processes and outcomes, incorporating community perspectives. Scale guidelines to match project goals.”

...

Changing #5 from: “Co-create water project capacity opportunities that are inclusive, including to disproportionately impacted communities. When possible, invest in community-based organizations to build their own capacity to engage and maintain authentic relationships among communities and the water projects. Community investment can take many forms including compensating community members for their participation.”

To: #5 “Create inclusive water project opportunities, prioritizing disproportionately impacted communities. Invest in local organizations to build their engagement capacity while maintaining authentic relationships with all involved. Support may include compensating community members for participation.”

...

Changing #7 from: “Coordinate with the community and across water project participants to leverage resources, staff, and data. Water projects should clearly identify ways to optimize community engagement considering effective use of community members’ time and resources.”

To: #7 “Coordinate with the community and water project participants to leverage resources, staff, and data to optimize community engagement, ensuring efficient use of everyone's time and resources, particularly those of community members.”

We realize the value of using base ten as a heuristic to capture the attention of people when the information might otherwise go unnoticed. However, we do not think the administrative rulemaking is

the correct venue for a top ten list because the content is much more serious than typical uses of top ten lists, and requires getting the correct number of best practices. Would the practices be more comprehensible if there were 7 or 13 of them? Please consider reviewing the best practices and listing them in the most accurate and comprehensible way.

We point out a few picayune typos in the DRAFT, although, we expect the overall text to change to the extent these edits may become moot [**emphasis added**]:

On page 3: “However, as drought conditions in Oregon continue to increase in intensity and duration, and Oregon’s population centers continue to grow, the state's water scarcity concerns and need for inclusive water project solutions ever **increases**. [Delete the “s” in “increases.”]

On page 3: “Engagement improves projects and helps Oregon **meets** the water needs of its economy, environment, communities, and cultures.” [Delete the “s” in “meets.”]

On page 5: “Water projects should seek out and facilitate the involvement of members of **disproportionality** impacted communities.” [Change “ disproportionality” to “disproportionately.”]

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hall", with a stylized, cursive script.

Christopher Hall
Water League



*Water League engages the public
in water stewardship.*

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In Memoriam
John L. Gardiner

October 20, 2024

Charlotte Regula-Whitefield
Community Engagement Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Dear Ms. Regula-Whitefield,

Water League submits our comments to the October 16, 2024 draft OAR 690-601
Best Practices in Community Engagement for Water Projects on the following pages. We
appreciate the opportunity to share our thoughts and discussing these and other
concepts at the upcoming Rules Advisory Committee on October 30, 2024.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall". The signature is fluid and cursive, with the first and last names being the most prominent.

Christopher Hall
Executive Director

**Comments on the October 16, 2024, DRAFT
OAR 690-0601 *Best Practices in Community Engagement for Water Projects***

Relating to

HB 3293 *Relating to water project community engagement*
ORS 541.551 *Requirements for providers of water project support*

and in the context of public hearings in the

House Committee On Agriculture and Natural Resources – March 16, 2021
Senate Committee On Natural Resources and Wildfire Recovery – May 3, 2021

by Christopher Hall, Water League
October 20, 2024

The Division 601 rules should adhere closely to the legislative intent of HB 3293, which became law as ORS 541.551 *Requirements for providers of water project support*. Neither the bill nor statute envision state agencies limiting funding for community engagement around water projects to water project developers.

In the OAR 690-601-0002(4), (10), and other related sections released as a draft on October 16, 2024, for the Rules Advisory Committee to consider, OWRD limits community engagement funding to water project developers. The draft rules OAR 690-601-0002, as of October 16, 2024, state [**emphasis added**]:

(4) “Community Engagement Plan Applicant” means eligible local governments or local organizations **that apply to receive grants or loans from OAR 690-600 or OAR 690-093 for a water project Community Engagement Plan.**

(10) “Local Organization” means a special government body as defined in ORS 174.117, a federally recognized Indian tribe, a nonprofit organization, or other organization identified who operates in an area affected by a water project and is eligible **to receive grants or loans pursuant to OAR 690-600 or OAR 690-093.**

The legislative intent and the views of those who testified show no intention of establishing a conflict between the interests of the water project developers and the need for community engagement among disproportionately impacted communities. They clearly state communities themselves should plan for their water future.

For example, Jason Miner, Governor Brown's Natural Resources Advisor, stated [**emphasis added**]:

...we began to right-size our expectations and craft an initial step approach that begins community engagement – enables agencies to fund community engagement, seeking the opportunities **to fund these community plans to enable communities themselves to plan for their water future**, and seeking the establishment of some best practices for engaging underrepresented communities, as Representative Reardon, just eloquently addressed, to forward equity in water planning.¹

Mr. Miner said that HB 3293 is supposed to give agency to impacted communities to plan for their water future themselves. Such agency requires that they control the community engagement process, which includes working with local organizations they trust and comprise.

Meta Loftsgaarden, Director, Oregon Watershed Enhancement Board, similarly stated that **[emphasis added]**:

Somebody who's the water planner may have a number of other jobs that they have in those Communities, and so **providing funding and support to help smaller communities in particular, do that community engagement**, and providing funding for members of the community to participate.²

Director Loftsgaarden explained that water planners, presumably those involved in proposed water projects, are too busy to adequately conduct community engagement. HB 3293 funding should help communities “do that community engagement.” Communities are the people who are impacted by the water projects; some are disproportionately impacted. The proposed rules, OAR 690-601-0002(4), (10), and related sections strip the disproportionately impacted communities from having the very agency HB 3293 was written to address and hand the power of engagement over to the water project developers.

Director Loftsgaarden also noted **[emphasis added]**:

One of the most important things that we've learned in the process is **the worst time to talk about engagement in a water project is when the water project is coming for a grant or loan to be funded**. At that point in time, a lot of engineering, technical design, permitting, and other work has gone into that project. And so really, **if we want to expand meaningful engagement by all those who may benefit from a water project, you have to move back to the planning phase**.³

The grantee of a state agency-funded water project cannot include this extra community engagement funding request in their water project grant if the community engagement is supposed to precede the grant-making process. A prospective water project developer could not go to the state a couple of years in advance of applying for a grant or loan for a water project to seek funds from the state agency providers for community engagement; according to the proposed Division 601 draft rules, the Community Engagement Plan Applicant has to have

¹ Jason Miner, Testimony for HB 3293. [[Begin at 48:40](#)].

² Meta Loftsgaarden, Director, Oregon Watershed Enhancement Board, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 51:02](#)].

³ Meta Loftsgaarden, Testimony for HB 3293. [[Begin at 50:25](#)].

already applied for water project support under OAR 690-600 or OAR 690-093. To be a Community Engagement Plan Grantee, the eligible entity will have had to “receive[d] funding for a Community Engagement Plan for water projects that are supported by grants or loans pursuant to OAR 690-600 or OAR 690-093.”

