12-14

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [November 19, 2010] by the Oregon Water Resources Commission.

Oregon Water Resources Department; Administrative Services Division		Chapter 690
Agency and Division		Administrative Rules Chapter Number
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to become effective [upon filing]. (Date upon filing or later) Rulemaking Notice was published in the [September, 2010] Oregon Bulletin.** (Month and Year)

WRD 2-2010

RULE CAPTION

Procedures and standards for administration of the Columbia River Basin Water Development Loan Program

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:
690-095-0005; 690-095-0010; 690-095-0015; 690-095-0020; 690-095-0025; 690-095-0030; 690-095-0035; 690-095-0040; 690-095-0045; 690-095-0050; 690-095-0055; 690-095-0060; 690-095-0065; 690-095-0070; 690-095-0075; 690-095-0080; 690-095-0085; 690-095-0090; 690-095-0095; 690-095-0100.

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:

FILED
DEC 14 2010
ARCHIVES DIVISION
SECRETARY OF STATE

Stat. Auth.: ORS 536.027; ORS 541.646

Other Auth.: Chapter 907, Oregon Laws 2009

Stats. Implemented: ORS 541.600 – ORS 541.646

RULE SUMMARY

HB 3369, enacted into law by the Oregon Legislature in 2009, directs the Oregon Water Resources Commission to adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund. In addition, HB 3369 establishes a separate and distinct process for certain applicants seeking a loan from the Water Development Fund. These applicants include qualified water developers that are not a municipality or a provider of water for municipal purposes and that are applying for a loan to enable the construction of a water development project in the Columbia River Basin. The adopted rules provide procedures and establish standards for administration of a Water Development Loan Program for applicants that are not a municipality or a provider of water for municipal purposes and that are applying for a loan to enable the construction of a water development project in the Columbia River Basin in accordance with HB 3369 (Chapter 907, Oregon Laws 2009).

Ruben E. Ochoa	RUBEN E. OCHOA	12/14/2010
Authorized Signer	Printed name	Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

OREGON WATER RESOURCES DEPARTMENT

DIVISION 95

Columbia River Basin Water Development Loan Program

690-095-0005
Purpose, Statutory Authorization

The Water Development Fund [Article XI-I(1), Constitution of Oregon] provides financing for loans for the construction of water development projects for irrigation, drainage, fish protection, watershed restoration and municipal uses and for the acquisition of easements and rights of way for water development projects authorized by law.

These rules establish procedures and standards for administration of the Columbia River Basin Water Development Loan Program to provide for loans that have a high probability of repayment and are adequately secured in the event of default. The Columbia River Basin Water Development Loan Program implements provisions of Chapter 907, Oregon Laws 2009 related to loans to finance water development projects in the Columbia River Basin and various provisions of ORS Chapter 541, as amended by Chapter 907. These rules are authorized by ORS 541.646 and ORS Chapter 183.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0010
Definitions

The words and phrases used in these rules have the meaning given in ORS 541.600 and ORS 541.700, unless they are otherwise specifically defined in this division.
(1) "Adequate Security" means the pledge of real or personal property or a credit enhancement or other collateral of value authorized by the director to secure a loan against default.
(2) "Applicant" means a qualified water developer applying to borrow moneys through the loan program for a water development project in the Columbia River Basin.
(3) "Application" includes all documents and forms required by the department under these rules and pursuant to ORS 541.600 to 541.855.
(4) "Bonds" mean the State of Oregon general obligation bonds issued under Article XI-I(1) of the Oregon Constitution to fund the loan program.
(5) "Columbia River Basin" means the area of land comprising the drainage areas of all river basins within Oregon that drain directly to the Columbia River or Snake River and includes the main stem of the Columbia River.
(6) "Commission" means the Oregon Water Resources Commission.
(7) "Community" means an incorporated or unincorporated town or locality with more than three service connections.
(8) "Department" means the Oregon Water Resources Department.
(9) "Director" means the director of the Oregon Water Resources Department or the director's designee.
(10) "Federal Water Development Project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.
(11) "Loan" means the moneys loaned by the department under the loan program to finance a water development project.

