

Oregon CWSRF 2022 Rulemaking Advisory Committee Meeting 1 Clean Water State Revolving Fund

July 29, 2022
Zoom Meeting

Agenda

- Welcome and logistics
- Committee membership introductions
- Review Advisory Committee Charter, roles and responsibilities
 - Break
- Rule language – how much detail needed in rule
- Scope of Rulemaking
- CWSRF Program overview
- Bipartisan Infrastructure Law
 - Break
- Environmental Justice metrics under consideration
- Wrap up with committee
- Public comment

Purpose and Goals

- To welcome, introduce and **engage RAC members** in the rulemaking process
- To **develop understanding of roles and responsibilities**
- To **review rulemaking scope** and relevant Oregon Administrative Rule sections *
- To **inform and educate the RAC about the CWSRF program and key areas** related to rulemaking
- To **inform and educate the RAC about the Bipartisan Infrastructure Law key provisions** related to Oregon CWSRF program priorities and rulemaking
- To **present information on environmental justice metrics under consideration** by the program

***DEQ will NOT cover specific rule language in detail, make recommendations or request action from the RAC for meeting #1**

Welcome and Introductions!

- Name and affiliation
- Why are you interested in the CWSRF and RAC?
- What unique aspects does your organization bring to the table?
- Expectations and desired outcomes from participating?

Committee Charter Purpose and Goals

- Provide review and input into CWSRF program rule amendment recommendations to DEQ
- Develop recommendations through a collaborative process that considers the program goals and priorities
- Make recommendations that reflect adequate integration of regulatory, financial, technical, environmental and policy information in rulemaking
- Help ensure the loan program continues to meet state and federal requirements, including perpetuity of the fund, through proposed rule changes
- The rulemaking Advisory Committee will continue to serve as a standing CWSRF program Advisory Committee for at least 18 months to inform and CWSRF regarding program aspects beyond rulemaking

Roles and Responsibilities: Committee Members

- Prepare for and set aside time for the meetings
- Provide DEQ staff with copies of relevant research and documentation cited during the meeting
- Stay focused on the specific agenda topics for each meeting
- Contribute constructively and in good faith
- Consult regularly with constituencies to inform them on the process and gather their input

Roles and Responsibilities: Committee Members

- Treat other participants and staff with respect
- Allow one person to speak at a time
- Be courteous by not engaging in sidebar discussions
- Avoid representing to the public or media the views of any other committee member or the committee as a whole

Roles and Responsibilities: Facilitator

- Encourage open, candid and robust dialogue toward a productive meeting
- Use effective tactics to engage and elicit input from each RAC member
- Start and end the meetings and agenda items on time
- Encourage innovation by listening to all ideas
- Recognize when the discussion is outside the scope of the meeting and steers the discussion back to the primary focus

Roles and Responsibilities: DEQ Staff

- Provide relevant meeting materials at least two weeks prior to scheduled meeting
- Give committee members reasonable access to staff
- Encourage all members to take part in discussions
- Provide a clear description of members' roles, the committee timeline, the level of agreement expected and feedback on members' input

Committee Meetings and Resources

- Open to the public, opportunity for comment, public notice for hearing in October 2022
- CWSRF 2022 Rulemaking website: [Clean Water State Revolving Fund 2022](#)
 - DEQ will post agenda and meeting materials on the Advisory Committee website at least two weeks in advance.
 - DEQ administrative staff will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members.
 - Final meeting minutes will be posted to the Advisory Committee website and will be part of the public record.
- CWSRF 2022 Rulemaking mailbox: 2022.cwsrf@deq.oregon.gov
 - Communication about rulemaking needs to go through this mailbox

Break

10 Minute Break



What is a rule?

- Defined by ORS 183.310(9)-four parts
 1. Any agency directive, standards, regulation or statement
 2. Of general applicability
 3. That implements, interprets or prescribes law or policy, or
 4. That describes the procedure or practice requirements of any agency.

Statute vs. Rule

Statute

- It is the law
- Adopted, repealed and amended by the legislature and signed by the governor
- Must be consistent with state and federal Constitutions and federal laws
- ORS

Rule

- It is the law
- Adopted, repealed and amended by agency
- Must be consistent with state and federal Constitutions and state and federal laws
- OAR

Why have rules?

