

WATER LEAGUE

*Water League engages the public
in water stewardship.*

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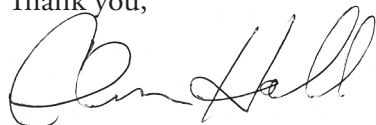
October 20, 2024

Charlotte Regula-Whitefield
Community Engagement Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Dear Ms. Regula-Whitefield,

Water League submits our comments to the October 16, 2024 draft OAR 690-601 *Best Practices in Community Engagement for Water Projects* on the following pages. We appreciate the opportunity to share our thoughts and discussing these and other concepts at the upcoming Rules Advisory Committee on October 30, 2024.

Thank you,



Christopher Hall
Executive Director

**Comments on the October 16, 2024, DRAFT
OAR 690-0601 *Best Practices in Community Engagement for Water Projects***

Relating to

HB 3293 *Relating to water project community engagement*
ORS 541.551 *Requirements for providers of water project support*

and in the context of public hearings in the

House Committee On Agriculture and Natural Resources – March 16, 2021
Senate Committee On Natural Resources and Wildfire Recovery – May 3, 2021

by Christopher Hall, Water League
October 20, 2024

The Division 601 rules should adhere closely to the legislative intent of HB 3293, which became law as ORS 541.551 *Requirements for providers of water project support*. Neither the bill nor statute envision state agencies limiting funding for community engagement around water projects to water project developers.

In the OAR 690-601-0002(4), (10), and other related sections released as a draft on October 16, 2024, for the Rules Advisory Committee to consider, OWRD limits community engagement funding to water project developers. The draft rules OAR 690-601-0002, as of October 16, 2024, state [**emphasis added**]:

(4) “Community Engagement Plan Applicant” means eligible local governments or local organizations **that apply to receive grants or loans from OAR 690-600 or OAR 690-093 for a water project Community Engagement Plan.**

(10) “Local Organization” means a special government body as defined in ORS 174.117, a federally recognized Indian tribe, a nonprofit organization, or other organization identified who operates in an area affected by a water project and is eligible **to receive grants or loans pursuant to OAR 690-600 or OAR 690-093.**

The legislative intent and the views of those who testified show no intention of establishing a conflict between the interests of the water project developers and the need for community engagement among disproportionately impacted communities. They clearly state communities themselves should plan for their water future.

For example, Jason Miner, Governor Brown's Natural Resources Advisor, stated [**emphasis added**]:

...we began to right-size our expectations and craft an initial step approach that begins community engagement – enables agencies to fund community engagement, seeking the opportunities **to fund these community plans to enable communities themselves to plan for their water future**, and seeking the establishment of some best practices for engaging underrepresented communities, as Representative Reardon, just eloquently addressed, to forward equity in water planning.¹

Mr. Miner said that HB 3293 is supposed to give agency to impacted communities to plan for their water future themselves. Such agency requires that they control the community engagement process, which includes working with local organizations they trust and comprise.

Meta Loftsgaarden, Director, Oregon Watershed Enhancement Board, similarly stated that **[emphasis added]**:

Somebody who's the water planner may have a number of other jobs that they have in those Communities, and so **providing funding and support to help smaller communities in particular, do that community engagement**, and providing funding for members of the community to participate.²

Director Loftsgaarden explained that water planners, presumably those involved in proposed water projects, are too busy to adequately conduct community engagement. HB 3293 funding should help communities “do that community engagement.” Communities are the people who are impacted by the water projects; some are disproportionately impacted. The proposed rules, OAR 690-601-0002(4), (10), and related sections strip the disproportionately impacted communities from having the very agency HB 3293 was written to address and hand the power of engagement over to the water project developers.

