

Comment [td11]: Comment balloons will be used to highlight areas for discussion or clarification.

OAR#	DRAFT RULES	Bill Section	SB 839 (ORS REFERENCE)
005	<p>Purpose</p> <p>The purpose of these rules is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits. The rules establish procedures and requirements for the funding of water resources projects from the Water Supply Development Account established in ORS 541.656.</p>	2	<p>SECTION 2. (ORS 541.653)</p> <p>(1) The purpose of sections 1 to 15 of this 2013 Act is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits.</p> <p>(2) The Legislative Assembly intends that any conditions or requirements described in sections 1 to 15 of this 2013 Act apply only to projects that receive loans or grants from the Water Supply Development Account established in section 3 of this 2013 Act.</p>
010	<p>Definitions</p> <p>The following definitions apply to this division of the rules:</p> <p>(1) “Above Ground Storage” means capture and storage of surface water in an above ground storage facility.</p> <p>(2) “Adequate Security” means the pledge of real or personal property given to secure a loan against loss or credit enhancement guaranty or other security of value authorized by ORS 470.170, given as assurance that the loan will be paid.</p> <p>(3) “Ad valorem taxing authority” means a tax based on the value of real estate or personal property.</p> <p>(4) “Collateral” means the security pledged for the payment of a loan.</p> <p>(5) “Commission” means the Water Resources Commission.</p> <p>(6) “Conserved Water” means that amount of water that results from conservation measures, measured as the difference between:</p> <p>(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and</p> <p>(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.</p> <p>(7) “Director” means the director of the Oregon Water Resources Department or the director’s designee.</p> <p>(8) “Indian tribe” means a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.</p> <p>(9) “Newly developed water” means the new increment of water:</p> <p>(a) Stored for a project providing new or expanded storage;</p> <p>(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or</p> <p>(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.</p> <p>(10) “Non-Profit Organizations” means an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends.</p> <p>(11) “Perennial Stream” means a continuous stream flow year around.</p> <p>(12) “Personal property” means movable property or possessions not permanently affixed to and a part of the real estate.</p> <p>(13) “Persons” means individuals, corporations, associations, firms, partnerships, joint stock companies, public</p>	1	<p>SECTION 1. (ORS 541.651)</p> <p>As used in sections 1 to 15 of this 2013 Act:</p> <p>(1) “Newly developed water” means the new increment of water:</p> <p>(a) Stored for a project providing new or expanded storage;</p> <p>(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or</p> <p>(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.</p> <p>(2) “Seasonally varying flows” means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream 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 due regard given to the need for balancing the functions against the need to store water for multiple purposes.</p>

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	<p>and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.</p> <p>(14) "Project Materials" means documents or media materials that are published or produced to describe or market the project. (see ORS 541.692)</p> <p>(15) "Seasonally varying flows" means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream 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 due regard given to the need for balancing the functions against the need to store water for multiple purposes.</p> <p>(16) "Secondary water right" means a water right obtained for the out-of-reservoir use of water stored in a reservoir.</p> <p>(17) Technical Review Team – Team which conducts the initial scoring and ranking for the projects which consists of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.</p> <p>(18) "Water Supply Development Account" is the account established in the State Treasury under ORS 541.656.</p>		<p>SECTION 7. (ORS 541.669)</p> <p>(3) <i>Excerpt</i> - The department shall forward applications that have passed preliminary review, along with any comments received from applicants or the public, to a technical review team consisting of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.</p>
020	<p>Authorized Use of Funds</p> <p>(1) The Department may expend moneys from the Water Supply Development Account in accordance with ORS 541.656 for loans and grants approved by the Water Resources Commission.</p> <p>(2) Expenditures under section (1)(a) and (1)(b) may be made only if the Department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.</p>	3	<p>SECTION 3.-(ORS 541.656)</p> <p>(1) The Water Supply Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply Development Account shall be credited to the account. Moneys in the account are continuously appropriated to the Water Resources Department for use in carrying out sections 1 to 15 of this 2013 Act. [not included in OAR]</p> <p>(2) The department may expend moneys from the account for:</p> <p>(a) Subject to subsection (4) of this section, making loans and grants to evaluate, plan and develop in-stream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:</p> <p>(A) Repair or replace infrastructure to increase the efficiency of water use;</p> <p>(B) Provide new or expanded water storage;</p> <p>(C) Improve or alter operations of existing water storage facilities in connection with newly developed water;</p> <p>(D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;</p> <p>(E) Allocate federally stored water;</p> <p>(F) Promote water reuse;</p> <p>(G) Promote water conservation;</p> <p>(H) Provide streamflow protection or restoration;</p> <p>(I) Provide for water management or measurement in connection with newly developed water; and</p>