- Rules fill in the gaps left by statutes
- Rules facilitate open and accountable government
- The rulemaking process provides an opportunity for public input into public policy
- Rules promote consistency and protect the public from arbitrary agency action
- Rules and the rulemaking process give fair notice to those involved

When are rules required?

- When an agency's statutes say a rule is required
- When an agency must interpret broad statutory authority delegate by the legislature
- To amend or repeal an existing rule
- When the agency action meets the definition of a "rule" in ORS 183.310(9)

When is a rule not required?

- When the statutes are clear enough to administer without rulemaking
- When the agency merely interprets an existing rule (but interpretation should be consistent)
- When the action does not meet the definition of a “rule” or a statutory exception applies (ORS 183.310(9)(a)(b).
 - Internal management directives, regulations or statements which do not substantially affect the interests of the public
 - Between agencies, or their officers or their employees; or
 - Within an agency, between its officers or between employees
 - Actions by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public

What should not go into a rule?

- Unlawful delegation to another entity by adopting its standards, including future changes
- Restatement of statute, unless there is a very good reason
- Suggestions
- Ambiguous or unintelligible language
- Anything already governed by federal requirements

Oregon CWSRF 2022 Rulemaking Scope

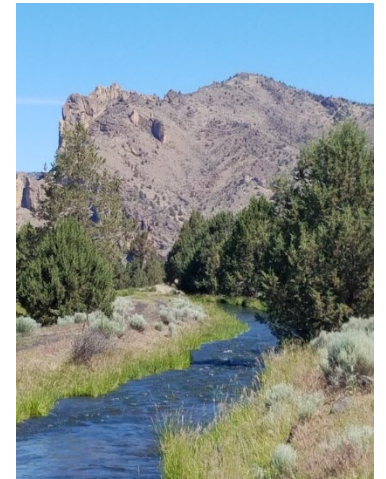
- Principal forgiveness
- Affordability criteria
- Project ranking and scoring
- Intended Use Plan
- Environmental justice metrics



Prineville's treatment wetlands



Wastewater aeration basin



Central Oregon
Irrigation District open
canal flows by Smith
Rock

Oregon Administrative Rule Sections

- Principal forgiveness
- Affordability criteria
 - [OAR 340-054-0065 Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates](#)
- Project ranking and scoring
 - [OAR 340-054-0026 Clean Water State Revolving Fund Loans: CWSRF Project Ranking Criteria for Non-planning Loans](#)
 - [OAR 340-054-0027 Clean Water State Revolving Fund Loans to Public Agency Borrowers: CWSRF Project Ranking Criteria for Planning Loans](#)
- Intended Use Plan
 - [OAR 340-054-0025 Clean Water State Revolving Fund Loans: Intended Use Plan \(IUP\) and Project Priority List](#)

