

## STATEMENT OF NEED, RACIAL EQUITY IMPACTS, AND ECONOMIC & FISCAL IMPACTS

### *Need for Rulemaking:*

Oregon Revised Statute 541.551, (House Bill 3293, 2021), authorizes the Oregon Water Resources Department (Department) to provide financial support for the purpose of enabling local organizations and local governments to develop and implement community engagement plans for water project. The statute mandates that the Department recognize community engagement best practices for use in the development and implementation of Department funded community engagement plans; thus, the Department is pursuing this rulemaking. The Department is undertaking rulemaking to align with statutory mandates, recognizing 10 best practices for use in department-funded community engagement plans.

The Department has created a new division to house the proposed rules. Division 601, Best Practices in Community Engagement for Water Projects, establishes standards and procedures for implementing and developing Department funded community engagement plans using the Department recognized Best Practices. The purpose of this new Division is to promote meaningful involvement of disproportionately impacted communities in water projects and provide these communities with avenues for suitable access to the decision-making process related to water projects.

Water is crucial to Oregon's economic vitality. In 2023, over 48% of the state's total economic output and nearly 44% of its employment were directly linked to water. (Pilz et al. 2023) Water's value extends across various sectors, including housing, infrastructure, health, manufacturing, agriculture, energy, recreation, and the food and beverage industries. (Pilz et al. 2023) As drought conditions in Oregon intensify and population centers grow, water scarcity concerns increase. Inclusive water project solutions are essential to address these challenges, as disproportionately impacted communities often experience changing environmental conditions most acutely.

Disproportionately impacted communities have been underrepresented or historically discriminated against in water policy decision-making. (Dalgaard, 2022) Exclusion has led to a lack of representation and consideration of their unique needs and perspectives in decision-making processes. These communities often bear the brunt of environmental challenges. Considering the voices of disproportionately impacted communities is not only a matter of justice but also a practical necessity for creating effective and sustainable water project strategies. Diverse and broad community engagement improves water projects outcomes and helps projects better met the needs of Oregon's economy, environment, communities, and cultures. Involving disproportionately impacted communities in water projects facilitates the exchange of invaluable knowledge and insights, enhancing project effectiveness and relevance. Additionally, fostering community trust encourages transparency and cooperation among project partners and communities impacted by the water project aims and outcomes.

***Documents Relied Upon, and where they are available:***

This is an abbreviated list of the principal documents relied upon for the proposed rulemaking. Please contact the Oregon Water Resources Department for a complete list of documents relied upon and the location(s) of those documents.

ORS 541.551, available at

([https://www.oregonlegislature.gov/bills\\_laws/ors/ors541.html](https://www.oregonlegislature.gov/bills_laws/ors/ors541.html))

Draft 10 Best Practices in community Engagement Around Water Projects (2024)

(<https://www.oregon.gov/owrd/Documents/HB3293%20Best%20Practices.pdf>)

Pilz, D., et al. (2023) The Business Case for Investing in Water in Oregon. Available at

([https://www.oregon.gov/owrd/WRDPublications1/230721\\_FINAL\\_Business\\_Case\\_for\\_Water\\_in\\_OR\\_Exec\\_Summ.pdf](https://www.oregon.gov/owrd/WRDPublications1/230721_FINAL_Business_Case_for_Water_in_OR_Exec_Summ.pdf))

Dalgaard, S. (2022) State of Water Justice in Oregon: A Primer on How Oregon Water Infrastructure Challenges Affect Frontline Communities Across the State, White Paper prepared for the Oregon Environmental Council and the Oregon Water Futures Project (<https://www.oregonwaterfutures.org/water-justice-report>)

***Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in This State:***

The proposed rules within Division 601 aim to increase the meaningful involvement of disproportionately impacted communities by supporting the development and implementation of community engagement plans for water project. This funding support will be provided in the form of loan and grant funding through OAR 690-600 or OAR 690-093 (Water Conservation, Reuse, and Storage Grant Program and Water Supply Development Account).

There is significant state interest in providing meaningful engagement opportunities for communities that have historically been excluded from decision-making processes related to water projects. Disproportionately impacted communities, as defined by the proposed rules, include, but are not limited to, communities of color and other groups that face barriers to meaningful involvement in public processes. The proposed rules have a direct nexus with racial equity, as increasing the meaningful engagement of disproportionately impacted communities is a core component. This is important because it ensures that the voices of those most affected are heard and considered, leading to more equitable and effective outcomes. In practice, these rules are anticipated to enhance racial equity in the development and implementation of water projects.