Comment [tdI2]: An *Excerpt* is a tool used to print the bill language next to the section of the OAR (in the left column) where it will be used.

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			<p>(J) Determine seasonally varying flows in connection with newly developed water.</p> <p>(b) Paying the necessary administrative and technical costs of the department in carrying out sections 1 to 15 of this 2013 Act.</p> <p>(3) (a) In addition to any other permissible uses of moneys in the account, the department may expend moneys from the account to support:</p> <p>(A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and</p> <p>(B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.</p> <p>(b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under sections 1 to 15 of this 2013 Act.</p> <p>(4) The department may expend account moneys under subsection (2) of this section for loans and grants to develop in-stream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.</p>
030	<p>Loan and Grant Applicant Eligibility</p> <p>(1) Parties eligible for a loan or grant under these rules include:</p> <p>(a) "Persons" as defined by ORS 536.007.</p> <p>(b) "Indian tribes" as defined by ORS 391.802.</p> <p>(c) "Non-profit organizations".</p> <p>(2) If an applicant is required to have a water management and conservation plan, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account.</p>	4	<p>SECTION 4. (ORS 541.659)</p> <p>Loans and grants may be made from the Water Supply Development Account to persons as defined in ORS 536.007, Indian tribes as defined in ORS 391.802 and nonprofit organizations. If an applicant is required to have a water management and conservation plan, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account.</p>
040	<p>Pre-application conferences</p> <p>(1) A pre-application conference may be requested by prospective applicants.</p> <p>(2) The Department may request, and the applicant must provide 14 days prior to the conference, adequate project information to prepare for the pre-application conference.</p> <p>(3) At the pre-application conference, the Department shall inform the prospective applicant of:</p> <p>(a) The procedural and substantive requirements of a loan or grant application.</p> <p>(b) The scoring system used to evaluate loan and grant requests.</p> <p>(c) Any known issues associated with project eligibility for a loan or grant from the account.</p> <p>(4) The prospective applicant may request additional pre-application consultation with the department.</p>	5	<p>SECTION 5. (ORS 541.663)</p> <p>(1) A prospective applicant for a loan or grant from the Water Supply Development Account may participate in a preapplication conference with the Water Resources Department.</p> <p>(2) At the preapplication conference, the department shall inform the prospective applicant of the procedural and substantive requirements of a loan or grant application and of the scoring system used to evaluate loan and grant requests. The department shall assist the prospective applicant by identifying known issues that may affect project eligibility for a loan or grant from the account.</p> <p>(3) Not less than 14 days before the preapplication conference, the prospective applicant must provide the department with adequate project information to prepare for the preapplication conference.</p> <p>(4) The prospective applicant may request additional preapplication consultation with the department.</p>
050	<p>Application Submission Periods</p> <p>(1) The Department shall accept an application for a loan or grant at any time, but shall establish a yearly</p>	7	<p>SECTION 7. (ORS 541.669)</p> <p>(1) <i>Excerpt</i> - The commission shall make the loan and grant funding decisions once each</p>