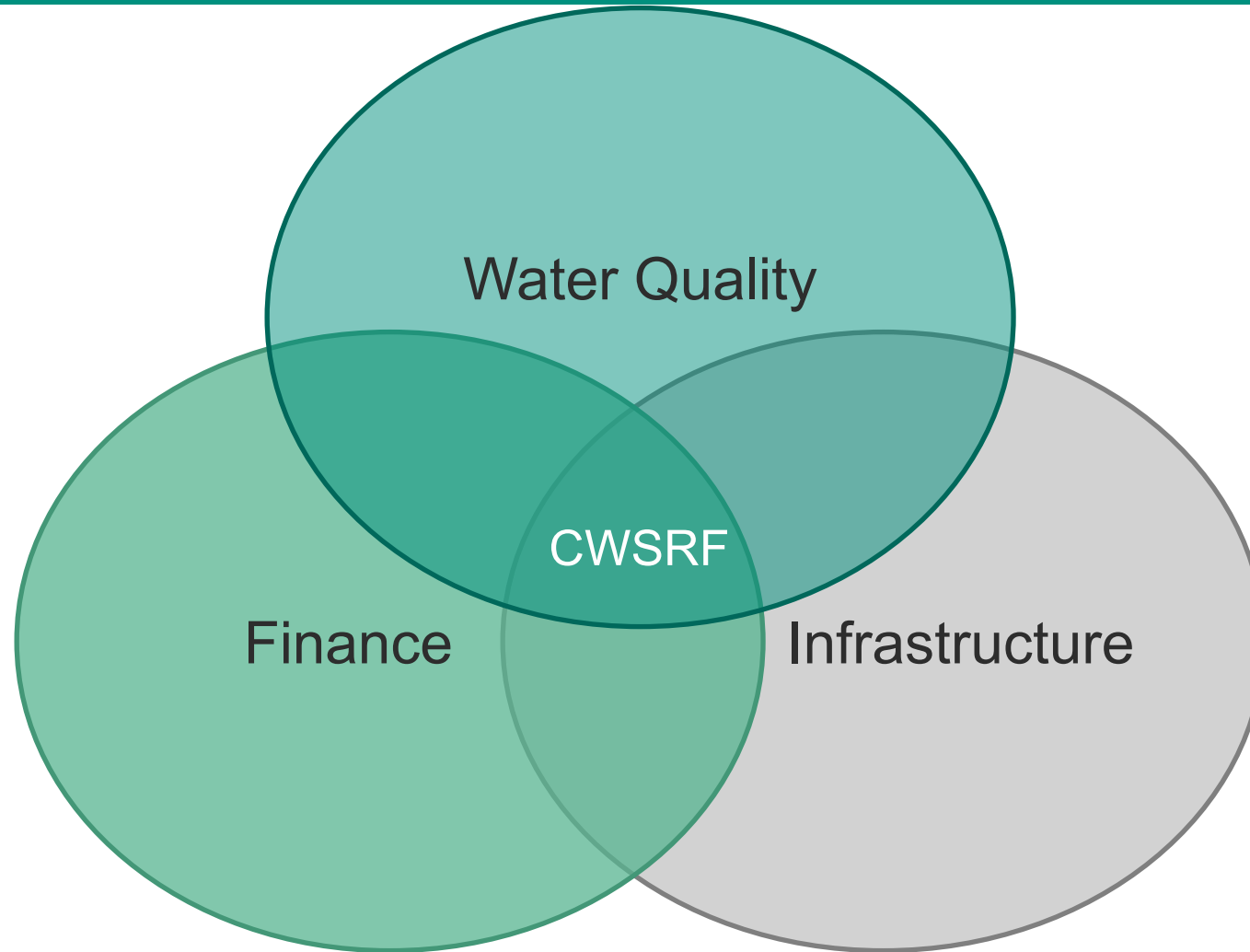
Rulemaking Milestones and Timeline

Milestone	Target Date
Appoint Rulemaking Advisory Committee members	June 14, 2022 (done)
Schedule three RAC meetings	July 1 – Sept. 30, 2022
RAC meeting #1 scheduled	July 29, 2022
File public notice	Oct. 28, 2022
Complete EQC staff report	Dec. 18, 2022
DEQ request EQC action on final proposed rules	Jan. 17 – 18, 2023