(12) "Loan Advisory Board" means a board appointed by the director to review applications made under Section 20 of chapter 907, Oregon Laws 2009 and make recommendations thereon to the director.
(13) "Loan Document" means the loan agreement, any supplemental loan agreement, promissory note, mortgage, security agreement and any related documents, including but not limited to any pledge of or lien against collateral, entered into by the department and an applicant related to a loan from the department to a borrower under the loan program, and any documentation required by the department to change a loan's terms and conditions.
(14) "Loan Program" means the Columbia River Basin Water Development Loan Program.
(15) "Provider of water for municipal purposes" means a public body as defined in ORS 174.109, a community or a private entity whose primary purpose is to operate a water distribution system that delivers potable water for community needs, either to individual customers or through another water distribution system.
(16) "Municipality" means a city as defined in ORS 174.100(2); includes any incorporated village or town.
(17) "Qualified Water Developer" means a "water developer" as defined in ORS 541.700 that is not a municipality, a community or a provider of water for municipal purposes.
(18) "Security Value" means the value assigned by the department to the project or other security.
(19) "Water Development Fund" means the fund created through the adoption of Article XI-I of the Constitution of Oregon by general election in November, 1977, as amended.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0015
Eligibility: Applicant and Project
(1) To be eligible, an applicant must be a qualified water developer seeking to finance a water development project in the Columbia River Basin under the loan program.
(2) To be eligible, projects shall meet the definition of a "water development project" as defined in ORS 541.600.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0020
Eligible Costs
The department shall determine the eligible costs during the pre-application conference or the loan review process. Subject to these rules, a loan may be approved to pay the "startup costs" relating to a water development project. "Startup costs" must be allowable as capital costs or reimbursable costs that may be financed with federally tax-exempt bonds under the Internal Revenue Code and may include, but are not limited to:
(1) The costs of buying or otherwise acquiring, constructing, installing, rehabilitating or reconstructing a water development project, including site costs and acquisition of water rights relevant to the project;
(2) The costs of obtaining a loan from the department under these rules;
(3) Design and engineering costs;
(4) The costs to acquire licenses and permits for a water development project;
(5) Reserves, interest costs related to construction or interim financing;
(6) Grant matching funds or other costs of funds needed for a water development project; and

(7) Costs for preparation of claim of beneficial use and costs incurred up to and including obtaining applicable water right certificates and limited licenses.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0025
Ineligible Costs
The director may not issue a loan to provide assistance for 'on-going' operation or maintenance costs of a water development project. A loan may not be used to pay any capital costs incurred prior to execution of the loan document without prior approval of the director.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0030
Authority of Director
(1) Loans over three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules may only be approved by the commission.
(2) The director is authorized by the commission to approve loans under three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules; approve, deny, amend, or set conditions of loans; establish loan interest rates; execute bond and loan documents; and sign all loan documents.
(3) The director shall:
(a) Give a periodic written report on all loan activity to the commission;
(b) Assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and affected tribal governments, and notify other interested parties who may be consulted, as deemed appropriate. If a project may affect agricultural use, the department shall also assess the project in consultation with the State Department of Agriculture; and
(c) Take such steps as are needed to recover loan funds and prevent their misuse, or to prevent loan funds from being diverted from the originally approved purpose.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0035
Loan Advisory Board
(1) The director may appoint a loan advisory board to review applications made under the loan program and pursuant to these rules make recommendations thereon to the director. The scope of application review shall be limited to the adequacy of security, the potential for repayment, and economic feasibility of the project. Members shall be knowledgeable and experienced in the fields of banking, finance, economics, or related field. The members appointed to the board shall be subject to the approval of the commission.
(2) After its review, the loan advisory board shall advise the director in writing and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the loan advisory board.