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	<p>deadline for the consideration of a pool of applications.</p> <p>(2) The Department will conduct a preliminary review of the application for completeness, eligibility and for sufficiency of information to determine benefits and outcomes as listed in OAR 690-###-060 Scoring and Ranking and OAR 690-###-065 Project Selection.</p> <p>(3) Applications not funded during one annual period may be resubmitted in a future period.</p>		<p>year. Applications must be filed with the Water Resources Department. The department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.</p> <p>(2) <i>Excerpt</i> - The department shall conduct a preliminary review of applications to check for completeness, eligibility and minimum requirements upon receipt of each application. The department shall return incomplete applications to the applicant.</p>
055	<p>Application Requirements</p> <p>(1) Applications for a loan or grant from the Water Supply Development Account must submit a written application to the Department.</p> <p>(2) The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including the expected results from the proposed Project for each of the public benefits as prescribed in OAR 690-###-0065, demonstrated in-kind and cash cost match of not less than 25% of the amount sought for grants, and documentation to validate the Project schedule and costs.</p> <p>(3) Applications will not be given a score based on their completeness or quality; they either pass the initial review or they do not.</p> <p>(4) Applications determined to be ineligible, incomplete or that provide insufficient information shall be returned to the applicant.</p>	6	<p>SECTION 6. (ORS 541.666)</p> <p>Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:</p> <ol style="list-style-type: none"> (1) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed. (2) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project. (3) Current contact information for the principal contact, fiscal officer and involved landowners. (4) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record. (5) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate. (6) An itemized budget for the project, including fiscal and administrative costs. (7) A description of funds, services or materials available to the project. (8) A project schedule, including beginning and completion dates. (9) Any conditions that may affect the completion of the project. (10) A completed feasibility analysis if appropriate. (11) Suggestions for interim and long-term project performance benchmarks. (12) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account. (13) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral. (14) Letters of support for the proposed project. (15) If required by the department, a description of consultations with affected Indian tribes regarding the project. (16) Any other information required by the department.
060	<p>Scoring and Ranking; funding decisions</p> <p>(1) The primary elements in the process of scoring and ranking of applications include the following:</p> <ol style="list-style-type: none"> (a) Initial review for completeness – Complete or Incomplete (b) Public Comment (c) A Technical Review Team conducts the initial scoring and ranking for the projects, considers comments from applicants and the public and makes loan and grant funding recommendations to the 	7	<p>SECTION 7. (ORS 541.669)</p> <p>(1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking projects to determine which projects are to be awarded loans and grants from the Water Supply Development Account, including but not limited to the application of minimum criteria designed to achieve the outcomes described in section 9 of this 2013 Act. The criteria shall be based on the public benefit categories</p>