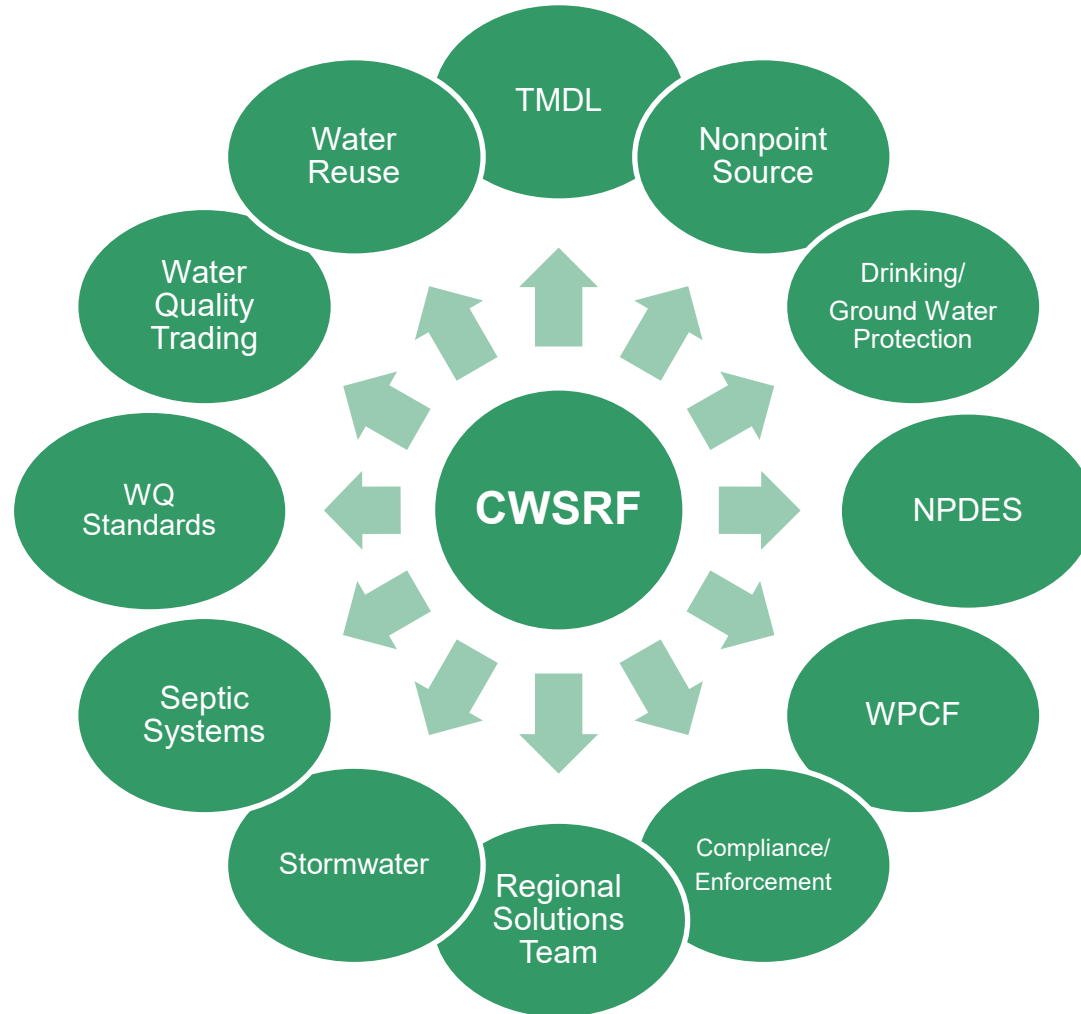
CWSRF Program Overview

- Oregon CWSRF overview, basics and key areas
- Principal forgiveness - what is principal forgiveness and how does the program award principal forgiveness?
- Affordability criteria - what is affordability criteria and how does the program define and use affordability criteria?
- Project ranking and scoring - how does the program evaluate and score projects (broad categories)
- Intended Use Plan - what is the Intended Use Plan, purpose and how does the program develop and use the IUP

