

Item C: Oregon CWSRF 2022 Rulemaking Environmental Quality Commission Meeting Clean Water State Revolving Fund

Jan. 19, 2023

Presentation overview

- Background: Bipartisan Infrastructure Law and CWSRF rulemaking
- CWSRF rulemaking priorities and scope
- CWSRF rulemaking milestones and timeline
- Proposed rules overview
- BIL implementation beyond rulemaking ... looking ahead
- DEQ recommendation

Bipartisan Infrastructure Law

Key Provisions and Priorities

- Federal infrastructure funding Nov. 2021 to SRFs through EPA for five years
- ***New requirement for CWSRF programs to provide more principal forgiveness***
- Priority to address “disadvantaged communities” (affordability criteria for CWSRFs)
- Priority on environmental justice
- Priority to address emerging contaminants
- Build America Buy America requirements
- Technical assistance (new under Clean Water Act)

EPA Capitalization Grant Funding FFY2022 Allocated for Oregon CWSRF

Annual Base Cap Grant	BIL Supplemental Cap Grant	Emerging Contaminants Cap Grant
\$13,071,000	\$ 20,271,000	\$1,064,000

- **49% of BIL cap grant amount must be provided as principal forgiveness**
- Technical assistance: 2% of each cap grant available for TA, including, but not limited to:
 - Application assistance
 - Capacity development
 - Meeting federal requirements
 - Project management
- Emerging contaminants cap grant of \$1,064,000 available each year
 - DEQ is determining needs and potential projects for EC funding

Estimated BIL Funding for Oregon CWSRF Over the Next Five Years

FFY2022	\$ 20,271,000
FFY2023	\$ 23,578,386
FFY2024	\$ 25,730,637
FFY2025	\$ 27,872,179
FFY2026	\$ 27,872,179
Total	\$125,324,381

CWSRF Rulemaking Priorities and Scope

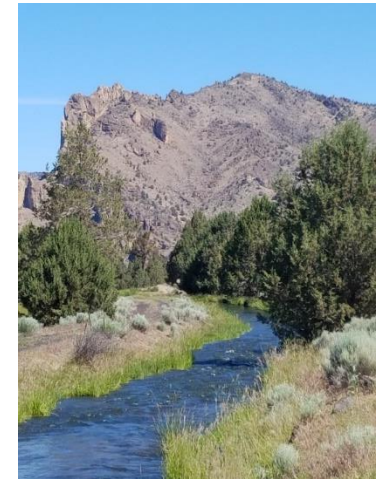
- Principal forgiveness
- Affordability criteria
- Project ranking and scoring
- Intended Use Plan



Prineville's treatment wetlands



Wastewater aeration basin



Central Oregon
Irrigation District open
canal flows by Smith
Rock

Rulemaking Milestones and Timeline

Milestone	Target Dates
Rulemaking Advisory Committee Meeting #1	July 29, 2022
Rulemaking Advisory Committee Meeting #2	Aug. 19, 2022
Rulemaking Advisory Committee Meeting #3	Sep. 30, 2022
Public notice	Oct. 28, 2022
Public hearing	Nov. 15, 2022
Environmental Quality Commission meeting	Jan. 19, 2023

Proposed Rule Changes – Principal Forgiveness

- Provide flexibility to meet current and future federal capitalization grant requirements, including Bipartisan Infrastructure Law
- Eliminate limits of principal forgiveness on a per loan basis to meet BIL requirements for the program (49% of BIL cap grant amount as PF)
 - *Current PF limits: 50% up to \$500,000 max. per loan*
- Enable program to provide principal forgiveness for all planning loans
- Eliminate limits for principal forgiveness for green projects
- PF to be documented in Intended Use Plan, which meets EPA requirements
- The IUP includes public comment for transparency and responsiveness

Proposed Rule Changes – Affordability Criteria

- “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)
- Remove detail from rule regarding affordability criteria
 - Currently affordability criteria is based on the Business Oregon Distressed Areas index
 - Changes will allow DEQ incorporate environmental justice metrics into affordability criteria
 - Further address economically distressed, water pollution and health burdened communities
 - New EJ metrics emphasized by EPA
- Include language from Clean Water Act Section 603(i) regarding what is required for affordability criteria
- Document affordability criteria in the Intended Use Plan as required by EPA

Proposed Rule Changes – Project Ranking and Scoring

- Keep language in rule regarding primary project ranking and scoring categories:
 - Category 1. Water quality standards and public health considerations
 - Category 2. Watershed health benefits
 - Category 3. Other considerations
- Remove detail from rule regarding project ranking and scoring
- CWSRF has internal program procedures with more detail than what is in rule for scoring projects
- Project ranking and scoring criteria will be documented in the IUP, which meets EPA requirements

Proposed Rule Changes – Intended Use Plan

- Remove details from rule related to IUP regarding project ranking and scoring
- Add language that project ranking and scoring criteria will be documented in the IUP
- Retain language regarding Intended Use Plan requirements and timelines
- The IUP will continue to be published three times per year for public comment
- The program will continue to meet EPA requirements for the IUP

Stakeholder feedback and public comments

- Oregon CWSRF Rulemaking Advisory Committee feedback indicated overall support of proposed rule changes
- RAC feedback emphasized the importance of the program to provide:
 - Principal forgiveness and assistance for small disadvantaged communities throughout Oregon
 - *The proposed rules will enable the program to **increase principal forgiveness** for small disadvantaged communities that meet affordability criteria as required by EPA*
 - Incentives for green and sustainable projects
 - *The proposed rules will enable the program to **increase principal forgiveness** for green projects as well as provide **principal forgiveness for all planning loans**, including sustainable planning projects*
- DEQ received three public comments during the public comment period:
 - Two comments were not specifically relevant to this rulemaking and focused on questions about the program
 - One comment - letter from League of Oregon Cities, Special Districts Association of Oregon, and Oregon Association Clean Water Agencies in support of proposed rule changes and resulting benefits for Oregonians
 - Public comments were supportive or neutral

BIL implementation beyond rulemaking ... looking ahead

- Standing Advisory Committee input on program implementation beyond rulemaking:
 - Principal forgiveness
 - Affordability criteria
 - Project ranking and scoring
 - Environmental Justice metrics
- Develop new Intended Use Plan addressing requirements by March 2023
- Apply for BIL supplemental cap grant by April 2023
- Coordination with EPA regarding BIL requirements and implementation (ongoing)

Recommendation

DEQ recommends that the Environmental Quality Commission adopt the proposed rules as seen in Attachment A of the staff report as part of Chapter 340 of the Oregon Administrative Rules.

Proposed motion language:

“I move that the Oregon Environmental Quality Commission adopt the proposed rules as seen in Attachment A of the report for this item as part of Chapter 340 of the Oregon Administrative Rules.”