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	<p>Commission.</p> <p>(d) The Commission determines the final scoring and ranking of projects, provides for additional public comment, and makes the final decision regarding which projects are awarded loans or grants from the account.</p> <p>(2) The Technical Review team scoring methodology shall rank applications based upon the public benefits of the project. Each of the three public benefit categories will have scoring sublevels including but not limited to conditions listed in ORS 541.673.</p> <p>(a) Scoring sublevels may have positively or negatively scored items.</p> <p>(b) A point scale from -1 to + 5 shall be used as follows:</p> <p>(i) Negative one point = There is a negative impact</p> <p>(ii) One point = No or very low likelihood (0% - 20% chance) of positive impact</p> <p>(iii) Two points = Low or in some minor way (21% - 40% chance) of positive impact</p> <p>(iv) Three points = Moderate to significant likelihood (41% - 60% chance) of positive impact</p> <p>(v) Four points = High likelihood (61% - 80% chance) of positive impact</p> <p>(vi) Five points = Very high likelihood (81% - 100% chance) of positive impact</p> <p>(c) Sublevel scores shall be summed to a public benefit category level; category levels must have a positive score for the application to proceed.</p> <p>(3) The Technical Review team will use a composite score of the three public benefit categories to rank all applications and make loan and grant funding recommendations to the Commission.</p> <p>(4) The Commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account based on criteria in OAR 690-###-065.</p> <p>(5) The department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the commission have been published.</p>		<p>described in section 8 of this 2013 Act. [not included in OAR] The commission shall make the loan and grant funding decisions once each year. Applications must be filed with the Water Resources Department. The department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications. [see 050 Application Submission Periods]</p> <p>(2) The department shall conduct a preliminary review of applications to check for completeness, eligibility and minimum requirements upon receipt of each application. The department shall return incomplete applications to the applicant. [see 050 and 055] The department shall provide public notice by posting new funding applications on the department's website for a 60-day period prior to reviewing the applications. The department shall provide for the receipt of public comment on the applications during the 60-day period that applications are posted on the department's website. [see 070 Public Comment]</p> <p>(3) The department shall forward applications that have passed preliminary review, along with any comments received from applicants or the public, to a technical review team consisting of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department. [see Definitions] The technical review team shall conduct the initial scoring and ranking for the projects described in the applications, consider comments from applicants and the public and make loan and grant funding recommendations to the commission. The commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account. Before the commission makes a final decision on an application, the commission shall offer one additional opportunity for public comment. [see 070 Public Comment]</p> <p>(4) The commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles. [Not necessary for OAR]</p> <p>(5) The department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the commission have been published.</p>
065	<p>Project Selection</p> <p>The Commission shall select projects for funding which have the greatest public benefit and will achieve the statutory outcomes in ORS 541.677.</p> <p>(1) Project evaluation shall include:</p> <p>(a) The public benefit in three categories:</p> <p>(i) Economic,</p>	8	<p>SECTION 8. (ORS 541.673)</p> <p>(1) Projects applying under section 7 of this 2013 Act for funding from the Water Supply Development Account shall be evaluated based upon the public benefits of the project. The evaluation must consider both positive and negative effects of a project. The three categories of public benefit to be considered in the project evaluation are economic benefits, environmental benefits and social or cultural benefits. Each</p>

Comment [td14]: Directions to create rules are not necessary in OAR. The ~~strikeout~~ indicates that this paragraph will not be used in this portion of the administrative rules.

Comment [td15]: Notations that direct the reader to an OAR indicate where this portion of the bill will be referenced in the OAR column on the left

Comment [td13]: RAC needs to discuss how the Department will "consider both positive and negative effects of a project".

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	<ul style="list-style-type: none"> (ii) Environmental, and (iii) Social or Cultural; (b) Equal importance of each of the three categories of public benefit; and (c) Consideration of both positive and negative effects of the projects in the three categories. <p>(2) The Commission will consider all of the following in its determination of eligible Projects that will receive funding.</p> <ul style="list-style-type: none"> (a) Projects that provide benefits in each of the three categories of public benefits described in ORS 541.673. (b) The extent to which a partnership is engaged in the successful completion of the project and demonstrated collaborative efforts within the local community to meet common goals related to water supply. (c) The funding of projects of diverse sizes, types and geographic locations. (d) If a project proposes to divert water, the extent to which the project provides a measurable improvement in protected streamflows. (e) If a project proposes to increase efficiency, the extent to which the project provides a measurable increased efficiency of water use. 		<p>category of benefits shall be given equal importance in the evaluation of a project. The technical review team described in section 7 of this 2013 Act shall use the evaluation system to assign initial scores and rankings to projects. The Water Resources Commission shall use the evaluation system to assign final scorings and rankings to the projects. The commission shall award loan and grant funding from the account to the projects that have the greatest public benefit and will best achieve the outcomes described in section 9 of this 2013 Act.</p> <p>(2) The evaluation of economic benefits for a project shall be based on the changes in economic conditions expected to result from the project, including but not limited to conditions related to:</p> <ul style="list-style-type: none"> (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. <p>(3) The evaluation of environmental benefits for a project shall be based on the changes in environmental conditions expected to result from the project, including but not limited to conditions related to:</p> <ul style="list-style-type: none"> (a) A measurable improvement in protected streamflows that: <ul style="list-style-type: none"> (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. <p>(4) The evaluation of the social or cultural benefits for a project shall be based on the changes in social or cultural conditions expected to result from the project, including but not limited to conditions related to:</p> <ul style="list-style-type: none"> (a) The promotion of public health and safety and of local food systems; (b) A measurable improvement in conditions for members of minority or low-income