The Basics

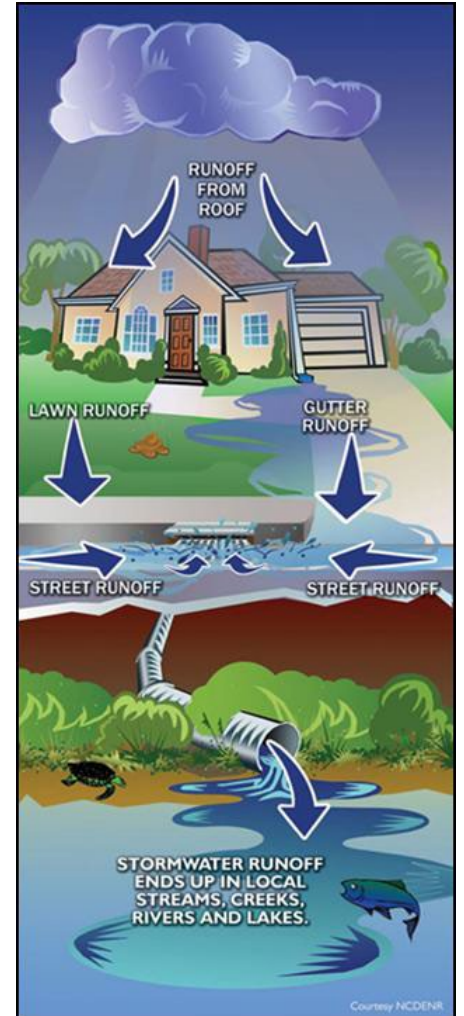


CWSRF: Core to Water Protection

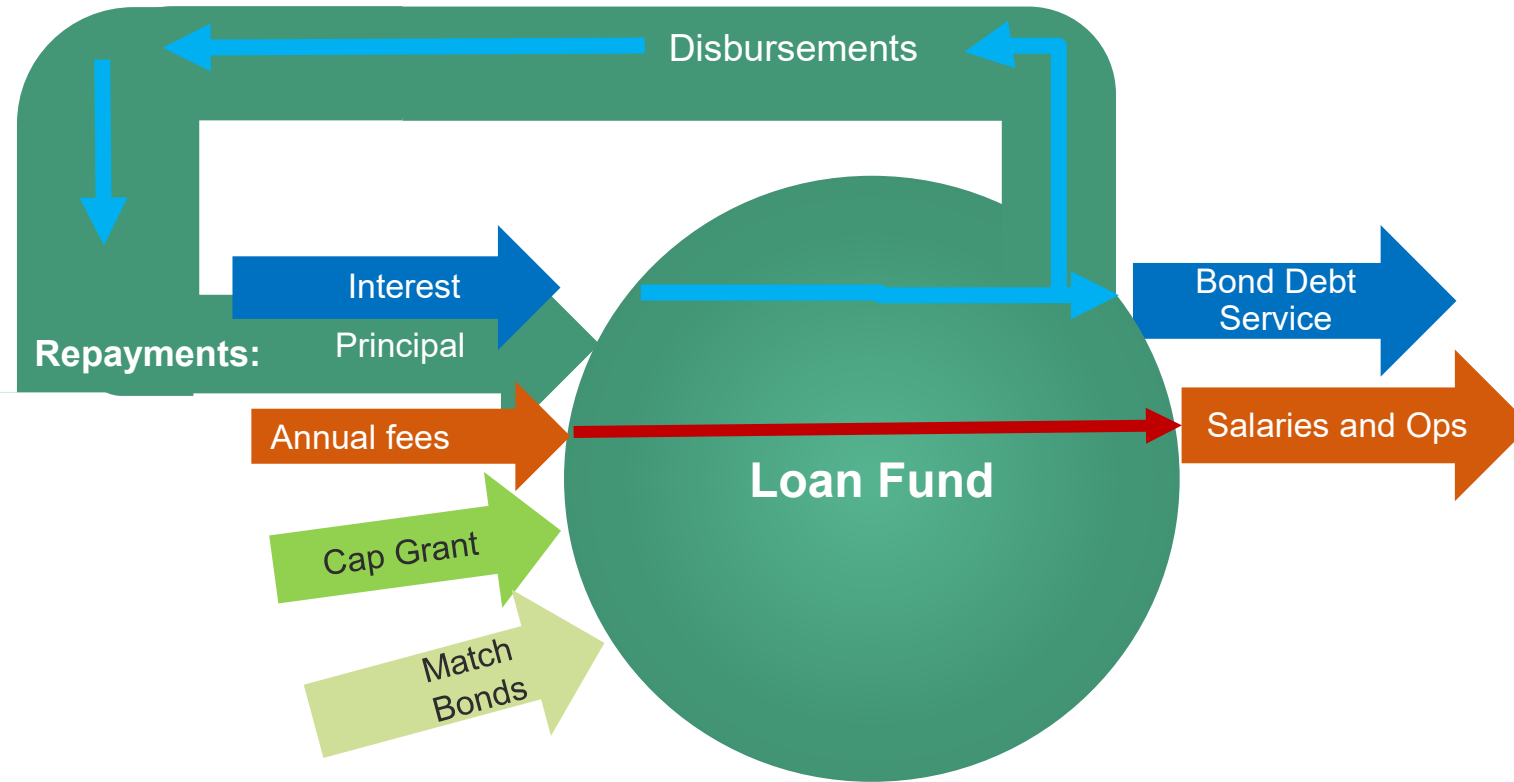


CWSRF Brief Overview

- Funding authorized under the Clean Water Act in 1987 to finance water pollution control activities
- Below-market rate loans for a wide range of water quality and infrastructure projects
- More than \$1.4 billion to 200 borrowers throughout the state of Oregon over 30 years
- \$750 million loan portfolio value at any given time – the fund “revolves” ...