690-095-0040
Application
(1) Applications for loans to fund water development projects in the Columbia River Basin shall be filed under these rules and pursuant to ORS 541.600 through 541.855. The terms used in the application shall have the meanings given in these rules, ORS 541.600 and ORS 541.700.
(2) Loan applications shall be submitted in the manner and format and contain or be accompanied by any and all information as prescribed by the commission and required by the department.
(3) If an application submitted under this rule lacks any information required by the department, the department may reject the application or require the applicant to submit additional information.
(4) It is recommended that potential applicants contact the director for a pre-application conference prior to submitting an application. The director or designee may give advice on a loan before an application is submitted and may advise whether the proposed project appears to comply with these rules, whether funds are likely to be available under the loan program, and which costs may be eligible for financing through a loan. Any such advice, however, does not constitute a loan approval or any other binding commitment.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0045
Public Notice and Review Period
(1) Upon receipt of an application that the director determines is complete in accordance with these rules, the director will provide public notice of the application by posting it on the department website for 60 days beginning with the date the department determines the application is complete. The notice shall contain a summary of the application including the names of the applicant, the location, purpose of the loan, and other relevant information.
(2) The public may comment on the posted application by submitting comments as directed by the department on its website. The director need not respond to the commentator or the applicant in connection with any submitted comments. The director will determine the weight, if any, to be given to submitted comments in its evaluation of an application.
(3) The director shall begin review of a completed application no later than 60 days after receiving the completed application. The review shall comply with requirements of OAR 690-095-0050, these rules and any other requirements made by the department, and shall be done in a timely basis as determined by the director.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0050
Criteria for Granting a Loan
(1) Loans shall not be approved unless:
(a) The applicant demonstrates and the department finds that the loan will comply with the requirements of Article XI-I(1) of the Oregon Constitution, ORS 541.600 to 541.855, and any applicable federal and state requirement.
(b) The director determines that the applicant meets the following standards:
(A) Demonstrated revenues or other resources available to:
(i) Repay the loan in accordance with its terms, and
(ii) Provide for the continued operation and maintenance of the project.
(B) Satisfactory credit history or rating from a rating agency; or

(C) Good and sufficient collateral is available to secure and provide repayment of the loan, and
(D) The project plan assures timely completion and includes schedules with measurable performance benchmarks.
(c) The application requirements and qualifications are met.
(d) The commission finds that all conditions of ORS 541.720 are met.
(2) The director, under the authority of the commission, may issue an initial non-binding letter of intent to an applicant, indicating a present intention to approve a loan application in a specified amount but subject to:
(a) Receipt of certain additional and specified information in the letter,
(b) The director's review and approval of such additional information, or
(c) The applicant's receipt of any required permits or other regulatory licenses or approvals necessary to construct or operate the project.
(3) For application to fund a federal water development project, the director must determine that all required federal approval for funding and construction of the project has been obtained.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0055
Appeal Process
(1) If the director rejects an application or approves a loan amount different than that requested by the applicant, the applicant may file an appeal to the commission. The commission, upon making a finding, may reverse, modify or affirm the director's action on the application.
(2) An applicant must file a written request for an appeal of the director's action; the written request shall be received by the department on or before the thirtieth (30th) day after the date of the written notice to the applicant of the director's action on the application.
(3) An appeal of a decision of the commission as a final order of the agency as authorized under ORS Chapter 183.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0060
Loan Security
(1) The director shall require repayment of an approved loan to be secured by a first priority lien or by other good and sufficient collateral as described in ORS 541.740, as applicable to the applicant. The director, in his or her discretion, using the information in an application and any other information available, will determine the security value of the collateral provided under the loan document.
(2) An applicant may demonstrate adequate security or good and sufficient collateral if:
(a) The applicant has ad valorem taxing power that it has exercised and pledged to secure the loan;
(b) The applicant is an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65 whose principal income is from farming in Oregon, the loan shall be secured by a mortgage or security agreement in the full amount of the loan and the loan amount does not exceed 70 percent of the appraised value of the security for the loan; or
(c) The applicant is a qualified water developer that is not an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65, security may include:
(A) First lien to the State of Oregon attached to the real property of the water developer, and the user charges owed to or received by the water developer;

