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**Chapter 695**

**Division 48**

**OWEB DRINKING WATER SOURCE PROTECTION GRANT PROGRAM**

**695-048-0010**

**Purpose**

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

- (1) The acquisition of lands from willing sellers;
- (2) Entering into covenants, easements or similar agreements with willing landowners; or
- (3) Repaying a loan used to finance a [Project](#) as described in [OAR 695-048-0010](#) (1) or (2).

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

This Chapter 695, Division [48](#) supplements the OWEB Grant Program rules under OAR Chapter 695, Division 5, which also apply to this program. This division provides specific requirements for the OWEB Drinking Water Source Protection [Grant](#) Program. In any conflict between these requirements and requirements identified in OAR 695-005, the Drinking Water Source Protection requirements in this division will take precedence.

**695-048-0020**

**Definitions**

- (1) “Community Drinking Water Enhancement and Protection Fund” is a fund established in the State Treasury for use by OWEB to carry out the purpose of ORS 448.370.
- (2) “Community Water System” means a [Public Water System](#) that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents as defined in OAR 333-061-0020 (25).
- (3) “Conservation Easement” means a nonpossessory interest in real property that imposes limitations or affirmative obligations for the purposes of protecting, restoring, or enhancing lands where doing so will benefit a source of drinking water.
- (4) “Drinking Water Source Area” is an area delineated under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. This includes Drinking Water Protection Areas defined in OAR 333-061-0020 (52) that are certified by Department of Environmental Quality or the Oregon Health Authority and drinking water source areas delineated by Tribes or by Environmental Protection Agency (EPA) for ~~Tribally owned water suppliers~~ [Tribal Public Water Systems](#). For a surface water-supplied drinking water source, the Drinking Water Source Area is a specifically determined part

of a lake's, reservoir's or stream's watershed that supplies water to the source. For a groundwater-supplied drinking water source, the Drinking Water Source Area is the ~~area on the surface~~ area that directly overlies that part of the aquifer that supplies groundwater to a well, well field, or spring.

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

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

(7) "Holder" has the meaning given to it in ORS 271.715, ~~except that state agencies do not qualify as a "Holder" other than a state agency;~~

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

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

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

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

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

(10) "Notice of Grant Requirements" is a ~~legal recordable~~ recorded document ~~that provides providing~~ protection in perpetuity to Drinking Water Source Protection ~~P~~program investments in deeds conveying estates in fee simple ~~absolute~~ acquisitions.

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

(12) "Partnership" means a collaboration between an eligible Water Supplier and a Holder ~~as that term is defined in ORS 271.715~~ that have ~~formally committed via a documented agreement~~ agreed in writing

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Commented [RD2]: RAC: At 4/19 RAC meeting, OWEB staff will describe rationale for this edit.

to coordinating funding, expertise, materials, labor, or other assistance to a proposed ~~P~~project. A ~~Water Supplier~~~~n-eligible-entity~~ may form a Partnership for the acquisition of any Protective Instrument.

(13) "Profit" means a positive difference between the original purchase price for the Protective Instrument acquired with OWEB grant funds and a subsequent purchase price for the same Protective Instrument, minus the owner's property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.

(14) "Project" means the aggregate of eligible activities included in OAR [695-048-0100](#) that comprise an application and are specific to parcels of land, all of which are essential to the protection, restoration, or enhancement of a drinking water source.

(15) "Protective Instrument" means a legal document conveying ~~an estate in~~ fee simple ~~absolute, granting~~ a Conservation Easement, ~~real~~ covenant, ~~or an~~ equitable servitude, or ~~a deed restriction establishing similar agreements~~ for the purposes of protecting, restoring, or enhancing lands where doing so will benefit a drinking water source.

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

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

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

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

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

#### [695-048-0030](#)

#### Protective Instrument Requirements

(1) A Protective Instrument, other than a deed conveying an estate in fee simple absolute, acquired with funds awarded in a Drinking Water Source Protection Program Grant shall include:

(a) A legal description of the land subject to the Protective Instrument acquired;

(b) The objectives of the grant and terms demonstrating how the Protective Instrument will meet those objectives;

(c) Specific obligations of the Grantee including, but not limited to:

(A) A Requirement that the Grantee will monitor the property, at least annually, and enforce the terms in the Protective Instrument;

(B) A Requirement that the Grantee will repay the grant funds to OWEB (or provide some other remedy) if Grantee fails to enforce the terms of the Protective Instrument;

(C) A covenant that the Grantee will not modify, assign, or convey the Protective Instrument without the consent of OWEB and, if applicable, the Department of Administrative Services;

(D) Terms that provide for the obligations to run with the land and inure bind to any successor in interest or permitted assignee; and

(E) Grantee will require any assignee to enter into a similar agreement with OWEB.