How the fund revolves



EPA Context and Resources

- EPA's Clean Water State Revolving Fund [Website](#)
- Title VI of the Clean Water Act ([33 U.S. Code §1383](#)) and CWSRF Regulations ([40 CFR Part 35.31](#))
- Overview of EPA [CWSRF Eligibilities](#)
- DEQ Oregon CWSRF coordinates with EPA Region 10 (Seattle)

State of Oregon Context and Resources

- Oregon Revised Statutes [468.020 and ORS 468.423 – 468.440](#)
- Oregon Administrative Rules [Oregon Administrative Rules Chapter 340, Division 54](#)
- Oregon CWSRF Program website: [CWSRF Program Website](#)
- Oregon CWSRF Program Annual Report 2021: [Oregon CWSRF Annual Report 2021](#)

Four loan types: Many possible projects

Below-market rate loans for planning, design and construction

The Oregon Clean Water State Revolving Fund helps protect public health, restore natural areas and promote economic development. We can help you decide which treatment approach and loan type will meet your water quality needs.



Point Source

- Any single identifiable source of water pollution discharge
- Common types are factories, sewage treatment plants and other industries



Nonpoint Source

- Pollution carried by rain, snowmelt, seepage or drainage, including:
- Oil
 - Animal waste
 - Bacteria
 - Agricultural chemicals
 - Stormwater



Planning

- Data collection and measurement
- Evaluation, analysis and security
- Report preparation
- Environmental review and any other activity leading to a written document



Local Community

- Enables communities to develop their own water quality loan program
- Projects may include septic work, estuary management and irrigation projects



Loans in the public interest

- Below market-rate loans
 - Current interest rates: range from 0.8% - 2.76%
- Interest accrues only on the disbursement amounts, not the full amount upfront
- Repayment begins six months to one year after project completion
- Great source of match
- Fund reliability
- ***Principal forgiveness***

What is Principal Forgiveness?

Oregon Administrative Rule [340-054-0010](#)

Definitions:

(19) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

CWSRF Principal Forgiveness

- ❖ Principal Forgiveness: Up to \$500,000 max or 50% of loan

- ❖ Eligibility:

- ❖ Distressed communities (per Biz OR Distressed Index)
 - ❖ Green projects that meet EPA criteria
 - ❖ Ratepayer hardship

- ❖ Subject to:

- ❖ Availability of funds
 - ❖ Readiness to proceed to sign a loan agreement (met all loan requirements)



CWSRF Affordability Criteria

- Clean Water Act requires CWSRF programs to establish affordability criteria for “additional subsidization” (Water Resources Reform and Development Act of 2014)
- Clean Water Act Section 603(i) - affordability criteria shall be based on:
 - Income
 - Unemployment data
 - Population trends
 - Other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area

Oregon CWSRF Affordability Criteria

Oregon Distressed Area Index

- Distressed Areas - [OAR Chapter 123, Division 24](#)
- Four primary factors to calculate “distressed area” at the county level:
 - The state's **unemployment** rate divided by the county's unemployment rate;
 - The county's per capita personal **income** divided by the state's per capita personal income;
 - The change in the county's average covered payroll per worker over a two-year period;
 - The sum of the change in the county's employment over a two-year period.
- Business Oregon updates distressed area list of cities and counties
- Oregon CWSRF uses this list to determine eligibility for principal forgiveness

Oregon CWSRF Project Ranking and Scoring for Non-planning Loans

- **Category One – Water Quality Standards and Public Health Considerations**
 - Water quality benefits
 - Water quality standards
 - Compliance
- **Category Two – Watershed and health benefits**
 - 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)
- **Category Three – Other considerations**
 - Long term planning
 - Outreach/education
 - Other resources/partnerships
 - Small community (10,000 population or less)
 - Sponsorship option

Oregon CWSRF Project Ranking and Scoring for Planning Loans

- Include more than one water quality benefit, pollutant or restoration effort?
- Include sustainability?
- Take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?
- Include financial, managerial or technical capability aspects of the project?
- Include integrating natural infrastructure and built systems?
- Demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?

