

Oregon CWSRF 2022 Rulemaking Advisory Committee Meeting 2

Clean Water State Revolving Fund

Aug. 19, 2022
Zoom Meeting

Agenda

- **Welcome and logistics** - (5 minutes – begin recording)
 - Roll call, introduction of committee members not present for RAC meeting #1
- **Brief review of meeting #1. Goals for meeting #2:** (5 minutes)
- **Proposed rule changes**
 - **Principal forgiveness** (15 minutes)
 - OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates
 - **Q and A, feedback and discussion**
 - **Affordability criteria** (15 minutes)
 - OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates
 - **Q and A, feedback and discussion** (10 minutes)
- **Break** (10 minutes)

Agenda (continued)

- **Proposed rule changes** (continued)
 - **Project ranking and scoring** (15 minutes)
 - OAR 340-054-0026 CWSRF Project Ranking Criteria for Non-planning Loans
 - OAR 340-054-0027 CWSRF Project Ranking Criteria for Planning Loans
 - **Q and A, feedback and discussion** (10 minutes)
 - **Intended Use Plan**
 - OAR 340-054-0025 Intended Use Plan (IUP)
 - **Q and A, feedback and discussion** (10 minutes) and Project Priority List
- **Environmental Justice metrics and analysis** (30 minutes)
 - **Q and A, feedback and discussion** (10 minutes)
- **Wrap up with committee and overview of RAC meeting #3** (10 minutes)
- **Public comment** (10 minutes)
- **Adjourn**

RAC Meeting #1 Brief Review

- Committee membership introductions
- Review Advisory Committee Charter, roles and responsibilities
- Rule language – how much detail needed in rule
- Scope of Rulemaking
 - Principal forgiveness
 - Affordability criteria
 - Project ranking and scoring
 - Intended Use Plan
- CWSRF Program overview – key areas related to rulemaking (see above)
- Bipartisan Infrastructure Law – key provisions and program priorities
- Environmental Justice metrics under consideration

Rulemaking Advisory Committee

Milestones and Timeline

Milestone	Target Dates
RAC Meeting #1 – Rulemaking, CWSRF program, BIL and EJ overview	July 29, 2022
RAC Meeting #2 – CWSRF rule change recommendations	Aug. 19, 2022
RAC Meeting #3 – CWSRF proposal for EQC, fiscal impact statement, racial equity statement	September TBD
DEQ presents proposed rule changes to EQC	January 2023
CWSRF Standing Advisory Committee – continued program guidance	January – December 2023
BIL Implementation	April 2023 ->

RAC Meeting #2 Purpose and Goals

- To present proposed rule changes in relevant Oregon Administrative Rule sections for feedback and considerations by the committee
- To develop greater understanding of environmental justice metrics, receive feedback on thresholds and considerations of how to incorporate into the program
- To give an overview of Rulemaking Advisory Committee meeting #3

Proposed Rule Changes – Principal Forgiveness

- Allow flexibility to meet federal capitalization grant requirements, including Bipartisan Infrastructure Law, and any future additional federal capitalization grants
- Remove limited eligibility of principal forgiveness for planning loans from just sustainable planning projects to allow PF for all planning loans
- Eliminate limits in rule for principal forgiveness amount on a per loan basis to meet overall program requirements for BIL
- Eliminate limits of principal forgiveness specific to green projects in rule consistent with other PF eligibilities, keeps limit of PF to green components of projects
- Will document principal forgiveness limits for the program in the Intended Use Plan

Principal Forgiveness – OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

Existing Rule Language	Proposed Changes	Reason/basis for Change
(12) Principal forgiveness for public agency borrowers. DEQ may provide additional subsidization to public agency borrowers in the form of principal forgiveness to the maximum extent the federal capitalization grant allows and as the criteria established in this section require.	<p>“Whenever DEQ receives a federal capitalization grant in addition to the annual base capitalization grant, DEQ may provide additional subsidization to eligible borrowers in the form of principal forgiveness to the maximum extent that the additional capitalization grant allows, and subject to its terms and the criteria established in this section.”</p> <p>Details will be moved to Intended Use Plan.</p>	<p>Will ensure the program meets federal requirements for BIL and any future capitalization grants</p> <p>Does not limit the program to just meet BIL requirements.</p> <p>Allows flexibility to meet future federal cap grants without additional rule change</p> <p>Support from EPA, DEQ leadership and program</p> <p>This is to meet federal requirement not required to be in rule.</p>