The need for community engagement to happen before funding, which is a major hallmark of the testimony and legislative intent of HB 3293, means that the proposed draft rules for OAR 690-601-0002(4), (10), and related sections, which limit funding for community engagement to the water project applicants and grantees, undermine the legislative intent. Director Loftsgaarden would not have envisioned OWEB funding for community engagement around water projects to go to the water project developers instead of local organizations that genuinely represent the interests of the disproportionately impacted communities.

Sara O'Brien, Executive Director of Willamette Partnership, stated that **[emphasis added]**:

...a lot of our work is working directly with folks, like the local governments and other organizations that would be the beneficiaries of this bill. **We help folks find creative solutions to pressing water infrastructure challenges**, whether that's drinking water, water quality, water supply, flood management. And we help folks find innovative ways to do that that meet multiple goals and, and address the needs and priorities of communities.⁴

Ms. O'Brien's testimony shared how the Willamette Partnership's work exemplifies the type of community organization that could potentially receive funding to conduct community engagement around water projects. Ms. O'Brien went on to say **[emphasis added]**:

So one big thing **that we've observed in the last years or so of providing technical assistance to communities on water infrastructure needs, in particular with water infrastructure providers**, is that, when those efforts start with community engagement and visioning, they generally end up with better solutions.⁵

Ms. O'Brien explained that community engagement she and other organizations conduct in advance of the proposed water infrastructure projects leads to better outcomes. She did not envision the actual water project developers approaching disproportionately impacted communities after those water project developers were applicants and/ or grantees with submitted plans and designs. Further, she stated **[emphasis added]**:

So doing **this kind of engagement doesn't always come naturally to infrastructure providers. But we have a lot of communities in Oregon that are really leading the way to start out**. Instead of starting with design, with an engineering firm, to start out with community engagement and visioning and lifting the voices of folks in our communities.⁶

⁴ Sara O'Brien, Executive Director of Willamette Partnership, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [\[Begin at 54:49\]](#).

⁵ Sara O'Brien, Testimony for HB 3293. [\[Begin at 55:14\]](#).

⁶ Sara O'Brien, Testimony for HB 3293. [\[Begin at 56:42\]](#).

The repeated emphasis on conducting community engagement before the planning, design, engineering, and funding phases of water infrastructure projects is uncontested in the public record. OWRD cannot propose draft rules that counter the legislative intent, testimony, and the statute so directly.

Dylan Cruz, Director of Government Affairs and Program Strategy with Sustainable Northwest, testified that “we’re a nonprofit located in Portland, Oregon, working in with rural communities to address challenges related to natural resource management.” He referred to **[emphasis added]**:

...this emphasis on working with underserved communities, rural communities, tribal communities, and **trying to bring partnerships together and support local governments and NGOs to design these complex water projects.**⁷

Mr. Cruz explains the type of community engagement processes his organization conducts. They do the types of specialized work envisioned by HB 3293. He continued about how **[emphasis added]**:

we’ve been strong advocates for many years of the place-based planning process, and **doing a lot of work on the Oregon coast, particularly added to surface drinking water protection and drinking water management issues...to bring the community together**, to connect local government service providers, landowners, you know, members of the general public, to understand these issues is really critical.⁸

He then follows up with a conclusion about how water project providers do not have the time (and possibly lack the professional qualifications) to do the community engagement work **[emphasis added]**:

So, for a lot of these service providers, you know, **they are just fully subscribed during the day-to-day work of their job and trying to raise capital to support these projects. To then have to engage in a complex public outreach process is a burden and can be very difficult.**⁹

Mr. Cruz’s testimony echoes the sentiment of Director Loftsgaarden and Ms. O’Brien that community engagement is a specialized professional skill that water project developers do not necessarily possess.¹⁰ We acknowledge that OWRD appreciates this concern, as noted in OAR 690-601-0005(4), which requires applicants to demonstrate how they are professionally qualified to conduct community engagement. We do not believe such provisions can protect disproportionately impacted communities from the conflict of interest water project developers will have if the state grants the water project developers funds to engage those communities.

⁷ Dylan Cruz, Director of Government Affairs and Program Strategy with Sustainable Northwest, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 58:30](#)].

⁸ Dylan Cruz, Testimony for HB 3293. [[Begin at 58:42](#)].

⁹ Dylan Cruz, Testimony for HB 3293. [[Begin at 59:24](#)].

¹⁰ See footnotes #2 and #6.

The assumption that water project developers can just tack that extra task onto their funding requests underscores the argument that the intent of the funding is less about representing community interests as it is to promote why a water project should go forward, which any competent marketing department can do. Under these circumstances, highlighting the “Ten Best Practices” in OAR 690-601-0004 may have the unintended effect of providing political cover for (*equity-washing*) the obvious conflict of interest created by limiting funding under ORS 541.551 to water project developers.

Despite OAR 690-601-0005, the state cannot structure community engagement grant application criteria that will ensure water project developers seek genuine community engagement when it might alter their water projects in ways they disfavor or that halt the water projects altogether. The reason is not that the questions the state would ask are faulty; rather, it’s the selected audience to whom the state would limit funding: the water project developers whose conflict of interest no grant questions can protect against. We also note that the well-intentioned grant reporting in OAR 690-601-0006 comes after the water project has been funded (which we discussed earlier), which serves to limit the state’s exposure to worsening or future bad investments much more than it protects the public health, safety, and welfare of disproportionately impacted communities.

In the event the water project developers recognize that they lack the qualifications and inclination to conduct community engagement themselves, would they outsource the community engagement job to competent organizations? If water project developers were allowed to use the ORS 541.551 funding to contract out the community engagement work, then there is no reason why the state shouldn’t, instead, fund local organizations that directly and genuinely represent the affected community, such as organizations the community trusts and requests.

One of the most important evaluation criteria for any grant application open to prospective local organizations on community engagement around water projects is the need for applicants to *come from within the disproportionately impacted community*. In our contemporary period, there has been a significant change in the ethics of grant funding, which is funding that includes community members at every stage of the project or program. Ostensibly, this is the very purpose and legislative intent of HB 3293. Gone are the days of so-called saviors coming into communities to save them from themselves. Despite the well-intentioned title of Division 601, the rules for OAR 690-601-0002(4), (10), and related sections perpetuate the problems of that bygone era by funding the water project developers to manage the very problems disproportionately impacted communities would experience with the water projects.

Instead of ensuring that community voices (especially from disproportionately impacted communities) are genuinely involved in shaping water projects, the draft rules limit community engagement funding to project developers who have incentives to control the community engagement process to ensure their projects move forward as the water project developers envision.