Director Loftsgaarden also noted **[emphasis added]**:

One of the most important things that we've learned in the process is **the worst time to talk about engagement in a water project is when the water project is coming for a grant or loan to be funded**. At that point in time, a lot of engineering, technical design, permitting, and other work has gone into that project. And so really, **if we want to expand meaningful engagement by all those who may benefit from a water project, you have to move back to the planning phase**.³

The grantee of a state agency-funded water project cannot include this extra community engagement funding request in their water project grant if the community engagement is supposed to precede the grant-making process. A prospective water project developer could not go to the state a couple of years in advance of applying for a grant or loan for a water project to seek funds from the state agency providers for community engagement; according to the proposed Division 601 draft rules, the Community Engagement Plan Applicant has to have

¹ Jason Miner, Testimony for HB 3293. [[Begin at 48:40](#)].

² Meta Loftsgaarden, Director, Oregon Watershed Enhancement Board, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 51:02](#)].

³ Meta Loftsgaarden, Testimony for HB 3293. [[Begin at 50:25](#)].

already applied for water project support under OAR 690-600 or OAR 690-093. To be a Community Engagement Plan Grantee, the eligible entity will have had to “receive[d] funding for a Community Engagement Plan for water projects that are supported by grants or loans pursuant to OAR 690-600 or OAR 690-093.”

The need for community engagement to happen before funding, which is a major hallmark of the testimony and legislative intent of HB 3293, means that the proposed draft rules for OAR 690-601-0002(4), (10), and related sections, which limit funding for community engagement to the water project applicants and grantees, undermine the legislative intent. Director Loftsgaarden would not have envisioned OWEB funding for community engagement around water projects to go to the water project developers instead of local organizations that genuinely represent the interests of the disproportionately impacted communities.

Sara O'Brien, Executive Director of Willamette Partnership, stated that [**emphasis added**]:

...a lot of our work is working directly with folks, like the local governments and other organizations that would be the beneficiaries of this bill. **We help folks find creative solutions to pressing water infrastructure challenges**, whether that's drinking water, water quality, water supply, flood management. And we help folks find innovative ways to do that that meet multiple goals and, and address the needs and priorities of communities.⁴

Ms. O'Brien's testimony shared how the Willamette Partnership's work exemplifies the type of community organization that could potentially receive funding to conduct community engagement around water projects. Ms. O'Brien went on to say [**emphasis added**]:

So one big thing **that we've observed in the last years or so of providing technical assistance to communities on water infrastructure needs, in particular with water infrastructure providers**, is that, when those efforts start with community engagement and visioning, they generally end up with better solutions.⁵

Ms. O'Brien explained that community engagement she and other organizations conduct in advance of the proposed water infrastructure projects leads to better outcomes. She did not envision the actual water project developers approaching disproportionately impacted communities after those water project developers were applicants and/ or grantees with submitted plans and designs. Further, she stated [**emphasis added**]:

So doing **this kind of engagement doesn't always come naturally to infrastructure providers. But we have a lot of communities in Oregon that are really leading the way to start out**. Instead of starting with design, with an engineering firm, to start out with community engagement and visioning and lifting the voices of folks in our communities.⁶

⁴ Sara O'Brien, Executive Director of Willamette Partnership, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 54:49](#)].

⁵ Sara O'Brien, Testimony for HB 3293. [[Begin at 55:14](#)].

⁶ Sara O'Brien, Testimony for HB 3293. [[Begin at 56:42](#)].

The repeated emphasis on conducting community engagement before the planning, design, engineering, and funding phases of water infrastructure projects is uncontested in the public record. OWRD cannot propose draft rules that counter the legislative intent, testimony, and the statute so directly.

Dylan Cruz, Director of Government Affairs and Program Strategy with Sustainable Northwest, testified that “we’re a nonprofit located in Portland, Oregon, working in with rural communities to address challenges related to natural resource management.” He referred to [**emphasis added**]:

...this emphasis on working with underserved communities, rural communities, tribal communities, and **trying to bring partnerships together and support local governments and NGOs to design these complex water projects.**⁷

Mr. Cruz explains the type of community engagement processes his organization conducts. They do the types of specialized work envisioned by HB 3293. He continued about how [**emphasis added**]:

we’ve been strong advocates for many years of the place-based planning process, and **doing a lot of work on the Oregon coast, particularly added to surface drinking water protection and drinking water management issues...to bring the community together**, to connect local government service providers, landowners, you know, members of the general public, to understand these issues is really critical.⁸

He then follows up with a conclusion about how water project providers do not have the time (and possibly lack the professional qualifications) to do the community engagement work [**emphasis added**]:

So, for a lot of these service providers, you know, **they are just fully subscribed during the day-to-day work of their job and trying to raise capital to support these projects. To then have to engage in a complex public outreach process is a burden and can be very difficult.**⁹

Mr. Cruz’s testimony echoes the sentiment of Director Loftsgaarden and Ms. O’Brien that community engagement is a specialized professional skill that water project developers do not necessarily possess.¹⁰ We acknowledge that OWRD appreciates this concern, as noted in OAR 690-601-0005(4), which requires applicants to demonstrate how they are professionally qualified to conduct community engagement. We do not believe such provisions can protect disproportionately impacted communities from the conflict of interest water project developers will have if the state grants the water project developers funds to engage those communities.

⁷ Dylan Cruz, Director of Government Affairs and Program Strategy with Sustainable Northwest, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 58:30](#)].

⁸ Dylan Cruz, Testimony for HB 3293. [[Begin at 58:42](#)].

⁹ Dylan Cruz, Testimony for HB 3293. [[Begin at 59:24](#)].

¹⁰ See footnotes #2 and #6.

The assumption that water project developers can just tack that extra task onto their funding requests underscores the argument that the intent of the funding is less about representing community interests as it is to promote why a water project should go forward, which any competent marketing department can do. Under these circumstances, highlighting the “Ten Best Practices” in OAR 690-601-0004 may have the unintended effect of providing political cover for (*equity-washing*) the obvious conflict of interest created by limiting funding under ORS 541.551 to water project developers.

Despite OAR 690-601-0005, the state cannot structure community engagement grant application criteria that will ensure water project developers seek genuine community engagement when it might alter their water projects in ways they disfavor or that halt the water projects altogether. The reason is not that the questions the state would ask are faulty; rather, it’s the selected audience to whom the state would limit funding: the water project developers whose conflict of interest no grant questions can protect against. We also note that the well-intentioned grant reporting in OAR 690-601-0006 comes after the water project has been funded (which we discussed earlier), which serves to limit the state’s exposure to worsening or future bad investments much more than it protects the public health, safety, and welfare of disproportionately impacted communities.

In the event the water project developers recognize that they lack the qualifications and inclination to conduct community engagement themselves, would they outsource the community engagement job to competent organizations? If water project developers were allowed to use the ORS 541.551 funding to contract out the community engagement work, then there is no reason why the state shouldn’t, instead, fund local organizations that directly and genuinely represent the affected community, such as organizations the community trusts and requests.

One of the most important evaluation criteria for any grant application open to prospective local organizations on community engagement around water projects is the need for applicants to *come from within the disproportionately impacted community*. In our contemporary period, there has been a significant change in the ethics of grant funding, which is funding that includes community members at every stage of the project or program. Ostensibly, this is the very purpose and legislative intent of HB 3293. Gone are the days of so-called saviors coming into communities to save them from themselves. Despite the well-intentioned title of Division 601, the rules for OAR 690-601-0002(4), (10), and related sections perpetuate the problems of that bygone era by funding the water project developers to manage the very problems disproportionately impacted communities would experience with the water projects.

Instead of ensuring that community voices (especially from disproportionately impacted communities) are genuinely involved in shaping water projects, the draft rules limit community engagement funding to project developers who have incentives to control the community engagement process to ensure their projects move forward as the water project developers envision.

Given that ORS 541.551 emphasizes engagement with rural, tribal, and historically marginalized communities, the proposed rules could further marginalize these groups. Instead of enabling their

self-determination, these rules could reinforce power imbalances by putting project developers in control of the engagement process, leading to token participation rather than *meaningful involvement*. As drafted, OAR 690-601-0002(4), (10), and related sections risk undermining the broader goals of equity and environmental justice, a great irony given the attention to the 10 Best Practices in Community Engagement Around Water Projects.