Oregon CWSRF Intended Use Plan

- EPA requires CWSRF to develop an Intended Use Plan annually
- The IUP must include a Project Priority List identifying projects the program intends to fund during the year
- The IUP must include criteria for scoring and ranking projects
- EPA requires CWSRF to include affordability criteria in the IUP
- Oregon CWSRF reviews and scores applications three times per year and updates the IUP based on new applications during each cycle
- The IUP process includes a public comment period with each update for transparency, responsive to communities and stakeholders
- Oregon CWSRF Intended Use Plan 2023 Initial Edition [Oregon CWSRF Intended Use Plan 2023 Initial Edition](#)

Bipartisan Infrastructure Law Key Provisions and Priorities

- Federal infrastructure funding package signed into law Nov. 15, 2021, with funding to EPA through SRF programs for five years
- EPA BIL Implementation Guidance Memo issued March 8, 2022
- Requirement for CWSRF programs to provide more principal forgiveness
- Priority to address needs of “disadvantaged communities” defined by affordability criteria for CWSRFs
- Technical assistance (new under Clean Water Act)
- Priority to address emerging contaminants
- Environmental justice priorities
- Build America Buy America requirements

Bipartisan Infrastructure Law Opportunities

- Oregon CWSRF will receive a ***significant increase in funding under the Bipartisan Infrastructure Law over the next five years.***
- Oregon CWSRF will be able to provide ***more financing for water pollution control projects.***
- Oregon CWSRF will provide ***more principal forgiveness for loans to disadvantaged and economically distressed communities.***
- Oregon CWSRF will utilize ***new resources for technical assistance*** to help communities plan, develop, finance and manage projects.

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 amount** is available for TA
- Emerging contaminants cap grant of \$1,064,000 available each year

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

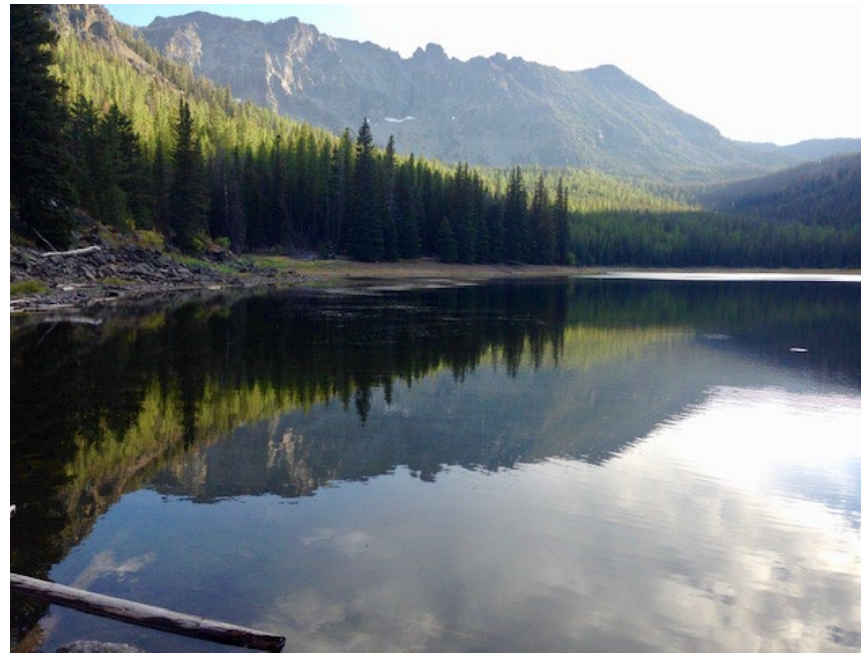
BIL Implementation: Oregon CWSRF Milestones and Timeline

Milestone	Target Dates
Apply for base cap grant FFY2022 to EPA	June 30, 2022 (done)
CWSRF loan application review cycles	August 12 and Dec. 9, 2022
Update Intended Use Plan	Nov. 1, 2022, and April 1, 2023
Contract for technical assistance	Jan. 1, 2023
Apply for BIL supplemental cap grant	January – March 2023
BIL implementation	April 2023

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	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 ->

Questions?



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Break

10 Minute Break