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			<p>communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes; (c) The promotion of recreation and scenic values; (d) Contribution to the body of scientific data publicly available in this state; (e) The promotion of state or local priorities, including but not limited to the restoration and protection of native fish species of cultural significance to Indian tribes; and (f) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state integrated water resources strategy.</p> <p><i>Excerpt from:</i> SECTION 9. (ORS 541.677) (1) The Water Resources Commission shall design the minimum criteria for the project scoring and ranking system described in section 7 of this 2013 Act to achieve the following outcomes: (a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in section 8 of this 2013 Act. (b) Preference for partnerships and collaborative projects. (c) The funding of projects of diverse sizes, types and geographic locations. (d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows. (e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use</p>
070	<p>Public Comment (1) The Department shall provide public notice and a 60-day period for public comment prior to initial scoring by the Technical Review Team by posting applications passing an initial review on the Department’s website. (2) Additional public comment will be sought by the commission prior to a final decision on an application. This will typically occur at the commission meeting.</p>	7	<p>SECTION 7. (ORS 541.669) (2) <i>Excerpt</i> - The department shall provide public notice by posting new funding applications on the department’s website for a 60-day period prior to reviewing the applications. The department shall provide for the receipt of public comment on the applications during the 60-day period that applications are posted on the department’s website. (3) <i>Excerpt</i> - Before the commission makes a final decision on an application, the commission shall offer one additional opportunity for public comment.</p>
080	<p>Program Review (1) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in ORS 541.677 are being achieved, and shall report the review findings to the Water Resources Commission. (2) The commission shall modify the project selection process as necessary to better achieve the outcomes described in ORS 541.677.</p>	9	<p>SECTION 9. (ORS 541.677) (1) The Water Resources Commission shall design the minimum criteria for the project scoring and ranking system described in section 7 of this 2013 Act to achieve the following outcomes: — (a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in section 8 of this 2013 Act. — (b) Preference for partnerships and collaborative projects. — (c) The funding of projects of diverse sizes, types and geographic locations. — (d) If a project proposes to divert water, preference for projects that provide a</p>

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			<p>measurable improvement in protected streamflows. (e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use. [Section (1) is incorporated into OAR 690-###-065 Project Selection]</p> <p>(2) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in subsection (1) of this section are being achieved, and shall report the review findings to the Water Resources Commission. The commission shall modify the project selection process as necessary to better achieve the outcomes described in subsection (1) of this section.</p>
090	<p>Grant conditions for certain above-ground storage facilities</p> <p>(1) A grant for the development of a new or expanded above-ground storage facility that impounds surface water on a perennial stream; diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or diverts more than 500 acre-feet of water annually must dedicate 25% of the newly developed water to in-stream use.</p> <p>(2) Compliance may be established by providing a copy of a federal, state, or local permit stating that 25% of the newly developed water is dedicated to in-stream use.</p> <p>(3) The Department shall place a condition [TO BE DETERMINED]</p>	10	<p>SECTION 10. (ORS 541.681)</p> <p>(1) The recipient of a grant from the Water Supply Development Account must agree to the condition set forth in subsection (2) of this section if the grant is for the development of a new or expanded above-ground storage facility that:</p> <p>(a) Impounds surface water on a perennial stream;</p> <p>(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or</p> <p>(c) Diverts more than 500 acre-feet of water annually.</p> <p>(2) Twenty-five percent of the newly developed water from a project described in subsection (1) of this section must be dedicated to in-stream use.</p> <p>(3) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project.</p>
100	<p>Demonstration of public benefits of project</p> <p>(1) A project that receives a loan or grant must demonstrate:</p> <p>(a) Social or cultural benefits</p> <p>(b) Economic benefits</p> <p>(c) Environmental Benefits</p> <p>(i) By dedicating 25% of conserved water or newly developed water to in-stream use; or</p> <p>(ii) Sufficient benefit to other environmental considerations as listed in ORS 541.673 to warrant an exception to the 25% listed in (i) as determined by the Technical Review Team.</p> <p>(2) The demonstration of public benefit does not exempt a project from meeting application, reporting, legal compliance, or other requirements contained in this administrative rule.</p> <p>(3) The demonstration of environmental benefits may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.</p>	11	<p>SECTION 11. (ORS 541.683)</p> <p>(1) A project that receives a loan or grant from the Water Supply Development Account must:</p> <p>(a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in section 7 of this 2013 Act; and</p> <p>(b) Except as otherwise provided in section 10 of this 2013 Act, demonstrate environmental benefits:</p> <p>(A) By dedicating 25 percent of conserved water or newly developed water to in-stream use; or</p> <p>(B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in section 7 of this 2013 Act.</p> <p>(2) The description of public benefit requirements in subsection (1) of this section does not exempt any project from meeting the minimum criteria designed by the Water Resources Commission under section 9 of this 2013 Act.</p> <p>(3) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project</p>

Comment [td16]: Agency staff are working on some proposed language for this section.

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110	<p>Protection of project water dedicated to in-stream use.</p> <p>(1) Applicants for water rights who intend to apply for grant funding under these rules will be required to apply for <u>water that can be protected instream on a form provided by the Department</u>. It shall be the applicant's responsibility to apply for enough water to satisfy the seasonally varying flow requirements. The Department shall protect the dedicated water in-stream consistent with the priority of the dedicated water source.</p> <p>(2) Dedicated water from projects may come from newly developed water or from other sources and may be put in-stream at other locations in the tributary if the department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize in-stream benefits in a manner consistent with public health and safety.</p>	12	<p>SECTION 12. (ORS 541.686)</p> <p>If a project dedicates water to in-stream use under the requirements described in section 10 of this 2013 Act or as allowed under section 11 of this 2013 Act, the Water Resources Department shall protect the dedicated water in-stream consistent with the priority of the dedicated water source. Dedicated water from projects may come from newly developed water or from other sources and may be put in-stream at other locations in the tributary if the department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize in-stream benefits in a manner consistent with public health and safety.</p>
120	<p>Determination of Seasonally Varying Flows</p> <p>(1) The Department shall make a determination as provided under subsection (2) if an application for a loan or grant is for a project that requires a new water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:</p> <p>(a) Impounds surface water on a perennial stream;</p> <p>(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or</p> <p>(c) Diverts more than 500 acre-feet of surface water annually.</p> <p>(2) The department shall review an application to determine whether the applicable seasonally varying flows have been established for the stream of interest. If the department determines that the applicable seasonally varying flows have not been established, the department shall establish the seasonally varying flows before issuing a loan or grant. The department may use Water Supply Development Account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.</p> <p>(3) The department shall establish any seasonally varying flows under subsection (2) in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The department may rely upon existing scientific data and analysis or may fund new data and analysis. The department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules. If seasonally varying flows are established for a stream, a subsequent water storage or aquifer recharge permit or limited license for the storage of water must be conditioned in accordance with the applicable seasonally varying flows if the license or permit:</p> <p>(a) Is for a project receiving a loan or grant from the account;</p> <p>(b) Is for the storage of water outside of the official irrigation season; and</p> <p>(c) Has a diversion point that is subject to seasonally varying flows.</p> <p>(4) The applicant for a permit or license may request that seasonally varying flows be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.</p> <p>(5) The department shall condition the new water storage permit and resulting certificate, new aquifer recharge</p>	13	<p>SECTION 13. (ORS 541.689)</p> <p>(1) The Water Resources Department shall make a determination as provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a new water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:</p> <p>(a) Impounds surface water on a perennial stream;</p> <p>(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or</p> <p>(c) Diverts more than 500 acre-feet of surface water annually.</p> <p>(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not been established, the department shall establish the seasonally varying flows before issuing a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.</p> <p>(3) The department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The department may rely upon existing scientific data and analysis or may fund new data and analysis. The department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules. If seasonally varying flows are established for a stream, a subsequent water storage or aquifer recharge permit or limited license for the storage of water must be conditioned in accordance with the applicable seasonally varying flows if the license or permit:</p> <p>(a) Is for a project receiving a loan or grant from the account;</p> <p>(b) Is for the storage of water outside of the official irrigation season; and</p>