The problem of water project developers imposing their will on communities is the very fear that inspired local communities, their organizations, and sponsors to promote HB 3293. By all accounts, that is why the House and Senate committees put the bill to a floor vote and why Governor Brown signed the bill into law. Under the proposed draft rules, the chances of water project developers simply checking boxes that they consulted with the community are high. Tribes experience this subterfuge constantly, and no amount of evaluation criteria and reports of any kind, whether associated with grants, contractual agreements, or treaties, have been consistently able to stand up to robust conflicts of interest that harm tribes.

Jeff Reardon, State Representative for District 48 and the primary sponsor for HB 3293, opened with these comments before the House Committee On Agriculture and Natural Resources [**emphasis added**]:

We know that **we've historically failed to engage many disproportionately impacted communities during the public planning and decision-making processes**, and especially for infrastructure projects. So with the lack of input from those voices, we've not achieved the best possible outcomes in all cases with some of our public infrastructure projects.¹¹

During the hearing, the focus was on empowering locals to develop community engagement plans. The intent was to genuinely hear their voices to ensure equitable and meaningful community participation in water project planning.

In Representative Reardon's testimony before the Senate Committee on Natural Resources, two months later, the bill's sponsor made similar, if not more pointed opening statements [**emphasis added**]:

We know that we've been historically failed to engage many of disproportionately impacted communities during public planning and decision-making processes, especially for infrastructure projects. With a lack of input from those voices, we've not achieved the best possible outcomes with our public infrastructure projects. In fact, **there are countless examples of negative health outcomes, displaced communities, and much more**.¹²

The proposed OAR 690-601-0002(4), (10), and related sections rules, institutionalize a conflict of interest that will almost certainly exacerbate the negative health outcomes HB 3293 sought to

¹¹ Jeff Reardon, State Representative for District 48, Testimony for HB 3293 before the House Committee On Agriculture and Natural Resources, March 16, 2021. [[Begin at 43:54](#)].

¹² Jeff Reardon, State Representative for District 48, Testimony for HB 3293, the Senate Committee On Natural Resources and Wildfire Recovery. [[Begin at 02:29](#)].

minimize. As currently drafted, the rules could result in a form of *astroturfing*, whereby the illusion of grassroots community engagement is funded by state agencies.

By all accounts, Representative Reardon sought to empower local communities to have a voice, represented by local organizations they trust. We recommend that the state prevent water project developers who receive state funding for water projects from having access to additional state funds to manage the engagement of disproportionately impacted communities because the outcome has a very high chance of increasing the disproportions, which is a tragic irony.

[Note: We recognize the significant amount of community engagement OWEB and ODA have funded over the decades so that Watershed Councils and Soil & Water Conservation Districts can work with landowners and local community members to effectively conduct projects. We know from the legislative record and the written and oral testimony for HB 3293, that HB 3293 wasn't just an effort to increase that sector funding. ORS 541.551(e) says:

“Water project” includes watershed enhancement, in-stream flow protection or enhancement, water resource conservation or development, or water supply and wastewater treatment and disposal projects.

While the term “Water project” is so broad as to include almost all conceivable water projects ever built or completed in Oregon, the purpose of HB 3293 was to address the inequities of the most controversial and contentious water projects that negatively impact communities. The typical work that Watershed Councils and Conservation Districts complete is rarely, if ever, controversial; nor do they harm communities in ways Representative Reardon discussed. HB 3293 was not written or inspired to address any problems related to the existing funding streams earmarked for Watershed Councils and Conservation Districts.

The longstanding community engagement that OWEB and ODA fund for Watershed Councils and Conservation Districts is mostly in the form of outreach to work with landowners on river restoration, riparian area restoration, and agricultural water quality, which are widely supported by communities. They do not disproportionately impact communities. The existing OWEB and ODA funding is not about addressing the problems disproportionately impacted communities experience by large water infrastructure projects that Representative Reardon and his colleagues testified about.

We raise this subject to ensure OWRD does not equate existing state funding for community engagement that supports non-controversial watershed and ag-water quality efforts with funds envisioned by HB 3293.]