(d) A Requirement that OWEB and its designees will be provided sufficient legal access to the land affected by the Protective Instrument acquired with Drinking Water Source Protection Grants, given reasonable notice, for the purpose of compliance inspections.

(e) The duration of the Protective Instrument

(A) A Conservation Easement shall last in perpetuity.

(B) Any other Protective Instrument, except for other than a deed conveying an estate in fee simple absolute, may last for a term unlimited in duration unless the instrument creating it otherwise provides. The A real covenant term shall be set at 12-month increments only and not partial years.

(2) If the Project includes a Partnership with a Holder, and the Grantee will not hold the Protective Instrument, the Holder will be required to execute any Protective Instrument so that it meets the requirements in OAR 695-048-0030 (1)(a) - (e).

(3) If a Grantee, or a Holder in Partnership with the Grantee, acquires an estate in fee simple absolute, the Grantee or the Holder, shall record on title a Notice of Grant Requirements that includes OAR 695-048-0030 (1)(a) - (e).

695-048-0040

Eligibility

Eligible Applicants

Commented [DR\*03]: RAC: Divided eligibility components into different sections

(1) Eligible applicants include Water Suppliers ~~as defined in ORS 448.115~~. Applicants ~~defined described~~ in OAR 695-005-0040(2) are not eligible for ~~this grant type~~ Drinking Water Source Protection Grants unless they ~~are defined otherwise qualify~~ as Water Suppliers.

(2) Eligible Water Suppliers must have service populations at or below 25,000 users.

(3) Eligible Water Suppliers may form Partnerships with eligible Holders ~~as defined in ORS 271.715~~.

#### 695-048-0050

##### **Eligible Properties**

(1) Eligible properties for Drinking Water Source Protection Grants are lands ~~where for which~~ the acquisition of a Protective Instrument will result in the protection, restoration, or enhancement of those lands ~~and will for the~~ benefit a drinking water source used by the Water Supplier.

(2) Eligible properties must be partially or fully within a delineated Drinking Water Source Area.

#### 695-048-0060

##### **Eligible Systems**

(1) Eligible Water Systems include:

(a) Public Water Systems, specifically including:

(A) Community Water Systems, ~~including those operated by Tribally owned Water Suppliers~~ Tribal Public Water Systems;

(B) Transient Non-Community Water Systems, ~~including Tribal Public Water Systems and Water Systems operated by a non-profit Water Supplier or Tribally owned Water Suppliers~~;

(C) Non-Transient Non-Community Water Systems, ~~including Tribal Public Water Systems and Water Systems operated by a non-profit Water Supplier or Tribally owned Water Suppliers~~; and

(D) Oregon Very Small Water Systems.

(2) Federally owned Water Systems are not eligible.

#### 695-048-0070

##### **Eligible Maximum Funding Request Grant Amount**

~~Each. The maximum available award for a Drinking Water Source Protection Grant request shall not exceed three million dollars (\$3 million) is \$3,000,000.~~

#### 695-048-0080

##### **Matching Contributions**

(1) Notwithstanding anything to the contrary in OAR ~~Chapter 695, Division 005~~, ~~all applicants shall demonstrate that a grant recipient shall provide~~ at least five percent (5%) ~~of the total Board Grant request as a match is being sought, based on the total Drinking Water Source Protection Grant request~~

for the Project. Match ~~funding is any contribution to a Project that is~~ must be from non-OWEB fundsources.

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

- (a) In-kind contributions to activities listed under OAR 695-048-0100;
- (b) Funding commitments made by others as a result of grant applicant efforts;
- (c) The forgiven portion of a loan that was used to acquire the Protective Instrument;
- (d) Interest paid on a loan that was used to acquire the Protective Instrument; and
- (e) A donated portion of a sale.

(3) Match contributions qualify if they were incurred no earlier than 18 months before the applicable grant application deadline.

(4) The ~~OWEB~~ Director retains the discretion to determine whether specific proposed match contributions not specifically identified in OAR 695-048-0080 (2) can be recognized as qualifying match.

695-048-0090

#### **Application Requirements**

~~(1)~~ In accordance with ORS 448.370, OWEB will accept on a regular basis Drinking Water Source Protection ~~G~~grant applications for the acquisitions of Protective Instruments that lead to the protection, restoration, or enhancement of drinking water sources.