Given that ORS 541.551 emphasizes engagement with rural, tribal, and historically marginalized communities, the proposed rules could further marginalize these groups. Instead of enabling their

self-determination, these rules could reinforce power imbalances by putting project developers in control of the engagement process, leading to token participation rather than *meaningful involvement*. As drafted, OAR 690-601-0002(4), (10), and related sections risk undermining the broader goals of equity and environmental justice, a great irony given the attention to the 10 Best Practices in Community Engagement Around Water Projects.

The problem of water project developers imposing their will on communities is the very fear that inspired local communities, their organizations, and sponsors to promote HB 3293. By all accounts, that is why the House and Senate committees put the bill to a floor vote and why Governor Brown signed the bill into law. Under the proposed draft rules, the chances of water project developers simply checking boxes that they consulted with the community are high. Tribes experience this subterfuge constantly, and no amount of evaluation criteria and reports of any kind, whether associated with grants, contractual agreements, or treaties, have been consistently able to stand up to robust conflicts of interest that harm tribes.

Jeff Reardon, State Representative for District 48 and the primary sponsor for HB 3293, opened with these comments before the House Committee On Agriculture and Natural Resources [**emphasis added**]:

We know that **we've historically failed to engage many disproportionately impacted communities during the public planning and decision-making processes**, and especially for infrastructure projects. So with the lack of input from those voices, we've not achieved the best possible outcomes in all cases with some of our public infrastructure projects.¹¹

During the hearing, the focus was on empowering locals to develop community engagement plans. The intent was to genuinely hear their voices to ensure equitable and meaningful community participation in water project planning.

In Representative Reardon's testimony before the Senate Committee on Natural Resources, two months later, the bill's sponsor made similar, if not more pointed opening statements [**emphasis added**]:

We know that we've been historically failed to engage many of disproportionately impacted communities during public planning and decision-making processes, especially for infrastructure projects. With a lack of input from those voices, we've not achieved the best possible outcomes with our public infrastructure projects. In fact, **there are countless examples of negative health outcomes, displaced communities, and much more.**¹²

The proposed OAR 690-601-0002(4), (10), and related sections rules, institutionalize a conflict of interest that will almost certainly exacerbate the negative health outcomes HB 3293 sought to

¹¹ Jeff Reardon, State Representative for District 48, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 43:54](#)].

¹² Jeff Reardon, State Representative for District 48, Testimony for HB 3293, the Senate Committee On Natural Resources and Wildfire Recovery. [[Begin at 02:29](#)].

minimize. As currently drafted, the rules could result in a form of *astroturfing*, whereby the illusion of grassroots community engagement is funded by state agencies.

By all accounts, Representative Reardon sought to empower local communities to have a voice, represented by local organizations they trust. We recommend that the state prevent water project developers who receive state funding for water projects from having access to additional state funds to manage the engagement of disproportionately impacted communities because the outcome has a very high chance of increasing the disproportions, which is a tragic irony.

[Note: We recognize the significant amount of community engagement OWEB and ODA have funded over the decades so that Watershed Councils and Soil & Water Conservation Districts can work with landowners and local community members to effectively conduct projects. We know from the legislative record and the written and oral testimony for HB 3293, that HB 3293 wasn't just an effort to increase that sector funding. ORS 541.551(e) says:

“Water project” includes watershed enhancement, in-stream flow protection or enhancement, water resource conservation or development, or water supply and wastewater treatment and disposal projects.

While the term “Water project” is so broad as to include almost all conceivable water projects ever built or completed in Oregon, the purpose of HB 3293 was to address the inequities of the most controversial and contentious water projects that negatively impact communities. The typical work that Watershed Councils and Conservation Districts complete is rarely, if ever, controversial; nor do they harm communities in ways Representative Reardon discussed. HB 3293 was not written or inspired to address any problems related to the existing funding streams earmarked for Watershed Councils and Conservation Districts.

The longstanding community engagement that OWEB and ODA fund for Watershed Councils and Conservation Districts is mostly in the form of outreach to work with landowners on river restoration, riparian area restoration, and agricultural water quality, which are widely supported by communities. They do not disproportionately impact communities. The existing OWEB and ODA funding is not about addressing the problems disproportionately impacted communities experience by large water infrastructure projects that Representative Reardon and his colleagues testified about.

We raise this subject to ensure OWRD does not equate existing state funding for community engagement that supports non-controversial watershed and ag-water quality efforts with funds envisioned by HB 3293.]

**Water League Testimony on the proposed Administrative Rules
OAR 690-601 *Best Practices in Community Engagement for Water Projects***

**Christopher Hall, Water League
January 9, 2025**

Thank you for this opportunity to provide testimony on the proposed administrative rules – OAR 690-601: *Best Practices in Community Engagement for Water Projects*. I am Christopher Hall, Executive Director of Water League.

First and foremost, Water League strongly supports the idea of 10 Best Practices for community engagement around water projects and that sentiment envisioned by the rules. That said we are concerned about the decision to limit funding only to the water project developers themselves, and not directly to disproportionately impacted communities.

First, we incorporate by reference [our letter and comments sent to OWRD on October 22, 2024](#), on our concerns about restricting community engagement funds to the actual water project developers themselves. To that extent, we reiterate our concerns here.

First we note two rule definitions:

Local Organization (OAR 690-601-0002):

(4) "Community Engagement Plan Applicant" means eligible local governments or local organizations **that apply to receive grants or loans from OAR 690-600 or OAR 690-093** for a water project Community Engagement Plan.

[OAR 690-093 and 690-600 limit eligibility to applicants who propose water projects; they do not authorize funding for community engagement plans.]

(10) "Local Organization" means a special government body as defined in ORS 174.117, a federally recognized Indian tribe, a nonprofit organization, or other organization identified who operates in an area affected by a water project **and is eligible to receive grants or loans pursuant to OAR 690-600 or OAR 690-093**.

[Applicants for community engagement plans must be the prospective water project developers.]

Without a direct project under OAR 690-093 or 690-600, a local organization's pathway to apply for funding under OAR 690-601 is indirect and hinges on collaborative involvement with eligible project developers. The idea that a controversial project, as viewed by a disproportionately impacted community, would partner with a group that does not like the project is improbable unless the scheme was to use the opportunity to manufacture the consent of the disproportionately impacted community.

True community engagement aims to involve community members in meaningful decision-making that affects them. This type of engagement requires local organizations that the disproportionately impacted communities trust. Genuine community engagement goes beyond mere consultation to actively incorporating their input and concerns into project planning and outcomes. This is the legislative intent

of HB 3293 that resulted in ORS 541.551.