Principal Forgiveness – OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

Existing Rule Language	Proposed Changes	Reason/basis for Change
(b) Ineligible loans. (D) Planning loans, except for planning loans for projects described in subsection (a)(B) of this section of the rule. (“sustainable project planning”)	Strike from rule Planning loan eligibility for PF will be identified in the Intended Use Plan.	Allows planning loans to include principal forgiveness award. Does not limit principal forgiveness for planning loans to sustainable project planning. Provides more incentive to finance planning with planning loans including principal forgiveness Allows the program to offer more principal forgiveness for planning

Principal Forgiveness – OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

Existing Rule Language	Proposed Changes	Reason/basis for Change
<p>(f) Award Amount.</p> <p>“(A) Eligible public agency borrowers that are an eligible recipient may receive additional subsidization <i>for up to fifty percent of their loan but not to exceed \$500,000.</i>”</p>	<p>Strike “<i>for up to fifty percent of their loan but not to exceed \$500,000</i>” ...</p> <p>Replace with “...for an amount not to exceed the maximum amount determined by DEQ.”</p> <p>Principal forgiveness award limits will be included in the Intended Use Plan.</p>	<p>Allows CWSRF program to meet federal requirement of providing 49% of the BIL supplemental cap grant as principal forgiveness for the program</p> <p>Eliminates limit for principal forgiveness in rule to allow more flexibility to provide more principal forgiveness on a per loan basis.</p> <p>Allows CWSRF to be responsive to any changes in future requirements without rule change while meeting program requirements.</p> <p>Limits for principal forgiveness can be included in the Intended Use Plan and adjusted as needed without future rule changes.</p> <p>The IUP includes public comment for transparency and responsiveness to community and program needs.</p>

Principal Forgiveness – OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

Existing Rule Language	Proposed Changes	Reason/basis for Change
(B) For public agency borrowers that are an eligible recipient and that qualify for principal forgiveness under paragraph 12(a)(B), DEQ will limit the additional subsidization to 50 percent of the project components qualifying under paragraph 12(a)(B), <i>not to exceed 50 percent of the loan amount or \$500,000, whichever is less.</i>	<p>Strike “not to exceed 50 percent of the loan amount or \$500,000, whichever is less.”</p> <p>Keep “limit additional subsidization to 50 percent of the project components qualifying under 12(a)(B).” ... “implements a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction.”</p>	<p>Consistency of eliminating limits of PF of 50 percent of loan or \$500,000 for green project eligibility.</p> <p>Retains limits of principal forgiveness to “green” components of projects (no change).</p> <p>Will include criteria for awarding principal forgiveness in IUP as required by EPA.</p>

Q and A, Feedback, and Discussion



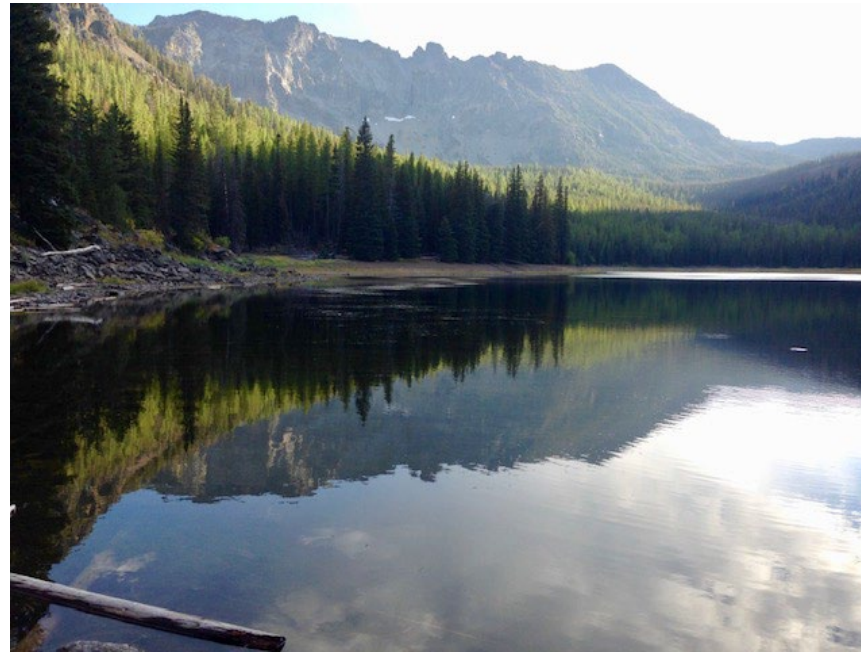
Proposed Rule Changes – Affordability Criteria