Comment [dwf7]: An applicant can not enlarge their application after submitting an application to allow water to be released for instream flow augmentation. So, they'll have to ask for that use, and an "up to" X AF. They might not know how much water will need to be protected, but they'll have to ask for a large quantity and then scale back after they find out the SVF Q #. A supplemental form/page can be developed to help applicants with this part of their application and any other SB839 application elements that end up being necessary. OAR 690-310-240(3)" The Department may issue a permit for a water use that is conditioned or modified from the use originally proposed in the application only if the conditioned or modified use does not change the source of the water, increase the amount of land appurtenant to the water use or enlarge the proposed use of water in any way."

OAR#	DRAFT RULES	Bill Section	SB 839 (ORS REFERENCE)
	<p>permit and resulting certificate or new aquifer recharge limited license associated with a project that receives a grant or loan from the account to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project. To protect the seasonally varying flow it will be necessary for the applicant to request a sufficient quantity of water be dedicated for protection when filing the water right or limited license application.</p> <p>(6) For purposes of any project that receives a loan or grant and has the characteristics described in subsection (1) of this section, or any project described in subsection (3) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.</p> <p>(7) Subsections (1) to (6) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.</p>		<p>(c) Has a diversion point that is subject to seasonally varying flows.</p> <p>(4) The applicant for a permit or license described in subsection (3) of this section may request that seasonally varying flows be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.</p> <p>(5) The department shall condition the new water storage permit and resulting certificate, new aquifer recharge permit and resulting certificate or new limited license associated with a project that receives a grant or loan from the account to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.</p> <p>(6) For purposes of any project that receives a loan or grant from the account and has the characteristics described in subsection (1) of this section, or any project described in subsection (3) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.</p> <p>(7) Subsections (1) to (6) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.</p>
125	<p>Seasonally Varying Flow Methodology</p> <p>(1) In determining the method for development of Seasonally Varying Flow prescription the project proponent (applicant) shall use the SB 839 Matrix to Select Methods for Development of Seasonally Varying Flow Prescriptions.</p> <p>(2) "Sufficient" information means enough scientific information collected using standard biological, hydrologic, or hydraulic methods to develop the recommended flow prescription.</p> <p>(3) The SB 839 Matrix to Select Methods for Development of Seasonally Varying Flow Prescriptions shall consider:</p> <p>(a) The level of ecological impact of the proposed project including:</p> <p>(A) Whether the project is diverting water from a stream supporting sensitive, threatened, or endangered species;</p> <p>(B) Whether the impoundment is located in-channel;</p> <p>(C) Whether the impoundment or proposed project has an impact on sensitive habitat/process;</p> <p>(D) Whether the project is proposing to divert more than half of the remaining available water in the basin;</p> <p>(E) Whether the majority of water is already developed in the basin.</p> <p>(b) The type of information already available including:</p> <p>(A) Whether there is sufficient long-term data to understand the natural hydrograph;</p> <p>(B) Whether there is sufficient information to understand climate driven shifts to the flow regime.</p> <p>(C) Whether there is sufficient information about water availability;</p>		

Comment [dwf8]: An applicant can not enlarge their application after submitting an application to allow water to be released for instream flow augmentation. So, they'll have to ask for that use, and an "up to" X AF. They might not know how much water will need to be protected, but they'll have to ask for a large quantity and then scale back after they find out the SVF Q#. A supplemental form/page can be developed to help applicants with this part of their application and any other SB839 application elements that end up being necessary.