We recognize and acknowledge OWRD's understanding that there must be guardrails and guidance related to community engagement, hence the articulation of the “Ten Best Practices in Community Engagement Around Water Projects.” We believe that putting the community engagement process in the hands of water project developers the community may view as a adversaries cannot be mitigated or ameliorated by the 10 Best Practices, particularly since there is evidence of gaming such rubrics by developers in every industry across all geographies and going back to when railroad development coined the term *railroaded*.

In the scoping document “10 Best Practices in Community Engagement Around Water Projects, on page 8 under the question “Why Conduct Community Engagement?” is this answer:

It is important to consider that some water projects are not suitable for all communities, and this may result in some projects needing to be placed on hold or delayed achieving the best interests of the larger community.

What is the chance that a water project developer will use state funds appropriated under OAR 690-601 to undermine their own project?

There's a substantial difference between engaging a community to genuinely consider their feedback and using engagement strategies as a checkbox exercise or worse, to co-opt community voices, manufacture their consent, or suppress their discontent.

We recognize the difficulty HB 3293 and ORS 541.551 put OWRD in; in fact, we articulated more than a dozen serious pitfalls that could occur in using state funding to empower local organizations and others in community engagement around water projects, in [our comments to OWRD on July 30, 2024, which we incorporate by reference here.](#)

Our main point then was that the process described in statute was highly corruptible. We articulated 15 serious concerns related to accountability, such as professional standards and qualifications, neutrality requirements, liability concerns, funding criteria/ fairness, monitoring and compliance, potential conflicts of interest, transparency in decision-making, equitable representation, and oversight mechanisms.

We view the proposed restriction in rule that OWRD put on eligibility to apply for funding, by restricting it to the water project developers, was to limit the potential corruption of the funding by special interests, and possibly some of the obvious concerns we raised that are self-evident. But by limiting the funding to the water project developers, OWRD has in fact, put the community engagement process in the hands of the special interest of the developers, which is the most serious concern we articulated.

Thank you very much for this opportunity to provide testimony.



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January 15, 2025

Oregon Water Resources Department

Attention: Margo Mashkovskaya

725 Summer Street NE, Suite A,

Salem, OR 97301

Submitted via email: wrd_dl_rule-coordinator@water.oregon.gov

Re: Comments on Proposed Best Practices in Community Engagement Rules

The Oregon Water Resources Congress (OWRC) is providing comments on the Oregon Water Resources Department's proposed new rules for Best Practices in Community Engagement under OAR Chapter 690, Division 601. OWRC monitored the rulemaking process and is supportive of the Department's overall approach. We have a few suggestions and comments on the proposed rules, largely focused on the need to adapt and learn from community engagement efforts as they occur.

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. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities. OWRC members deliver water to approximately 600,000 acres of farmland in Oregon, which is over one-third of all the irrigated land in the state.

As referenced under the definitions section, these rules apply to Community Engagement Plans related to WRD's existing funding programs OAR 690-600, the Water Conservation, Reuse, and Storage Feasibility Grant Program, and OAR 690-093, the Water Supply Development Account which is also known as the Water Grants and Loans program. Our members have used both programs to explore the feasibility of, and implement, various water infrastructure projects around the state. OWRC was also engaged and supportive of the originating legislation for both programs and is invested in ensuring that these and other related programs are able to continue supporting multi-benefit water projects.

Districts are often located in rural communities, some of which are also further "disadvantaged." While districts will likely be in the role of an applicant or partner on a community engagement plan regarding a district related water project, it is important to note that sometimes they will also be part of the community that needs greater engagement and outreach. Once the rules are finalized, we recommend the Department provide guidance to potential applicants and interested stakeholders that clarifies the funding eligibility, how the best practices apply, and other program components. These outreach and educational materials will likely need to be updated as the program is used and should strive to use common terminology as well as rule and statutory references.

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

Because the funding can be used to support the development or implementation of community engagement plans (or do both), it will be helpful to describe and give examples of both uses in the outreach materials. Community engagement can take many forms and having general or specific ideas once a plan is done will help inform future plans and potentially inspire new or creative approaches to increasing engagement and outreach to various disadvantaged communities. As stated in the inter-agency materials related to implementing HB 3293 (2021 Session) and the associated best practices for community engagement, there are options for what is in a community engagement plan, when it is conducted (beginning, middle, end), and where (small scale, large scale, format type). These descriptive and temporal categories make sense for the Department to build upon in future years.

We also want to note that many of our members are using federal programs to improve and modernize their water infrastructure systems. Often these projects are done in phases and planned out several years in advance. Including a community engagement plan in a federally driven process (such as Natural Resources Conservation Service or U.S Bureau of Reclamation) should not be too onerous if enough notice and guidance is provided. However, there may be different terminology or requirements between the state and federal entity that need to be figured out or potentially adjusted.

We recognize there is no additional funding provided to WRD or other agencies charged with implementing and incorporating these best practices into their funding programs. This unfortunately means that funding for community engagement plans will be from the same source of funds as the actual projects. While increasing community engagement in water projects is a beneficial endeavor, more funds are needed across the spectrum of planning, feasibility, and implementation of water projects. The Water Resources Commission will likely need to further discuss and develop processes for evaluating grant applications, which can already be difficult when demand from qualified applicants is significantly higher than available grant funds.

In conclusion, because these rules and best practices are new, it will be important for the Department to adapt and improve guidance within the current rules as engagement plans are developed and implemented. Additionally, it will be equally important to collect information about lessons learned and areas for improvement that can inform future rule revisions and program enhancements. Irrigation districts and similar entities are both potential applicants and community stakeholders, and we look forward to increasing engagement on water projects around the state

Your time and consideration of our comments is appreciated.

Sincerely,



April Snell
Executive Director



*Water League engages the public
in water stewardship.*

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John L. Gardiner

February 22, 2025

To:

Margo Mashkovskaya, Water Supply Rulemaking Operations & Policy Analyst
Charlotte Regula-Whitefield, Community Engagement Coordinator

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Dear Ms. Mashkovskaya and Ms. Regula-Whitefield,

Water League submits our testimony to the February 14, 2025, revision of the proposed Division 601 rules on the following pages. We appreciate the opportunity to share our thoughts.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall".

Christopher Hall

Executive Director

Continuing Testimony on the Proposed Administrative Rules OAR 690-601 Best Practices in Community Engagement for Water Projects

Christopher Hall, Water League
February 22, 2025

Water League's testimony responds to the factors that led the Oregon Water Resources Department (OWRD) to reopen public comment for the OAR 690-601 rulemaking process, referred to as Division 601 Rulemaking.

OWRD's stated reasons for reopening the public comment period come one month after the close of the first public comment period. OWRD articulated two reasons:

OWRD is extending the comment period to allow for additional feedback on the current draft rules and provide an update on how the OWRD anticipates implementing draft rules.