(B) A lien attached to all real property whether owned by the water developer or others, which is served by the water development project or which is served by a water source enhanced or restored by the water development project; or
(C) An agreement entered into by the water developer wherein assessments, user charges or other revenue is pledged for security of loan repayment and that such revenue shall be maintained at no less than 125 percent of the debt service on the loan.
(d) The commission determines, in consultation with the State Treasurer, that such other good tendered as collateral by the applicant is "sufficient" collateral to secure the loan instead of, or in addition to, a lien.
(3) Real property used for securing the loan shall have been appraised by a licensed appraiser, county assessor, or department appraiser, at the discretion of the director, within six months prior to the date of the letter of intent or if there is no letter of intent, the loan document.
(4) Where the applicant is a water developer described in ORS 541.700 (7) (a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien upon such real property of the water developer as the commission shall require for adequate security. The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.
(5) A partial release of lien may be granted by the director upon written request of a borrower if the remaining property provides adequate security as required by law and these rules.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0065
Interest Rates
(1) The director shall consult the State Treasurer before setting the interest rate on a loan in order to determine that the interest rate on the loan is sufficient to pay all costs associated with the bond issuance and expenses incurred in issuing the bonds.
(2) If the bonds have been sold, the director will set the interest rate paid under a loan document at a rate that is at least equal to the interest rate paid to bondholders and is sufficient to pay the State of Oregon for:
(a) The administrative expenses incurred by the department, the State Treasurer and any other agency of the state in connection with the issuance of the bonds and the loan program;
(b) Any costs related to administration of the bonds, including but not limited to the costs of any credit enhancement for the bonds and the establishment of the Water Development Administration and Bond Sinking Fund reserves; and
(c) An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.
(3) If, after consultation with the State Treasurer, the director believes that a project is unlikely to produce a net profit for the borrower, the director may set the loan interest rate in a loan document at a level that reduces or eliminates that portion of the loan rate above the bond interest rate.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0070
Loan Contract
(1) The loan contract shall contain the provisions required by Section 26(3) and (4) of chapter 907, Oregon Laws 2009, any provisions the director considers necessary to ensure expenditure of the loan proceeds for the purposes set forth in the approved application and any other provisions required by law or that the director determines are necessary to ensure timely repayment of the loan.
(2) Where the applicant is a water developer described in ORS 541.700(7)(e) through (o), the water developer shall represent and warrant in the loan contract that it is fully authorized to, and does, grant the State of Oregon, the liens required under the loan program and that granting the lien will not violate or conflict with any other agreement, pledge or contract to which the water developer is a party, or with any decree, order or judgment of any competent tribunal to which the water developer is subject.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0075
Conditions to Disbursement of Loan Funds
The director shall withhold payment of funds under a loan contract until any necessary federal and state environmental impact approval processes have been completed for the project and any relevant approvals and permits from any regulatory authority pertaining to the construction or operation of the project have been obtained.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0080
Fees and Charges
(1) At the time an applicant first submits any part of an application with the department, the applicant must pay an application fee equal to the lesser of 0.10 percent of the requested loan amount or $2,500.
(2) The director may require the applicant to pay for costs that exceed the initial application fee if the director determines that the costs are incurred solely in connection with processing the application. Before incurring the additional costs, the director will advise the applicant of the additional costs to be paid by the applicant.
(3) An applicant seeking a loan for a qualified water development project that is for fish protection or for watershed enhancement may be assessed a reduced fee as determined by the director when the applicant first submits any part of an application with the department.
(4) In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0085
Issuance of Bonds
Bonds may be issued at the request of the director and administered as provided in ORS chapter 286A and 541.780 to 541.840. Bonds may be issued prior to and after the execution of any loan contracts entered into with respect to the bonds.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0090
Loan Servicing
The provisions of OAR 690-090-0050 apply to loans and loan contracts entered into under the loan program and these rules.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0095
Collection of Delinquencies
The provisions of OAR 690-090-0055 apply to loans and loan contracts entered into under the loan program and these rules.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist:

690-095-0100
Property Management
The provisions of OAR 690-090-0060 apply to loans and loan contracts entered into under the loan program and these rules.
Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist: