

SB 839 Task Force Ground Rules

Principles for Cooperation

- Members should bring concerns from the interests they represent to the attention of the group, so that later surprises are avoided. Members should also work constructively to understand the concerns of others, and help to find ways to address those concerns.
- All meetings of the task forces will be open to the public. At the close of each meeting, the facilitator will typically allow time for public comment, taking into consideration the length of the agenda and the opportunity for Task Force members to speak on all issues.
- Members will treat each other with respect throughout the process. They will listen to each other to seek to understand each other's perspective, even if they disagree.
- One person will speak at a time and stay focused on the scope of work. To indicate an interest in speaking, members will turn name tent cards vertical. Members will participate fully in letting the group know their perspective on issues, their concerns, and their differing points of view in an effort to achieve a shared understanding and find common ground. At the same time, members will respect time constraints, and will share the speaking time with others. Members should seek to resolve differences and reach consensus.
- All members will act in good faith in all aspects of these discussions. This includes being honest and refraining from undertaking any actions that will undermine or threaten this process.
- All task force members agree to maintain the respectful tone of the meetings outside the formal meetings, including all email correspondence. Any reporting to constituents, the media, or other parties will focus on issues and not individuals.
- Members will refrain from generating controversy in the press and from publicly criticizing positions taken by other participants during the process.
- Members will not characterize or describe the positions of other task force members to the media or others, but will refer questions about others' positions to the other party.
- Members are reminded that all e-mail messages and written communications regarding the task force are likely subject to state public records laws, and likely subject to disclosure.
- E-mails for the entire group should be sent to staff, and distributed to the group by them.
- Please do your best to attend meetings in person, arrive on time, review necessary materials, and follow through on promises and commitments.
- Members may send a delegate in their place, if necessary. Members will minimize the use of delegates and notify the facilitator and staff in advance of the meeting.
- Audio tape recordings of each meeting will be posted online before the next meeting.
- Turn off cell phones or place in the non-ring mode during meetings

SVF Task Force Decision-Making

- Decisions of the SVF Task Force as a whole will be made by consensus. Pursuant to SB 839, "consensus" means that no more than one member of the task force formally objects to the decision.
- Consensus means the willingness to go along with recommendations, either in active support of it or not opposing it. Differences in opinion are to be expected in a group with such diverse perspectives and the group will work hard to reconcile them.
- Any member of the task force who objects to the methodology developed by the task force may provide a separate recommendation.
- Members will have the opportunity to review, make corrections, and then sign-off on the report and recommendations.

Senate Bill 839 Summary

A Reference for Task Forces

Purpose

The purpose of Senate Bill 839 is to establish a means for the state to support water supply development projects that provide economic, environmental and community benefits [Section 2(1)]. The bill establishes the Water Supply Development Account [Section 3(1)] which can be used by the Department to carry out the Act. Loans and grants may be made to persons, Oregon tribes, as well as nonprofit organizations [Section 4].

The requirements and conditions specified in the bill apply only to projects that receive grants or loans from the Water Supply Development Account [Section 2(2)].

Use of the Water Supply Development Account – Types of Projects and Costs

Funds from the account can be used to make loans and grants to evaluate, plan, and develop both instream and out of stream water development projects that: increase water use efficiency; develop new or expanded storage; allocate federally stored water; promote water reuse or conservation; or protect or restore streamflows [Section 3(2)]. Also eligible are projects that improve operations of existing water storage facilities; create new or improved water distribution, conveyance or delivery systems; provide for water management or measurement; or determine seasonally varying flows, when that project is developed in connection with newly developed water [Section 3(2)]. Newly developed water is water that results from (1) new or expanded storage, (2) allocation of un-contracted USACE stored water, or (3) the allocation of conserved water [Section 1(1)].

Other projects that are eligible without meeting the scoring or ranking, or grant and loan procedures are comprehensive basin studies done by BOR, or ongoing studies by USACE to allocate stored water [section 3(3)].

The Department may also spend funds from the Account to pay the technical and administrative costs of the Department to carry out the bill [Section 3(2)], as well as to pay the cost of establishing a seasonally varying flow, and to pay other costs directly related to project development [Section 13]. Prior to July 1, 2017, the Department may also use fund moneys for the task forces and SVF rule development [Sections 27 and 28].

Moneys not expended during a funding cycle are carried over to future cycles [Section 7(4)].

Application and Approval Process

Application Requirements - Section 6 of the bill prescribes the information that must be included on the application form. For applications involving physical changes or monitoring on private land, the landowners must agree to the project and aware that information is public. For grants, there must be a 25 percent cost match, whereas loans must submit evidence of the ability to repay the loan and provide collateral. Tribes must be consulted, if required by the Department [Section 6]. Projects must be approved by the Water Resources Commission [Section 3(2)] and the Department must determine that the transfer of water rights will not injure existing water rights [Section 3(4)]. In addition, applicants that are required to have a water management and conservation plan must have it approved prior to submitting the grant or loan application [Section 4].

Pre-Application - A prospective applicant can engage the department in a pre-application conference to review the requirements of the application and the scoring system, and identify issues that may affect project eligibility. The applicant must provide the Department with project information at least 14 days before the conference, and can ask for additional consultations with the Department [Section 5].

Application Acceptance and Funding Approval - The Commission is required to make the funding decisions once each year. Applications will be accepted year round, but a yearly deadline will be set to receive consideration for that grant cycle [Section 7(1)]. Upon receiving an application, the Department will check for completeness and eligibility. Incomplete applications must be returned. The Department must then post new applications on the Department's website for 60 days and accept public comment. The applications and public comments will be reviewed by a technical team (WRD, DEQ, ODFW, ODA, OBDD, affected Tribes, Regional Solutions¹, and Experts), which will score and rank projects, and make recommendations to the Commission. The Commission will allow an additional opportunity for public comment, and then make the final decision on scoring, and awards of loans and grants [Section 7 (2-3)]. After, the Department will make all rankings and funding decisions publicly available [Section 7(5)].

Evaluation of Projects – Outcomes, Criteria, Scoring and Ranking

The Water Resources Commission is directed to adopt rules for the scoring and ranking of projects. The Commission must base its funding decisions on the evaluation system of public benefits, selecting projects that have the greatest public benefit, and achieve the outcomes outlined below [Section 8(1)]. This scoring and ranking should include minimum criteria, which shall be based on the public benefits of the project and to achieve the following outcomes [Section 7(1) and 9(1)]: to only fund projects that provide public benefits in all three categories; give preference to partnerships and collaborative projects; fund projects of diverse sizes, types and geographic locations; give preference to projects that measurably improve streamflows if diverting water; and give preference to projects that measurable increase water efficiency, if the project proposes to do so [Section 9(1)]. The Department is required to report to the Water Resources Commission biennially to assess whether these outcomes are being achieved, and the Commission will modify the project selection process if necessary [Section 9(2)].

Public Benefits - Economic, environmental, and social/cultural benefits are given equal importance in the evaluation of the project [Section 8(1)]. To demonstrate social/cultural² and economic benefits³, the project must provide social/cultural and economic benefits in a sufficient amount to qualify under the

¹ The Department believes "any collaborative body established by the Governor to address challenges, opportunities, and priorities for the region affected by the project" [Section 7(3)] means Regional Solutions. According to the Governor's website Regional Solutions work "at the local level to identify priorities, solve problems, and seize opportunities to complete projects."

² The evaluation of the social or cultural benefits shall be based on the changes in social or cultural conditions expected to result from the project, including the promotion of: (a) public health and safety and of local food systems; (b) measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes; (c) recreation and scenic values; (d) contributions to the body of scientific data publicly available in this state; (e) state or local priorities, including the restoration and protection of native fish species of cultural significance to Indian tribes; and (f) collaborative basin planning efforts, including efforts under the state integrated water resources strategy. [Section 8].

³ The evaluation of economic benefits shall be based on the changes in economic conditions expected to result from the project, including: (a) Job creation or retention; (b) Increases in economic activity; (c) Increases in efficiency or innovation; (d) Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses; (e) Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and (f) Increases in irrigated land for agriculture. [Section 8].

scoring and ranking system. To demonstrate environmental benefits, a project may dedicate 25 percent of the new increment of water to instream use, or by demonstrating environmental benefits to qualify under the scoring and ranking⁴. However, these requirements do not exempt a project from meeting the minimum criteria [Section 11].

Protection of Water Instream

As noted above, any project may demonstrate environmental benefits by dedicating 25 percent of the new increment of water to instream use [Section 11].

In addition, for grants to new or expanded above-ground storage facilities that impound surface water on a perennial stream, divert water from a stream with listed species, or divert more than 500 af per year, the project must provide 25 percent of the new increment of water for instream use. The applicant may include water dedicated as a result of conditions on federal, state or local permits in this amount [section 10].

In both of these instances, water dedicated instream must be protected by the Department according to its priority. Water for instream uses may come from the new increment of water, or other sources, and may be put in other locations in the tributary, if those other locations would not injure existing water rights, and the alternate location, in consultation with ODFW, provides greater or equal environmental benefits. WRD, in consultation with ODFW, will determine the timing of flows to maximize instream benefits [Section 12].

Seasonally Varying Flows (SVFs) and Task Force

When a project requires a new water storage or aquifer recharge permit or license to store water outside the irrigation season, and it impounds surface water on a perennial stream, diverts water from a stream with listed species, or diverts more than 500 af per year, seasonally varying flows must be protected [Section 13]. SVFs are the duration, timing, frequency, volume of flows, that must remain instream outside of the official irrigation season in order to protect and maintain the biological, ecological, and physical functions of the watershed downstream of the point of diversion, with regard for the need to balance functions against need for water [Section 1(2)]. The functions are outlined in Section 19(4) and the economic considerations are outlined in Section 19(5).

If the applicable SVFs have not been established, the Department must establish the flows in consultation with ODFW and affected Tribes, before issuing a grant or loan for the project. If SVFs are established for the stream, subsequent storage or aquifer recharge permits or limited licenses must be conditioned for the SVF if the project receives a grant or loan from the account and the water is for storage outside the irrigation season, and has a diversion point subject to SVFs. Applicants can request that the SVF be altered based on new information. However, the Department must condition the new permit or license to protect the SVF that is in effect at the time the grant or loan is issued. The SVFs do not alter other Department processes for determining water availability for a permit or license [Section 13].

⁴ The evaluation of environmental benefits shall be based on the changes in environmental conditions expected to result from the project, including : (a) A measurable improvement in protected streamflows that: (A) Supports the natural hydrograph; (B) Improves floodplain function; (C) Supports state or federally listed sensitive, threatened or endangered fish species; (D) Supports native fish species of cultural importance to Indian tribes; or (E) Supports riparian habitat important for wildlife; (b) A measurable improvement in ground water levels that enhances environmental conditions in ground water restricted areas or other areas; (c) A measurable improvement in the quality of surface water or ground water; (d) Water conservation; (e) Increased ecosystem resiliency to climate change impacts; and (f) Improvements that address one or more limiting ecological factors in the project watershed. [Section 8]

The SVF Task Force shall consider the economic and science subgroup reports⁵ and develop a recommended methodology for determining seasonally varying flows that optimizes the functional benefits to watersheds while also recognizing that many functional benefits will not occur unless a new water storage project is financially feasible and that new storage projects will not be appropriate or feasible in many locations. The method must use the best available science. The method recommended shall be by consensus; however, any member that objects may provide a separate recommendation for a methodology [Section 19].

The SVF Task Force report will be considered by the Water Resources Commission in adopting rules to establish a methodology for determining seasonally varying flows. The task force will serve as a rules advisory committee for the rule adoption. The rules will be adopted in time to take effect on January 1, 2015 [Section 20]. The provisions requiring SVFs for storage projects (in section 13) are operative January 1, 2015 [Section 21]. Moneys cannot be expended for certain projects until January 1, 2015 [Section 25 and Section 26].

Requirements for Approved Projects

Before loan or grant moneys are expended for project construction, all applicable local, state, and federal permits must be obtained. Loans or grants may contain conditions to require the project to be completed and operated as described in the application. The Department may require that before project operation, the recipient demonstrate that identified public benefits will be realized in a timely fashion. At regular intervals and upon project completion, the recipient must submit updates to the Department describing the work completed, public benefits achieved, and expenditures. Water diverted and used from the project must be measured and reported regularly. The recipient must monitor, evaluate and maintain the project for the life of the loan, or as specified for the grant and provide annual progress reports to the Department. The Department may impose other project conditions. Funding can be terminated, reduced, or delayed upon failure to comply [Section 14].

Loan Standards for Borrowers

The Commission is directed to adopt rules establishing the standards for borrowers. The standards are to ensure a high probability of repayment, and adequately secured in case of default. The Commission, DAS, and the State Treasurer's comments shall be solicited when designing the standards. The standards may require the applicant to enter into a loan contract, secured by a first lien or other collateral [Section 15].

Governance Task Force

Governance Task Force directed to review the structure established in sections 1-15 for grants and loans. The task force may develop proposals for changing the structure, which may include changes in the long-term structure of the decision making process regarding: (1) the role of the state in providing loans and grants for water development under sections 1-15 (2) the process for allocating newly developed water from projects for which the use was not specified in the funding application [Section 18].

⁵ Science Subgroup—Shall consider the biological, ecological and physical functions in watersheds during periods that are outside of the official irrigation season, including: (a) Stream channel development and maintenance; (b) Connectivity to floodplains; (c) Sediment transport and deposition; (d) Migration triggers for upstream movement of adult fish and downstream movement of fry and juvenile fish; (e) Fish spawning and incubation; (f) Juvenile fish rearing; and (g) Adult fish passage.

Economic Subgroup—Shall consider the practical aspects of developing and operating new water development projects, including: (a) Practical engineering methods and applications; (b) The costs and benefits of the methodology and alternatives; (c) The economic feasibility of water storage development; and (d) The cost of complying with environmental benefit standards.