OWRD extended Rule Advisory Committee (RAC) invitations to several Oregon organizations focused on racial justice and equity in the context of water, as well as broader environmental, economic, and social issues. The final RAC composition included interests from Oregon's environmental and social justice organizations, local governments, and other community water users such as farming interests. No unintended adverse consequences on racial equity are expected from the rule. Further public comments on this rulemaking and its impact on racial equity in the state are encouraged throughout the posted public comment period.

### ***Tribal Engagement:***

Consistent with Government-to-Government coordination and consultation responsibilities, July 16, 2024, the Department mailed and emailed formal letters to Oregon's nine federally recognized Tribes, inviting coordination and/or consultation on this rulemaking and other proposed rulemakings. These correspondences included an invitation to join the Rules Advisory Committee. The Department also provided rulemaking updates during quarterly Cultural Resources Cluster and Natural Resources Work Group meetings (held January, February, July, and September of 2024), again offering to consult and/or coordinate with interested Tribes. To date, none of the Tribes have requested to initiate formal consultation, and none expressed interest in serving on Rules Advisory Committee. The proposed rules include provisions for tribal engagement in water projects, recognizing federally recognized Tribes as "eligible applicants" and "participants" within community engagement plans. Additionally, tribal communities are identified as "disproportionately impacted communities," making them a key focus for the engagement efforts outlined in the proposed rules. The proposed rules also include specific best practices aimed at including engagement with Federally Recognized Tribes. Public comments on this rulemaking and its potential impact on Tribes in the state are encouraged throughout the designated public comment period.

### ***Fiscal and Economic Impacts:***

The proposed rules are not expected to have a significant fiscal impact on the Department beyond the ongoing expenditure of grant funds for water project community engagement plans in communities across Oregon and the additional cost of departmental support for these grantees.

This rule may have a positive economic impact within Oregon communities as funds may be used to compensate disproportionately impacted communities' participation in water project community engagement development and implementation.

### ***Statement of Cost of Compliance:***

***(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).***

The proposed rules outline the requirements for local organizations and local governments applying for funding authorized under ORS 541.551. As proposed, the rules incorporate those additional requirements within existing authorized funding programs. The proposed rules may increase costs associated with reporting, administrative activities, and professional services for grantees developing or implementing a community engagement plan; however, the Department has attempted to reduce these potential additional costs by incorporating them into existing funding reporting requirements.

Furthermore, because the proposed rules create additional requirements for those water projects funded by the Department who are seeking to conduct a community engagement plan, increased

grant funds may be awarded to grantees to meet these requirements. Additional funds to support community engagement plans are intended to help cover the costs of compliance, ensuring that projects meet the new standards without placing an undue financial burden on the grantees. There are no new funding sources allocated to the Department for the expanded requirements contemplated by these rules, as a result fewer overall grants may be awarded as funding is reallocated for community engagement plans.

ORS 541.551 defines “water project support” as planning, technical, or financial support. Consequently, OWRD and other eligible support providers identified under ORS 541.551(1)(f) may experience a fiscal impact through the administration of water project support for community engagement plan grantees. These fiscal impacts could include increased costs related to the development and review of planning documents, and the allocation of financial resources. Additionally, the need for ongoing monitoring and reporting to ensure compliance with the proposed rule may further contribute to administrative expenses.

Additionally, the proposed rules allow for the compensation of disproportionately impacted communities during the development and implementation of the community engagement plans. This compensation aims to support meaningful involvement of these communities in the planning and decision-making process.

The Department recognizes that these changes may have varying impacts on different governments, organizations, and members of the public. Interested parties are encouraged to provide feedback on the anticipated fiscal impacts during the public comment period to help the Department refine and improve the proposed rule and impact analysis.

***(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).***

(2)(a) ORS 541.551 states that eligible applicants include local governments and local organizations as defined by ORS 174.117. Community engagement grantees may contract with small businesses to implement activities and work within the scope of the grant or loan agreement, but the proposed rules do not dictate the elements of that contractual relationship.

(2)(b) The reporting, record keeping, and administrative activities required by the rules are principally borne by the grantees that are voluntarily entering the program and are not defined as small businesses.

(2)(c) Similar to section b, the cost of professional services, equipment, supplies, labor, and increased administration to comply with the rules will be borne principally by program grantees that are not defined as small businesses.

***Describe how small businesses were involved in the development of these rule(s)?***

The Department hosted a virtual public open house, roundtables, and presented to the Environmental Justice Council on drafting the Best Practices in Community Engagement guidance document and proposed rule section 607.601.004(1). Several small businesses attended and provided input on the draft guidance and best practices. Guidance input helped develop the draft rules. During the open house, the Department openly solicited RAC members and added all who requested to participate. Small businesses were not specifically sought for RAC participation as they are ineligible to apply for authorized grant funds and are not expected to experience a significant impact by the proposed rules. Small businesses will have the opportunity to comment during the public comment period.

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