- Remove detail from rule regarding affordability criteria reference to Business Oregon Distressed Areas Index and negative population trends
- Replace with language from Clean Water Act regarding required contents of affordability criteria for CWSRF programs
- Document details of affordability criteria metrics in Intended Use Plan as required by EPA

Affordability Criteria – OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

Existing Rule Language	Proposed Changes	Reason/basis for Change
<p>12 (c) Affordability Criteria. DEQ will use the following criteria to determine affordability ...</p> <p>(A) Distressed as calculated by the Oregon Business Development Department's Oregon Distressed Index ...</p> <p>(B) Negative population trends as calculated by the annual United States' Census Bureau's American Community Survey.</p>	<p>Replace with: "Affordability Criteria. Affordability criteria shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area."</p> <p>This is language from the Clean Water Act</p> <p>Details and metrics will be described in Intended Use Plan as required by EPA</p>	<p>This is language from the Clean Water Act Section 603(i) regarding affordability criteria requirements.</p> <p>EPA BIL implementation guidance memo states: "States must include the disadvantaged community definition and the state affordability criteria in the IUP, which provides an opportunity for meaningful public review and comment" (EPA BIL implementation memo, page 26).</p> <p>Most SRF programs nationally publish affordability criteria in their Intended Use Plan, not in rule. All SRFs in region 10 publish affordability criteria in Intended Use Plan, not in rule.</p> <p>EPA supports including affordability criteria in Intended Use Plan to meet requirements, not required to be in rule.</p> <p>DEQ leadership supports removing detail from rule and including in IUP as required.</p>

Q and A, Feedback, and Discussion



Break

10 Minute Break



Proposed Rule Changes – Project Ranking and Scoring

- Remove detail from rule regarding project ranking and scoring
- Keep language in rule regarding primary project ranking categories
- Move project ranking and scoring criteria details to the Intended Use Plan, which meets federal requirements of EPA

Project Ranking and Scoring: OAR 340-054-0026 CWSRF Project Ranking Criteria for Non-planning Loans

Existing Rule (key elements summarized)	Proposed Changes	Reason/basis for Change
<p>(1) Category 1. Water quality standards and public health considerations.</p> <p>(1)(a) – (d) Key elements summarized below:</p> <ul style="list-style-type: none"> • Water quality benefits • Water quality standards • Compliance 	<p>Keep: “(1) Category 1. Water quality standards and public health considerations.”</p> <p>Strike detail: (1)(a) – (d)</p> <p>Move details to IUP.</p>	<p>Scoring criteria is not required to be in rule.</p> <p>EPA requires scoring criteria to be documented in the IUP.</p> <p>The CWSRF already uses more detailed internal scoring guidelines including categories and subcategories in rule to assign points to projects.</p> <p>CWSRF will be able to adjust scoring guidelines to include environmental justice metrics for the program in the IUP without future rule changes.</p> <p>The IUP includes public comment for transparency and responsiveness.</p>

Project Ranking and Scoring: OAR 340-054-0026 CWSRF Project Ranking Criteria for Non-planning Loans

Existing Rule (key elements summarized)	Proposed Changes	Reason/basis for Change
<p>(2) Category 2. Watershed and health benefits.</p> <p>(a) – (i) Key elements summarized below:</p> <ul style="list-style-type: none"> • Fish and aquatic life/habitat • Special status water bodies • Total Maximum Daily Load • Performance based monitoring • Green project categories (green infrastructure, water efficiency, energy efficiency, environmental innovation) 	<p>Keep: “(2) Category 2. Watershed and health benefits.”</p> <p>Strike (2) (a) – (i)</p> <p>Move details to IUP.</p>	<p>Scoring criteria is not required to be in rule.</p> <p>EPA requires scoring criteria to be documented in the IUP.</p> <p>The CWSRF already uses more detailed internal scoring guidelines including categories and subcategories in rule to assign points to projects.</p> <p>CWSRF will be able to adjust scoring guidelines to include environmental justice metrics for the program in the IUP without future rule changes.</p> <p>The IUP includes public comment for transparency and responsiveness.</p>