First, OWRD is reopening public comment to solicit feedback on more than a dozen instances where text in the proposed Division 601 rules has been struck out or added, changing the meaning of numerous sections, subsections, and paragraphs. OWRD also added a new section, 690-601-0600 *Public Notice*. There are also minor changes that appear to fall under the category of edits (the type that would be permitted to be made without “prior notice or hearing” under ORS 183.335(7)). These include renumbering sections and replacing references to rules with references to statutes. Even though the rulemaking process has remained open, reopening the public comment period on the basis stated below may justify including the changes in the Secretary of State’s Bulletin. The OWRD explains that the second reason for reopening public comment is:

In February 2025, OWRD confirmed with the Oregon Department of Administrative Services that Lottery Revenue Bonds, the current funding source for Water Project Grants and Loans, cannot be used to fund community engagement plans.

OWRD has planned to use some of the funding restricted to water projects (e.g., funding for the nuts and bolts of water *feasibility* projects and water *development* projects) to fund Community Engagement activities. OWRD hit a constitutional brickwall related to the idea of using development-related *Water Project Grants and Loans* under (ORS 541.651-541.696 and OAR 690-093) that are commonly referred to as “Water Project Grants” to pay for Community Engagement activities. Funding for Community Engagement activities, as spelled out by ORS 541.551 and OAR 690-601, has come to a dead end for Water Project Grants unless the legislature appropriates other funding.

OWRD also hit a similar, though less obstructive, obstacle with its plan to fund Community Engagement activities out of the *Water Conservation, Reuse, and Storage Grant Program* under (ORS 541.561-541.581 and OAR 690-600) that are commonly referred to as water project “Feasibility Grants.” Now (at the behest of OWRD?), legislators are proposing to work around the obstacle by revising the relevant statute (ORS 541.566) in HB 3364 (2025) to make funding Community Engagement activities as spelled out by ORS 541.551 and OAR 690-601 possible under the Feasibility Grant program.

We'll address the second reason for reopening public comment, which is related to the problems arising

from the OWRD's improper decision to limit funding to water project developers instead of permitting funding to the communities that are the impacted parties by those water projects.

Reason #2 for reopening public comment:

We incorporate [our prior testimony on January 9, 2025](#), by reference here; we also incorporate by reference [our letter to OWRD on October 16, 2024](#), which we also submitted as testimony during the first Division 601 public comment period. Our prior testimony demonstrates that OWRD's proposed rules turn the authorizing statute (ORS 541.551) on its head by disregarding the clear legislative intent of HB 3293, which formed the basis for the statute. By such action, OWRD ran into the constitutional brick wall and the statutory obstacle described above, both of which we argue are indicator symptoms of the impropriety of their decision.

The Notice of Proposed Rulemaking for OAR 690-601, dated November 22, 2024, states on page 3 that: "This funding support will be provided in the form of loan and grant funding through OAR 690-600 or OAR 690-093 (Water Conservation, Reuse, and Storage Grant Program and Water Supply Development Account)."

Neither of those programs may fund Community Engagement activities authorized by ORS 541.551 and the proposed associated rules, OAR 690-601. The Water Conservation, Reuse, and Storage Grant Program (Feasibility Grants) and Water Supply Development Account programs (Water Project Grants), statutorily restrict funding to the production of water projects. Notably, in the Notice of Proposed Rulemaking for OAR 690-601, OWRD states on page 4: "As proposed, the rules incorporate those additional requirements within existing authorized funding programs." The "existing authorized funding programs" do not currently authorize funding for Community Engagement activities. Therefore, it is currently impossible for OWRD to write lawful rules that incorporate Community Engagement funding into Feasibility Grants and Water Project Grants. To this degree, the November 22, 2024, Notice of Proposed Rulemaking for OAR 690-601 contains false information.

OWRD reopened the Division 601 Rulemaking public comment period, in part, because the OWRD discovered the error that the source of funding for Community Engagement activities is not authorized as they had presumed they were. This acknowledgment is likely a justification for OWRD to file an amended or new Notice of Proposed Rulemaking with the Secretary of State. This applies to both the obstacle related to Feasibility Grants and the brick wall related to the Water Project Grants.

The legal quagmire OWRD has caused and finds itself in is related to its decision to limit funding to water project developers by only permitting Community Engagement funds to be allocated from the two water project funding programs. Since neither program permits Community Engagement funding, OWRD hit the brick wall of the Oregon Constitution, Article XV, Section 4b, regarding Water Project Grants, and it hit an obstacle it has tried to work around regarding Feasibility Grants. We discuss these problems below, in particular, how OWRD and the legislators are coordinating in real time to fix a statute around the Division 601 rules that are currently in revision.

Legislators have proposed HB 3364 in the 2025 legislative session to revise the Feasibility Grants under (ORS 541.561-541.581) and Water Project Grants under (ORS 541.651-541.696). [We incorporate our testimony on HB 3364 here by reference.](#)

Working around the obstacle related to ORS 541.566 *Planning studies eligible for grants or direct service cost payments* that currently do not permit Community Engagement funding, HB 3364 Section

2 (1)(r) includes a new approved funding activity: “Analyses of impacts of a project on environmental justice communities and ways to minimize impacts on environmental justice communities.”

As we do with the proposed Division 601 rules, we object to the proposed statutory authority permitting Feasibility Grant applicants to conduct analyses of the impacts their proposals have on environmental justice communities because the grant applicants are incapacitated by an inescapable conflict of interest to ensure their projects proceed as planned. Section 2 (1)(r) risks minimizing the objective facts related to impacts on EJ communities. (*We raise this statutory issue because of its direct connection to these proposed rules.*) We note that a common regressive tactic is to put assessments and the engagement of disproportionately impacted communities into the purview of the very entities causing the problems. We reject the inequitable and unjust logic of that tactic.

One aspect of our HB 3364 testimony relates to the appearance of legislators fixing the statutes around proposed administrative rules (OAR 690-601) that are currently under revision and open for public comment from February 14 to 24, 2025. Not only is this backward, since rules are meant to help serve statutory provisions, but it also calls into question the separation of powers and the legislative process, where officials are revising these rules and legislation simultaneously.

The possibility of fixing statutes around rules, which is the opposite of the norm, is a policy innovation that needs scrutiny. If proposed rules are out of line with the statutes, such as how a key element of the proposed Division 601 rules is with ORS 541.551 (the legislative intent of the statute does not suggest restricting Community Engagement funding to the water project developers), and then other statutes (ORS 541.566) are revised to make that incongruence feasible, what does that say about the legislative and rulemaking processes? At a time when federal administrative rules are under spurious attack (e.g., *The Chevron Deference* has been reversed) and the possibility of illegitimate ripple effects from that reversal in state rulemaking processes, OWRD under the executive branch and the legislators ought to more carefully consider the appearance of their actions.

