**CWSRF Temporary Rulemaking**

**Presentation to EQC**

**April 17, 2009**

**Background of CWSRF loan program (Neil)**

* The Clean Water State Revolving Fund was established under the CWA amendments of 1987 to fund water quality improvement projects. The loan program is administered by DEQ through federal capitalization grants received from EPA. Oregon’s first loan was made in 1990.
* DEQ receives on an average about $10 million in annual capitalization grant. 20% state match of the grant is required.
* Due to the revolving nature of the loan program DEQ offers about $40 million annually for loans (this is from the annual cap grant, repayment on existing loans, interest on treasury account, and match).
* To date, DEQ has provided $716.5 million to 124 borrowers (245 loans total).

**Good**

**Overview of the Act (Neil)**

* The 2009 American Recovery and Reinvestment Act signed into law on Feb. 17, 2009 provides an additional $4 billion through capitalization grants to the states for the Clean Water State Revolving Fund loan program.
* DEQ’s “share” of this is about $44 million.
* The Act requires 20% of this amount be used for a Green Project Reserve to fund projects addressing green infrastructure, water or energy efficiency, or be environmentally innovative. This amounts to $8.8 million.
* The Act allows the use of 4% of the grant for administrative costs. Our analysis indicates that our current program resources can facilitate the implementation of the Act and disbursement of the $44 million cap grant and thus we will direct the 4% to be available for loans.
* The Act requires not less than 50% of the grant for additional subsidization to be provided through an eligible form of assistance. We reviewed current statutes and administrative rules, and the option decided on is to provide principal forgiveness on a loan. Since current rules do not allow principal forgiveness, the temporary rules address this (Judy will discuss these terms in a few minutes).

**Good**

**Project Applicants and Stimulus Funding**

* Through our outreach efforts since December 2008, we have supported (I don’t think we want to promote the idea that we encouraged public agencies to apply-given the grant vs. the demand we now have) public agencies applying for this additional funding. To date, we have received 164 applications totaling about $716 million.
* All projects must be under contract or construction by Feb. 16, 2010, and projects must comply with the Davis-Bacon Act and must use iron, steel, and manufactured goods produced in the U.S. (there is an optional waiver for the “buy American requirement)

**Good**

**Process to obtain the Act grant (Neil)**

* Program staff reviewed the current CWSRF program rules to ensure the CWSRF program could accommodate the requirements of the Act and proposed this temporary rulemaking to expedite obtaining the capitalization grant.
* Program staff has worked with OECDD and USDA Rural Development to understand how these agencies were pursuing the use of federal stimulus funding for water quality improvement projects and to coordinate outreach efforts to potential applicants.
* EPA regions have received their appropriate “shares” of the $4 billion, and have informed states of the capitalization grant amounts available.
* DEQ is preparing an application to Region 10 for the $44 million cap grant.
* A requirement of this application process includes preparing an Intended Use Plan that identifies the projects for which we have received applications. The Intended Use Plan must identify a project priority list of what projects will receive funding under the Act and for what loan amount.
* The Intended Use Plan will be public noticed.
* After the public comment is completed, we will send the cap grant application to EPA. We are targeting to have the application to EPA by mid-May and receive our cap grant by mid-June.
* Loans are expected to be executed in June.

**Good**

Judy, I thought your portion (below) skipped around and could be arranged in a better sequence. I have moved bullets/paragraphs around to make the information flow better…just my perspective.

**Temporary rulemaking (Judy)**

*Incorporating into existing rules*

* DEQ must comply with the federal requirements since the capitalization grant under the Act is being funneled through the CWSRF program. This means that the current OARs in place apply and DEQ’s program must meet the new requirements of the Act. For example, a project must comply with federal environmental review requirements such as the Endangered Species Act.
* Act states that funds may not be used for the purpose of purchasing or refinancing municipal debt or restructuring outstanding loans unless the initial debt was incurred after October 1, 2008. The intent of the October date was to allow loans to be made to potential borrowers while the stimulus funding debate was occurring in Congress. EPA has advised us that a loan had to be executed (signed) and subsequent debt incurred after this date.
* Program staff reviewed existing loan agreements to determine how the proposed rules could affect a project and their ability to obtain funding under the Act.