~~(2) In addition to (3) – (9) below, Drinking Water Source Protection grant applications shall be consistent with OAR 695-005-0030;~~

(1) If a Water Supplier ~~will form~~ has formed or proposes to form a Partnership with a Holder, ~~as defined in ORS 271.715~~, the application must include, at a minimum, the following information about the Partnership:

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

(2) The application must include a resolution by the applicant's board that ensures a commitment to fulfill what is proposed within their grant application.

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

(4) If the applicant is requesting loan repayment, then the application must include the fully executed loan agreement.

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

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

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

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

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

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

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

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

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

(9) Applications must include a description of community characteristics of the population served by the Water Supplier, including information ~~about~~ the following:

(a) Whether there are seasonal variations in the number of users and the impacts that has on the Water System;

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

(c) Information that demonstrates whether the Water Supplier ~~has a limited budget~~ is economically distressed due to:

(A) Small population size;

(B) The population served by the Water Supplier is ~~experiencing~~ lower incomes; or

(C) ~~The Water Supplier serves a rural community, other disadvantages experienced by the population served by the Water Supplier.~~

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

695-048-0100

## Use of Grant Funds

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

(1) Drinking Water Source Protection Grants may be applied towards costs related to:

- (a) Acquiring lands from willing sellers for the purposes in ORS 448.370;
- (b) Entering into real covenants, Conservation Easements or similar agreements for the purposes of ORS 448.370, which are defined as Protective Instruments in these rules; and
- (c) Repaying a loan used to finance a Pproject to protect, restore, or enhance lands consistent with OAR 695-048-0100 (1)(a) or (b).

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

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

- (a) The purchase price associated with the Protective Instrument.
  - (A) The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice for an estate in fee simple absolute and Conservation eEasement acquisitions.
  - (B) Other methods of substantiating the purchase price conducted by an independent third-party entity may be accepted at the discretion of OWEB for all other Protective Instruments.
- (b) The staff and contractor costs incurred as part of the acquisition process related to the Protective Instrument. Staff and contractor costs (labor hours) must be documented and tracked to the Project and capitalizable to the asset.
- (c) The cost of due diligence activities associated with acquisition of the Protective Instrument after the specific property has been identified and that are capitalizable to the asset, including appraisal or other method of substantiating the purchase price, environmental site assessment, survey, title review, consultant fees, and other customary due diligence activities.
- (d) The cost of baseline inventory preparation documenting the natural and human characteristics and conditions of the specific property ~~preparation for the specific property that has been chosen for acquisition at the time of acquisition~~ and that is capitalizable to the asset.



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

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

(g) For the costs in [OAR 695-048-0100 \(3\)](#)(a) - (f) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 60 days prior to the issuance of the Lottery Revenue Bonds sale.

(4) Eligible costs for Projects under [OAR 695-048-0100 \(1\)](#) that are funded with General Funds deposited into the Community Drinking Water Enhancement and Protection Fund include:

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

(A) The purchase price shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including but not limited to the Uniform Standards of Professional Appraisal Practice for an estate in fee simple absolute and eConservation eEasement acquisitions.

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

(b) The interest on bridge loans needed to ~~secure closure~~ close on the Protective Instrument prior to when funding will be available for distribution through the program.

(c) The staff and contractor costs incurred as part of the Protective Instrument acquisition process related to the property.

(d) The cost of due diligence activities, including appraisal or other method of substantiating the purchase price, environmental site assessment, survey, title review, consultant fees, and other customary due diligence activities.

(e) The cost of baseline inventory preparation documenting the natural and human characteristics and conditions of the specific property at the time of the acquisition of the Protective Instrument.

(f) The legal fees incurred by the Water Supplier related to the Project. General in-house legal costs that are related to the overall management or policy of the entity are not eligible.

(g) The closing fees, including recording and title insurance costs.

(h) The cost of developing a Long-Term Management Plan to meet program requirements.

(i) Indirect costs of the Grantee, dependent on available funding.

(j) For the costs in [OAR 695-048-0100 \(4\)](#)(a) - (i) to be eligible for reimbursement by OWEB, costs must have been incurred no earlier than 18 months ~~prior to the~~ before the applicable Drinking Water Source Protection Grant application deadline ~~date of submitting a Drinking Water Source Protection Grant application to OWEB~~.