Water Project Grants (ORS 541.651 - 541.696 and OAR 690-093), on the other hand, can’t be so easily fixed. Water Project Grants are funded by state lottery dollars, which do not permit using those funds for community engagement activities. Therefore, a similar fix for ORS 541.656 *Water Supply Development Account*, such as adding a provision similar to “Section 2(1)(r),” cannot be made because such a workaround is blatantly unconstitutional (e.g., Article XV, Section 4b of the Oregon Constitution). OWRD just reopened the public comment period on their Division 601 proposed rules because they had to make this awkward announcement -- that OWRD will not be able to issue community engagement grant funds for Water Project Grants. This revelation speaks to the *ad hoc* nature of the decision to limit community engagement funding established under ORS 541.551 to the water project developers. We note that it is well-established that Measure 76 Lottery Funds in Article XV Section 4b of the Oregon Constitution cannot fund community engagement activities, so clearly, the planning and execution of the OWRD proposed rulemaking for Division 601 was not well thought through.

The conundrum OWRD caused when it sought to restrict Community Engagement funding to water project developers shows how the separation of powers between the legislature and the executive branch that oversees the state agencies ranges from gauzy to a brick wall. As it stands, legislators can only accede to fixing ORS 541.566 around the Division 601 rules to assist Feasibility Grants. But, it cannot do so for the Water Project Grants, which, by comparison, are an order of magnitude more funding. For all intents and purposes, OWRD’s actions have shut down the legislative intent of ORS 541.551 equal to the value of 90% of all potential projects because the proposal to fund Community

Engagement activities out of the Water Project Development account is not possible; at best, it hinges on hope that non-lottery related funds might one day come from somewhere. To this degree, we argue that the Division 601 rules are a failure; not only do they go beyond running afoul of the legislative intent of ORS 541.551, but they also effectively kill off 90% of the legislative intent.

Notice of Proposed Rulemaking and Comments on the February 14, 2025 Draft of the Division 601 Rules:

We noted earlier that the November 22, 2024, Notice of Proposed Rulemaking states on page 3 that: “This funding support will be provided in the form of loan and grant funding through OAR 690-600 or OAR 690-093 (Water Conservation, Reuse, and Storage Grant Program and Water Supply Development Account).” The Notice of Proposed Rulemaking also states on page 4: “As proposed, the rules incorporate those additional requirements within existing authorized funding programs.” The “additional requirements” are the Community Engagement activities spelled out in ORS 541.551 and the proposed OAR 690-601. The “existing authorized funding programs” do not currently authorize funding for Community Engagement activities. Therefore, OWRD cannot state: “This funding support will be provided in the form of loan and grant funding through OAR 690-600 or OAR 690-093.” Nor could OWRD have written lawful rules that incorporate Community Engagement funding into Feasibility Grants and Water Project Grants.

The current Notice of Proposed Rulemaking for OAR 690-601 contains false information. Does this circumstance require OWRD to reissue a new Notice of Proposed Rulemaking now that it knows it published false information on the Secretary of State Bulletin? HB 3364, which attempts to fund Community Engagement activities from the Feasibility Grant program under Section 2 (1)(r), is not yet approved, nor will the Oregon Constitution be amended. Therefore, we believe the Notice of Proposed Rulemaking for OAR 690-601 publicizes incorrect information that should be corrected, possibly by reissuing an amended Notice of Proposed Rulemaking.

We question the order of operations, whereby OWRD files a Notice of Proposed Rulemaking that contains false information and then waits – hopes – for the legislature to pass HB 3364 with Section 2 (1)(r) intact to make it possible for the Feasibility Grants to align with the proposed rules OWRD has drafted. That the Water Project Grants have no such resolution makes the overall situation even more shady. We note that OWRD holds out hope that one day legislators will appropriate non-lottery funds to the Water Project Grant account to fund Community Engagement activities. That is a weak policy strategy. As we mentioned before, we argue these errors are indicator symptoms of the impropriety of OWRD’s decision to restrict funding to the water project developers.

Below are our notes on the new changes in the February 14, 2025, Division 601 rules. While we hold a neutral position on the changes that we do not address below, that does not mean we are necessarily neutral on the entirety of those sections; rather, it means that we have previously expressed our views in earlier testimony.

600-0020 Definitions:

- (1) “Disproportionately Impacted Communities” means communities that face barriers to meaningful involvement in public processes. This may include: [. . .]
- (2) “Meaningful Involvement” means that members of disproportionately impacted

communities have appropriate opportunities [. . .]

The new text in subsection (1) now causes an infinite loop when set in the context of subsection (2). To determine if a community is “disproportionately impacted,” OWRD needs to know if those concerned have “barriers to meaningful involvement,” but to determine if those concerned have “meaningful involvement,” OWRD needs to know if those concerned are a “disproportionately impacted community.” We suspect the purpose of creating this circular logic was not to confound the identification of those who are “disproportionately impacted” or the definition of “meaningful involvement;” rather, it appears to address a desire to limit the class of those who would participate in the Community Engagement activities.

The new version of subsection (4) states that:

(4) “Community Engagement Plan Applicant” means eligible local governments or local organizations that apply to receive grants or loans from ORS 541.561- 541.581 or ORS 541.651 - 541.696 for a Community Engagement Plan for water projects that are eligible to be supported by ORS 541.561-541.581 or ORS 541.651 - 541.696.

This change cements the Community Engagement Plan as part of a larger funding request for the entire water project rather than a standalone funding request. We oppose the proposal to restrict Community Engagement activities to water project developers.

600-0020 Funding for Community Engagement Plans:

The new version of subsection (1) states that:

(1) The Department may provide funding for community engagement plan development, implementation, or both to invite and support meaningful involvement by representatives of disproportionately impacted communities in water projects that are eligible to be supported by grants or loans through ORS 541.561-541.581 or ORS 541.651-541.696. Funding for community engagement plans will be contingent on the funding source for ORS 541.561-541.581 or ORS 541.651-541.696.

This change cements the Community Engagement Plan as a component that directly ties to the water project's funding application, which we have discussed throughout our testimony is fraught with legal obstacles and a questionable legislative process where the rules drive the legislative process. We also oppose the proposal to restrict Community Engagement activities to the water project developers, which this change furthers.

600-0040 Best Practices of Water Projects for use in Community Engagement Plans:

The new version of subsection (2)(A)(b) states that:

(b) A framework for how communities, including disproportionally[*sic*] impacted communities, will be engaged in water projects [. . .]