OAR#	DRAFT RULES	Bill Section	SB 839 (ORS REFERENCE)
	<p>(D) Whether there is sufficient information about all species present at/below the point of diversion and their lifecycle needs.</p> <p>(E) Whether there are habitat studies that provide sufficient information to understand the relationship between selected habitat features and streamflow;</p> <p>(F) Whether there are geomorphological studies or data that provide sufficient information to understand the relationship between sediment transport and streamflow;</p> <p>(G) Whether there is sufficient stream data available to describe stream complexity and floodplain connectivity; and</p> <p>(H) Whether there is sufficient water quality data available, particularly related to temperature.</p>		
130	<p>Agreements and Conditions</p> <ul style="list-style-type: none"> • Permitting • Project specific conditions • Project completion within certain time period from date of award 	14	SECTION 14. (ORS 541.692)
	<p>Project Administration</p> <ul style="list-style-type: none"> • Reporting • Sanctions • 		<p>(1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits. Project materials must include a notation indicating that Water Resources Department funding was used for the project.</p> <p>(2) The loans or grants may be conditioned to require that the recipient complete and operate the funded project as described in the loan or grant application. The department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.</p> <p>(3) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the department that describe the completed work, the public benefits achieved and project expenditures. The recipient must regularly measure and report the water diverted and used from the project. The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the department. The department may impose other project specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.</p> <p>(4) The department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (3) of this section.</p>
	<p>Interest Rates and Loan Fees</p> <ul style="list-style-type: none"> • Interest Rates for loans (based on term of loan) • Annual Loan Fee 		
140	<p>Standards for security of loans</p> <p>(1) Loans shall not be approved unless:</p> <p>(a) The applicant demonstrates and the department finds that the loan will comply with all requirements of the department and any applicable federal and state requirements.</p> <p>(b) The director determines that the applicant meets the following standards:</p> <p>(A) Demonstrated revenues or other resources available to:</p> <p>(i) Repay the loan in accordance with its terms, and</p>	15	
			<p>(1) The Water Resources Commission shall adopt rules establishing standards for borrowers obtaining loans issued from the Water Supply Development Account. The commission shall design the standards to ensure that all loans have a high probability of repayment and that all loans are adequately secured in the event of a default. The commission shall solicit comments from the Oregon Department of Administrative Services and the State Treasurer when designing the standards. The standards may</p>

Comment [tdI9]: There are typically a number of items addressed in Administrative rules regarding agreements, administration, and rates/fees. Many of these are not in SB 839, but should be discussed for possible inclusion.

Comment [tdI10]: Discussion requested regarding scope of this section.

OAR#	DRAFT RULES	Bill Section	SB 839 (ORS REFERENCE)
	<p>(ii) Provide for the continued operation and maintenance of the project.</p> <p>(B) The applicant is a qualified, credit-worthy and responsible water developer as demonstrated by a satisfactory credit history or rating from a rating agency; or</p> <p>(C) A first lien or other good and sufficient collateral is available to secure and provide repayment of the loan, and</p> <p>(D) The project plan assures timely completion and includes schedules with measurable performance benchmarks.</p> <p>(c) The application requirements and qualifications are met.</p> <p>(d) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints</p>		<p>include, but need not be limited to, standards that give preference to entities with ad valorem taxing authority.</p> <p>(2) If the Water Resources Department approves a loan from the account for the implementation of a water development project, the department may require that the applicant enter into a loan contract, secured by a first lien or by other good and sufficient collateral.</p>
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	Portions not used in the draft Admin Rules
3	<p>SECTION 3.</p> <p>(1) The Water Supply Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply Development Account shall be credited to the account. Moneys in the account are continuously appropriated to the Water Resources Department for use in carrying out sections 1 to 15 of this 2013 Act.</p>
7	<p>SECTION 7. (ORS 541.669)</p> <p>(1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking projects to determine which projects are to be awarded loans and grants from the Water Supply Development Account, including but not limited to the application of minimum criteria designed to achieve the outcomes described in section 9 of this 2013 Act. The criteria shall be based on the public benefit categories described in section 8 of this 2013 Act.</p>
7	<p>SECTION 7. (ORS 541.669)</p> <p>(4) The commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.</p>