## 695-048-0110

### **First Grant Solicitation Cycle**

~~Notwithstanding anything to the contrary in other sections of this rule set, the following shall be allowed for applications submitted during the first grant solicitation cycle of the Drinking Water Source Protection Grant Program, Matching Contributions (OAR 695-048-0080), Use of Grant Funds (OAR 695-048-0100), and Evaluation Criteria (OAR 695-048-0120) are modified in the following respects (collectively, the "First Cycle Modifications"); These allowances shall not be applicable for applications submitted in subsequent grant cycles.~~

(1) Loan repayment and associated eligible costs are eligible activities that can be funded by General Funds for transactions that have closed no more than ~~650~~ months ~~prior to the date of submitting a Drinking Water Source Protection Grant application before the applicable Drinking Water Source Protection Grant application deadline.~~

(2) Eligible match for ~~projects~~ described in OAR 695-048-0100 (1) can date back to ~~560~~ months ~~prior to the date of submitting a Drinking Water Source Protection Grant application before the applicable Drinking Water Source Protection Grant application deadline.~~

(3) A third-party demonstration of market value of the Protective Instrument is not required.

~~(4) Some evaluation criteria in OAR 695-048-0120 may not be applicable to applications submitted for~~ OWEB retains discretion to not apply some evaluation criteria in OAR 695-048-0120 to applications submitted for loan repayment during the first grant solicitation cycle.

~~(5) The First Cycle Modifications do not apply to any grant cycle other than the program's initial grant cycle.~~

## 695-048-0120

### **Evaluation Criteria**

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

(1) Significance of the acquisition of the Protective Instrument to the protection, restoration, or enhancement of drinking water sources with respect to sensitive areas, potential pollutants, and potential sources of pollution identified in the Source Water Assessment for the Drinking Water Source Area.

(2) The capacity and experience of the applicant and, if a Partnership is proposed, the Holder, to achieve the ongoing management and stewardship of the Protective Instrument as the long-term owner.

(3) ~~The strength of the technical, legal, and financial aspects soundness of the legal and financial terms~~ of the real estate transaction.

(4) Project readiness, including, but not limited to, ~~the applicant's capacity of the parties engaged in the Project, and if a Partnership is proposed, the Holder's capacity,~~ to complete acquisition transaction and due diligence steps within OWEB established timelines, and quality of due diligence information provided by the applicant.

(5) The Climate-Related Evaluation Criteria described in OAR 695-005-0045.

(6) For applicants that form Partnerships with eligible Holders:

(a) Demonstrated capacity and resources for long-term protection, restoration, or enhancement of drinking water sources.

(b) A Partnership mission that is in support of protection or restoration of natural resources.

(c) A clearly defined and documented Partnership including respective roles and responsibilities.

(7) ~~Demonstration that~~ For the Water System benefiting from the proposed ~~Project~~, the significance of that system facing-is-faced-with at least one of the following limiting factors:

(a) The extent to which Sseasonal variations in the number of users is affecting the Water System and the impact this~~that~~ has on the Water System;Sufficiency challenges in the Water System due to seasonal variations in users.

(b) The extent to which Ddrought or low water supply is affecting the Water System and the impact this~~at~~ has on the Water SystemSufficiency challenges in the Water System due to drought conditions or low water supply; or

(c) The extent of rRisks to water quality and the impact this~~at~~ has on the Water System.

(8) ~~(e)-The Water Supplier is economically distressed due to a small population size, the population served is lower income, or the population served is rural.Limited rate payer base of the Water System due to population, economic, or other disadvantages experienced by the water users.~~

(9) The duration and type of the Protective Instrument, with a preference for longer term agreements.

(10) Implementation of a Long-Term Management Plan or the intent to develop a Long-Term Management Plan that incorporates measures targeted at maintaining or enhancing drinking water quality and/or quantity. If the acquisition is for a Protective Instrument other than an estate in fee simple absolute or a Conservation Easement and a Long-Term Management Plan is not proposed, the strength of the required justification and rationale about why a Long-Term Management Plan is not necessary given the type of Protective Instrument proposed.

(11) The degree and urgency of risk to the land and the associated Drinking Water Source Area if the proposed ~~protection~~ Protective Instrument is not implemented.

**695-048-0130**

#### **Grant Agreement Conditions**

Upon Board approval of a Grant, the Board shall enter into a grant agreement with the Grantee that shall include Such other conditions as the Board deems appropriate to the particular circumstances of the Project, including but not limited to:

(1) The Grantee agrees to develop a Long-Term Management Plan if deemed appropriate and necessary by the Board. In all cases for acquired lands,estates in fee simple absolute, that includes, but is not limited to the :-(a) S stewardship, monitoring, and uses of the P property intended to carry out the

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purposes of ORS ~~Chapter~~ 448.370, developed in accordance with Long-Term Management Plan content described in the grant agreement with OWEB.