The change in language to “...will be engaged in water projects...” articulates a tone that aligns with our

concerns that the water project developers, who would be given the power and state funding to run and control the Community Engagement activities (around their own interests, no less), will engage disproportionately impacted communities whether they like it or not. We also note the typos in Subsection (2)(A) and (2)(A)(b) that use the term *disproportionally* instead of *disproportionately*.

Conclusion:

We acknowledge all the other well-intentioned guidelines in the proposed Division 601 rules. However, in the context of giving the power and state funding to the water project developers to run and control the Community Engagement activities, those guidelines will likely end up being used as political cover to equity-wash the intentions of water project developers to ensure their projects proceed exactly as they plan. The 10 Best Practices are well-envisioned, but they risk being used as tools to manufacture the consent of the disproportionately impacted communities, which is a common activity in nearly every development industry that impacts communities. In the contemporary period, best practices acknowledge that funding for community engagement should support the impacted communities, not those who are causing the impacts. It is a significant irony the the so-called “10 Best Practices in Community Engagement Around Water Projects” runs directly counter to this precept.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hall", with a stylized, cursive script.

Christopher Hall
Executive Director
Water League

Division 601 Summary of Public Comments Received and Department Responses

Theme or Rule Reference	Community Concern	Department Response
General terminology throughout rules	If the use of the term "disproportionately impacted communities" limits the involvement of other community members not included in this definition when it comes to community engagement for water projects.	This rule aims to increase participation in community engagement plans for all Oregon communities, including those that have been disproportionately impacted. Historically, these communities have faced more barriers to participating in public processes. Therefore, the rule, in alignment with ORS 541.551, includes specific language identifying these communities and targeting their engagement. Definition (6) "Community Engagement Plan" encompasses all Oregon communities
General clarification throughout rules	Clarification on the application process and related requirements	Additional rule language has been added clarifying that community engagement plan funding requests are a component of the grant application materials for OAR 690-600 or OAR 690-093 and not a separate application process.
Section 690-601-0500 (Application Requirements and Evaluation of Community Engagement Plans)	Further guidance and clarification on what criteria would be used to evaluate community engagement plans.	Section 690-601-0500 (3) has been updated to include "relevant" evaluation criteria to help ensure that community engagement plans are evaluated thoughtfully. Relevant evaluation criteria will be identified in grant specific reference materials which will be publicly available to all prospective applicants.

Theme or Rule Reference	Community Concern	Department Response
New Section 690-601-0600 (Public Notice)	Public notice and comment period be explicitly included in rule language	Section 690-601-0600 has been added, assigning the corresponding public comment and notice provisions with the existing processes identified for OAR 690-600 and OAR 690-093.
Section 690-601-0200 (Definitions)	Rules are restrictive because they only allow project developers as eligible grantees.	<p>Funding for community engagement plans is NOT restricted to water project developers.</p> <p>Per draft rules, community engagement plan applicants must be able to provide a framework for how engagement will involve “disproportionately impacted communities” in water project decisions. Although the applicant does not need to be a water project developer, to be eligible, they do need to be local governments or organizations, as authorized by ORS 541.511, that are eligible to be supported by grants or loans pursuant to OAR 690-600 or OAR 690-093.</p>
Section 690-601-0500 (Application Requirements and Evaluation of Community Engagement Plans)	Concerns related to accountability of the applicants for the funding, such as professional standards and qualifications for those applying for funds and conducting community engagement.	Section 690-601-0500 (4) was updated during the Rules Advisory Committee (RAC) process to address these concerns, to include subsection C. This section now includes application review criteria such applicants’ professional qualifications and ability to complete work.

Theme or Rule Reference	Community Concern	Department Response
General clarification throughout rules	Concerns related to transparency in water project decision-making and Department oversight mechanisms.	<p>Section 690-601-0400 (2)(A)(b)(iii) has been updated in draft rules to ensure guidelines for consideration and inclusion of community feedback in water project planning is included in the community engagement plan application.</p> <p>Section 690-601-0700 (2) was updated during the RAC process to address these accountability concerns, and to include clear reporting requirements for how community feedback was incorporated into planning and implementation.</p>

Division 601 Summary of Extended Public Comments Received and Department Responses

Theme or Rule Reference	Summary of Comment	Department Response
Rulemaking Process	Whether sharing updated draft rules and new funding information after the close of the initial public notice and comment period requires publishing a new or amended notice with the Secretary of State (SOS) or if otherwise noticing and extending the public comment period is sufficient.	<p>The Department SOS notice complies with ORS 183.335 as the Department is not required under the Administrative Procedures Act to publish a new or amended proposed rule notice via the Secretary of State's bulletin when extending a public comment period.</p> <p>The Department shared updated proposed rules as a courtesy when the public comment period was extended via GovDelivery to RAC members, legislators, Tribes, and our listservs subscribers of Funding Opportunities, Regional Planning and Management Workgroup, Rulemaking: Dam Safety, Rulemaking: Groundwater and Surface Water, Rulemaking: Public Records, Rulemaking: Water Planning, Rulemaking: Well Construction, and Water Planning.</p>
Rulemaking Process	OWRD's action, relating to ORS 541.551, face constitutional challenges pursuant to Article XV, Section 4(b) of the Oregon Constitution.	Article XV, Section 4(b) of the Oregon Constitution, in part, delineates how the legislative assembly shall appropriate monies in the natural resources subaccount. The Department believes that the use of monies from this subaccount for the purposes outlined by ORS 541.551, the proposed rules, and the referenced grant authorizing statutes (ORS 541.561-541.581 and ORS 541.651-541.696) are supported and proper.

Theme or Rule Reference	Summary of Comment	Department Response
Rulemaking Process	Concern on the appearance that legislators are amending statutes related to the proposed administrative rules (OAR 690-601) currently under revision. This process is backward, as rules should serve statutory provisions. Moreover, it raises questions about the separation of powers and the legislative process, given that officials are revising both rules and legislation simultaneously.	This rulemaking is based on the current authority provided by ORS 541.561-541.581 relating to Feasibility Study Grants and not any legislation currently being contemplated by the 2025 legislature.
Rulemaking Process	The current Notice of Proposed Rulemaking for OAR 690-601 contains false information because neither of the proposed funding sources may fund community engagement. Does this circumstance require OWRD to reissue a new Notice of Proposed Rulemaking now that it knows it published false information on the Secretary of State Bulletin?	The Water Projects Grants and Loans program currently does not have eligible funding for community engagement; however, the Feasibility Study Grants program does. The notice and rules specify that funding availability depends on the availability of eligible funding sources. At the time of the notice, the Department was unaware of the lack of eligible funding through the Water Projects Grants. Nevertheless, the notice and rule language were predicated on the availability of eligible funding.
Section 690-601-0200 'Definitions' of the Draft Rules	Assertion that grant applicants appear to be limited to water project developers. There are concerns that these applicants could have a conflict of interest when conducting an impact analysis of disproportionately affected communities.	Section 690-601-0200(4) of the draft rule states that all eligible local governments or local organizations may apply for funding per statute ORS 541.551. Any eligible applicant may apply for funding, regardless of whether they are the water project developer. However, to have meaningful involvement in the project outcomes, the water project developers should be involved in the development and implementation of the community engagement plan.