Project Ranking and Scoring: OAR 340-054-0026 CWSRF Project Ranking Criteria for Non-planning Loans

Existing Rule Language	Proposed Changes	Reason/basis for Change
<p>(3) Category 3. Other considerations. (a) – (e) key elements summarized below:</p> <ul style="list-style-type: none"> • Long term planning • Outreach/education • Other resources/partnerships • Small community (10,000 population or less) • Sponsorship option 	<p>Keep: “(3) Category 3. Other considerations.”</p> <p>Strike: (3) (a) – (e)</p> <p>Move details to IUP.</p>	<p>Scoring criteria is not required to be in rule.</p> <p>EPA requires scoring criteria to be documented in the IUP.</p> <p>The CWSRF already uses more detailed internal scoring guidelines including categories and subcategories in rule to assign points to projects.</p> <p>CWSRF will be able to adjust scoring guidelines to include environmental justice metrics for the program in the IUP without future rule changes.</p> <p>The IUP includes public comment for transparency and responsiveness.</p>

Project Ranking and Scoring: Project Ranking and Scoring: OAR 340-054-0027

CWSRF Project Ranking Criteria for Planning Loans

Existing Rule Language	Proposed Changes	Reason/basis for Change
<p>Will the scope of the planning effort:</p> <p>(1) Include more than one water quality benefit, pollutant or restoration effort?</p> <p>(2) Include sustainability?</p> <p>(3) Take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?</p> <p>(4) Include financial, managerial or technical capability aspects of the project?</p> <p>(5) Include integrating natural infrastructure and built systems?</p> <p>(6) Demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?</p>	<p>Strike from rule.</p> <p>Move details to IUP.</p>	<p>EPA requires scoring criteria to be documented in the IUP, which will include planning loans.</p> <p>Scoring criteria for planning loans specifically is not required in rule and there is no need to include scoring criteria for planning loans explicitly in rule.</p> <p>The CWSRF already uses more detailed internal scoring guidelines for planning loans to assign points to projects.</p> <p>CWSRF will be able to adjust scoring guidelines for the program in the IUP without future rule changes.</p> <p>Reduce risk – CWSRF is considered “low risk” to remove detail from rule per DOJ</p>

Q and A, Feedback, and Discussion



Proposed Rule Changes – Intended Use Plan

- Remove details from rule regarding project ranking and scoring
- Add language indicating project ranking and scoring criteria will be documented in the Intended Use Plan
- Keep language in regarding Intended Use Plan requirements and timelines
- These changes will be consistent with EPA requirements for the IUP

Intended Use Plan: OAR 340-054-0025 Intended Use Plan (IUP) and Project Priority List

Existing Rule Language	Proposed Changes	Reason/basis for Change
<p>(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.</p> <p>(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 340-054-0026 and 340-054-0027 on a point scale from one to five as follows:</p> <p>(A) One point = No or very low likelihood.</p> <p>(B) Two points = Low or in some minor way.</p> <p>(C) Three points = Moderate to significant likelihood.</p> <p>(D) Four points = High likelihood.</p> <p>(E) Five points = Very high likelihood.</p> <p>(b) DEQ will evaluate criteria 1(c), 1(d), 2(b), 2(c), 2(d), 2(e), and 3(d) in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (a) of this section.</p>	<p>Strike rule language detail regarding points (5)(a)(A) – (E), and (b).</p> <p>Replace language indicating scoring and ranking is in IUP:</p> <p>“Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on scoring criteria identified in the Intended Use Plan.”</p>	<p>EPA requires scoring criteria and project priority list in the IUP. This language refers to scoring and ranking of projects in the IUP.</p> <p>Scoring criteria and points are not required to be in rule, this satisfies the federal requirement to include in the IUP.</p> <p>CWSRF uses internal scoring criteria guidelines with detail to assign points in scoring projects. There is no need for this level of detail in rule and this is duplicative.</p> <p>Note: other language in rule regarding IUP requirements and timeline will remain.</p>

Q and A, Feedback, and Discussion



Time check

Quick Break?