(2) Review and approval of the agreement between the Grantee and the Holder.

(3) Subsequent conveyances requirements per OAR ~~695-048-0200~~ 695-048-0180.

(4) If a Project involves the payoff of a Grantee's loan used to finance the acquisition of a Protective Instrument, and the loan is forgivable in part, the Grantee cannot be reimbursed by OWEB for the forgiven portion of the loan.

**Commented [DR\*05]:** RAC: Clarifies situation when combined with loan forgiveness from another program

#### **695-048-0140**

##### **Board Approval and Delegation of Authority**

(1) The Board shall approve grants in accordance with this OAR Chapter 695, Division 48. The Director is delegated all necessary authority to ensure that funding conditions required by the Board are fully satisfied by the Grantee.

(2) ~~Notwithstanding~~ Other than provided for in OAR 695-048-0160 (4), conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, unless approved by the Board.

#### **695-048-0150**

##### **Public Comment on Grant Applications**

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

(1) Written comments received prior to the Board meeting at which the Board will consider the application;

(2) Comments made at public hearings held and publicized in accordance with ORS 271.735; and

(3) Comments made at the Board meeting at which the grant application is considered.

#### **695-048-0160**

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

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

(a) A grant agreement is executed by the Director and the Grantee;

(b) The funding conditions applicable to the allowable cost, if any, imposed by the Board are satisfied to the full satisfaction of the Director;

(c) The legal and financial terms of the proposed real estate transaction are approved by the Director;

(d) The Protective Instrument and any required title restrictions are approved by the Director;

(e) The Director has reconciled conditionally approved funding with actual Pproject costs; and

(f) The Grantee has satisfied the match requirements under OAR 695-048-0080.

(2) For grants established under these rules, the Director is authorized to reimburse the Grantee for allowable costs as identified in OAR 695-048-0100. ~~(a) Costs incurred in a Project by a Holder may be reimbursed if they have a Partnership established with the Grantee and reimbursements are requested through the Grantee.~~

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

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

~~(3) The Director is authorized to recognize match contributions under OAR that were incurred no earlier than 18 months before the applicable grant application deadline.~~

~~(34) Notwithstanding OAR 695-048-0160 (1)(a) and (b), funds may be distributed prior to transaction closing for staff costs and due diligence activities specified in OAR 695-048-0100 and included in the application budget.~~

#### 695-048-0170

#### **Compliance and Enforcement**

(1) The ongoing use of the Protective Instrument acquired with Drinking Water Source Protection Grants shall be consistent with the purposes specified in ORS Chapter 448.370. OWEB may initiate any and all legal remedies available to OWEB to address compliance issues, including but not limited to recovery of the OWEB grant funds used to purchase the Protective Instrument, and reasonable interest and penalties at the option of the Director.

(2) A Grantee is responsible for fulfilling the terms and conditions of any agreement:

(a) Between the Grantee and the Board;

(b) Between the Grantee and a landowner, or other person or entity, necessary for the Grantee to carry out the Pproject for which a grant has been awarded; and

(c) If a Partnership is proposed, between the Grantee and the Holder.

(3) OWEB and the Board are not liable to any landowner, person, or entity for the failure of a Grantee to fulfill the terms or conditions of any agreement between the person or entity and the Grantee.

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#### **Subsequent Conveyances**

Any subsequent [modification](#), transfer, conveyance, or assignment of a Protective Instrument acquired with Community Drinking Water Enhancement and Protection Fund funds must:

- (1) Strictly comply with the requirements of ORS 541.960 as applicable; be made subject to Board approval and, if applicable, Department of Administrative Services approval; and ensure that they shall not result in a Profit;
- (2) For [an estate in fee simple absolute](#) and [Conservation Easements](#), be transferred, conveyed, or assigned only to eligible applicants or eligible Holders; and
- (3) ~~Strictly comply~~ with the requirements of ORS 448.370 and OAR [Chapter 695, Division 48-695-048](#).

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#### **Waiver of Rules**

The Director may waive the requirements of [Chapter 695, Division 48](#) for individual grant applications unless required by statute, when doing so will result in more efficient or effective implementation of the Drinking Water Source Protection [Program](#). Any waiver must be in writing and included in the grant file to which the waiver applies.