Theme or Rule Reference	Summary of Comment	Department Response
Section 690-601-0200 'Definitions' of the Draft Rules	Concerns that Community Engagement Plan must be part of a larger funding request for the entire water project rather than a standalone funding request which restrict community engagement activities to water project developers.	Community engagement plans are not required to be part of larger funding requests for either Water Projects Grants and Loans or for Feasibility Study Grants. Applicants must be proposing to conduct an eligible study or implement a water supply project; however, they could be implementing the study/project with match funding and only apply to the Department for community engagement activities.
Section 690-601-0200 'Definitions' of the Draft Rules	Concerns over the perception that to determine if a community is "disproportionately impacted," OWRD needs to know if those concerned have "barriers to meaningful involvement," but to determine if those concerned have "meaningful involvement," OWRD needs to know if those concerned are a "disproportionately impacted community." We suspect the purpose of creating this circular logic was not to confound the identification of those who are "disproportionately impacted" or the definition of "meaningful involvement;" rather, it appears to address a desire to limit the class of those who would participate in the Community Engagement activities	<p>ORS 541.551 Section 1 (b) (D) states "Other communities that face barriers to meaningful participation in public processes." This originating statute ties the definition of disproportionately impacted communities to their barriers to meaningful involvement. However, ORS 541.551 did not define what meaningful involvement means.</p> <p>Section 690-601-0200 of the draft rules defines "meaningful involvement" and has been updated to remove 'disproportionately impacted communities' from the definition. The Department intends to be as inclusive as possible, while implementing ORS 541.551, to ensure all Oregon communities, especially disproportionally impacted communities, are engaged in water planning. The Department believes that the definition in Division 601 is inclusive and will benefit diverse communities across the state.</p>

Theme or Rule Reference	Summary of Comment	Department Response
Overall Mechanism for Funding	Assertion that neither Water Projects Grants and Loans nor Feasibility Study Grants are authorized to fund Community Engagement activities (per authorized by ORS 541.551 and the proposed associated rules, OAR 690-601).	Currently Water Projects Grants and Loans are funded through Lottery Revenue Bonds which cannot be used to fund community engagement plans. Feasibility Study Grants are predominantly funded through General Funds which are permitted for use for community engagement. The Department intends to keep Water Project Grants and Loans within Division 601 to remain prepared for potential funding from General Funds or other eligible funding sources in future legislative sessions.
Overall Mechanism for Funding	Lottery Revenue bonds which fund Water Projects grants cannot be used to fund community engagement as contemplated by the rules. Additionally, community engagement activity then hinges on hope that eligible funds might one day become available.	Lottery Revenue Bonds are not being used to fund community engagement as proposed by the rules, as funding is not eligible for such use. The Department chose to preserve Water Projects Grants and Loans in the language of the rule for efficiency, so that new rulemaking is not needed if general funds or other eligible funds become available.
Overall Mechanism for Funding	Questions related to the “existing authorized funding programs” do not currently authorize funding for Community Engagement activities. Therefore, OWRD cannot state: “This funding support will be provided in the form of loan and grant funding through OAR 690-600 or OAR 690-093.” Nor could OWRD have written lawful rules that incorporate Community Engagement funding into Feasibility Grants and Water Project Grants.	<p>Feasibility Study Grants can fund community engagement funding as authorized by ORS 541.566 (1) which identifies specific activities that the program funds and states “may include, but is not limited to.”</p> <p>Water Project Grants and Loans can fund community engagement funding as authorized by ORS 541.656 (2)(a) “to evaluate, plan and develop in-stream and out-of-stream water development projects.”</p>

Theme or Rule Reference	Summary of Comment	Department Response
Overall Mechanism for Funding	More funds are needed across the spectrum of planning, feasibility, and implementation of water projects – funding engagement plans from the same source of funding as other projects may be limiting.	The Department acknowledges that funding community engagement plans from the same source of funding may be limiting in the shorter term. However, the Department believes that in the longer term, projects who conduct community engagement plans will be better equipped to conduct more thoughtful and successful projects in the future – thus having a return on initial investments.
Implementation of Rules	Recommend the Department provide guidance to potential applicants and interested stakeholders that clarifies the funding eligibility, how the best practices apply, and other program components.	The Departments Grants Program is scoping implementation strategy including drafting additional guidance, outlining application review guidelines, and timelines for grant opportunities under the feasibility study grants.
Implementation of Rules	Recommends the Department provide guidance to potential applicants and interested stakeholders that clarifies the funding eligibility, how the best practices apply, and other program components.	The Department’s Grants Program staff are scoping the implementation strategy including drafting additional guidance, outlining application review guidelines, and timelines for grant opportunities under the feasibility study grants.
Implementation of Rules	Request to have the Department describe and give examples of how funded projects can develop or implement community engagement plans to support water projects, and possible outreach materials.	<p>The Department has already created a draft guidance document “10 Best Practices for Community Engagement Around Water Projects” in coordination with five other named agencies in the originating statute (ODFW, OHA, DEQ, BizOR, and OWEB).</p> <p>Included in the implementation material being considered are additional guidance documents which will include the requested water project engagement examples.</p>

Theme or Rule Reference	Summary of Comment	Department Response
Implementation of Rules	The Water Resources Commission will need to further discuss and develop processes for evaluating grant applications.	The Department's Grants Program is scoping implementation steps including drafting additional guidance documents, outlining review guidelines, and timelines for grant opportunities under the feasibility study grants.
Implementation of Rules	Including a community engagement plan in a federal process should not be too onerous if enough notice and guidance is provided. However, there may be different terminology or requirements between the state and federal entity that need to be figured out or potentially adjusted.	The Department's Grants Program is scoping implementation steps including drafting additional guidance documents. In these documents staff will work with potential applicants prior to the start of a funding cycle to ensure that terminology and other federal funding requirements are aligned the best as possible with the Departments guidelines.
General Comment	Refers to legislation currently under consideration in the Oregon Legislature known as HB 3364 (2025) to fund Community Engagement activities from the Feasibility Grant program under Section 2 (1)(r).	The Department has existing authority to fund community engagement activities through the Feasibility Study Grants program under ORS 541.566 (1). Legislative considerations under deliberation would be outside the authority of this rulemaking.