*Financial terms*

* To address the requirement for using not less than 50% for additional subsidization, staff evaluated all three options including principal forgiveness, grants, and negative interest loans. Although the Act allows the options of grants and negative interest loans, the CWSRF program is not set up to provide out-right grants and we would have to meet federal grant requirements as well. Negative interest loans are not allowed by statute.
* DEQ convened a financial workgroup to determine financing options that would meet the Act requirement to provide not less than 50% of the grant for additional subsidization. The workgroup wanted our approach to be equitable and simple and to fund as many projects as possible. (Financial terms will be discussed in a few minutes.)
* The financial workgroup analyzed various loan repayment scenarios under a certain percentage of additional subsidization at current interest rates (based on a percentage of the national average municipal bond rate) and at zero percent interest. In addition, the workgroup discussed how best to address those communities in need of this funding opportunity.
* Based on our current administrative rules defining small community, the workgroup looked at our initial list of applicants and types of projects small communities were proposing (refer to applicants’ list handout). A small community is defined as a public agency serving a population of 5000 or less. It was determined that small communities could be greatly assisted through the Act funding by offering 75% principal forgiveness while limiting the amount of a loan to $5 million. This obviously is a great financial incentive. I would like to note though that any loan agreement executed is based on an applicant having submitted a complete application.
* Other communities are also eligible and could be offered a loan with a limit of $5 million and 50% principal forgiveness. The interest rate for these communities is also proposed to be zero percent.

*Allocation of funds received*

* $5 million limit for any loan prior to Sept. 1. A limit was set to spread out the funding opportunity.
* If funds are still available after Sept. 1, a borrower that received initial funding under the Act may be allocated additional funding.
* The department will set aside 20% of the cap grant received for a Green Project Reserve.

*Adjustment to public comment requirement*

* Due to the expedient nature of this funding, we are proposing a public comment period of 14 days for the Intended Use Plan. The current rules require a 30-day comment period, and there is no federal requirement for public notice.

**Summary (Neil)**

* The department intends to follow this temporary rulemaking with a permanent rulemaking at the October EQC meeting. We want to ensure these temporary rule amendments address any possible future additional capitalization grant money that may be available to the department.
* DEQ program staff will continue to work with applicants to ensure the requirements of the Act are met. This includes tracking of projects for which loans have been made for.
* We will also follow through with reporting and certification requirements and state goals established by the Governor’s Office.
* We recommend the commission adopt the proposed rule revisions as presented in Attachment A and the findings in Attachment B.

**Good**

**Additional Info**

**Outreach –** Solicitation letter sent in December to:

* By US Mail - Cities: 242, Counties: 36, Special Districts: 142, Soil and Water Conservation Districts: 45
* By email (through ACWA and OWRC to their members), Wastewater and Stormwater Management agencies: 75, Irrigation Districts: 44
* Total: 509 (excluding ACWA mailing)

**“Ready to proceed” or “shovel-ready”**

* These terms not defined in the Act. We have encouraged applicants to submit applications that are complete and have projects that are ready to sign for a loan agreement. Depending on the type of loan, an applicant must also have planning and design documents and a water quality permit.

**Amount of unused loans communities have prior to Oct. 1, 2008**

Communities that have loan agreements signed and no loans disbursed include:

* Coquille - signed December 28, 2006; no disbursement yet
* Miles Crossing Sanitary Dist. - signed March 7, 2008; 1st disbursement 11/10/2008
* Portland - signed January 2, 2007; no disbursements yet (this is the nonpoint source part of a sponsorship option)
* Warrenton - signed April 30, 2007; no disbursements yet
* Woodburn - signed July 19, 2007; 1st disbursement November 20, 2008

**Amount of unused loans communities have on or after Oct. 1, 2008**

* Clackamas County Service District – signed January 2009 ($4.1 million/$13 million total), resubmitted
* MWMC – signed December 2008 ($36 million)
* Milwaukie – signed December 2008 ($3.6 million), resubmitted
* Scappoose – signed December 2008 ($700,000), resubmitted

**Small Communities**

* Current rules allow maximum 15% of CWSRF fund to be available (this would equate to about $6.6 million of the $44 million).
* Temporary rules [-0106(4)] do not define “classes” of borrowers as we wanted the funds to be equally available to everyone.

**Ranking of projects**

* Same ranking – In the past a “tie-breaker” was based on population of the community served. The larger the community, the more points. Unknown as to why it was defined as such, although could be due to more people benefiting from the project.
* “Tie-breaker” could be focused on “disadvantaged” communities and we could start by looking at the median household income (MHI).

**Loan increases**

* Feb. 17, 2009 date included to encourage new projects to apply, as current rules direct available funds to first go to loan increases.
* Projects with loans from the CWSRF program should have already considered and lined up their financing needs for the project.

**Job creation**

* Any reporting update on this?

**What if project not under contract or construction by Feb. 17, 2010?**

* What exactly would happen? ( March 2 EPA guidance simply says EPA will immediately deobligate funds not under construction/contract by Feb 17, 2010)
* Can another project be substituted for it? (Not clear. Guidance says none of the funds reallocated will be provided to states whose funds were reallocated)

**Definition of “green project”**

* Department believes EPA’s guidance is comprehensive with examples (water or energy efficiency, green infrastructure, and environmentally innovative projects).
* Reauthorization of the CWA may include regulations around a permanent Green Project Reserve that states will have to dedicate funds to.
* For future program rulemaking (targeted to begin later this year), we will be looking at how to integrate sustainability.

**Statewide Needs**

* About $5.9 billion in clean watersheds needs in Oregon (2009 survey in progress)