

From: [Harmony \(Paulsen\) Burrigh](#)
To: [REGULA-WHITEFIELD Charlotte M * WRD](#)
Subject: Re: Next Steps for OWRD Rules Advisory Committee - Best Practices in Community Engagement around Water Projects
Date: Tuesday, October 1, 2024 6:39:59 AM
Attachments: [OWRD HB3293 OAR DRAFT 7 09.03.24 sent to RAC HB.docx](#)

Hi Charlotte,

Thank you so much for the opportunity to comment. I've done the best I can with the time I have and hope that this is helpful.

Upon reviewing the materials, I find myself with lots of questions about how this will work in practice. The development of the best practices makes a lot of sense to me and I appreciate your very thoughtful approach to devising those and seeking feedback. Here are a few of the questions that I have (my apologies if some of them are answered in the meeting, I'm just now starting to watch the recording).

The statute lists a number of agencies that *may* make water project support available 2(a). Of the listed entities, which entities plan to provide support? What are the mechanisms by which they will provide support? Is there something summarizing the interagency approach to the statute?

The statute then goes on to say that each provider of water project support shall adopt rules. Will other agencies be adopting a similar set of rules or will OWRD be the only agency adopting rules? I know that this set of rules is focused on OWRD, but I'm curious whether other agencies will also be developing and adopting rules memorializing their support?

For OWRD, it seems that funding will be made available through the WPGL and FSG programs to develop community engagement plans? Though it's not entirely clear how that will happen. Are those programs set up for this new "eligible expenditure"? Will there be a new grant solicitation period? Would it make sense to wait and also include the PBP funding in this? Does the Department plan to provide any other forms of assistance (e.g., technical assistance) or will it just be financial assistance?

I'm very curious what the expected demand for this funding will be. Did you get any sense in your outreach?

To what extent do you think agencies will also endeavor to utilize these best practices in their own work?

See attached for some more specific comments on the draft rules. I plan to finish watching the recording this morning and will send along any other thoughts that come up in response to the discussion.

Again, thank you so much!

With gratitude,
Harmony

On Mon, Sep 30, 2024 at 4:46 PM Harmony (Paulsen) Burrigh
<harmonysimone@gmail.com> wrote:

09.03.24 DRAFT OAR

Chapter 690: Water Resources Department

Division 601: Best Practices in Community Engagement for Water Projects

Purpose

690-601-0001

- (1) OAR 690-601-0001 to OAR 690-601-0006 establishes rules to support meaningful involvement of disproportionately impacted communities in the development, implementation, or development and implementation of community engagement plans for water projects supported by authorized Oregon Water Resources Department grants and loans.

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551

Definitions

690-601-0002

For the purposes of Oregon Administrative Rules Chapter 690, Division 601:

- (1) "Disproportionately Impacted Communities" means:
 - A. Rural communities;
 - B. Communities of color;
 - C. Tribal communities;
 - D. Coastal communities;
 - E. Areas with above-average concentrations of:
 - a. historically disadvantaged households,
 - b. residents with low levels of educational attainment,
 - c. high unemployment,
 - d. high linguistic isolation,
 - e. low levels of homeownership or high rent burden,
 - f. sensitive populations;
 - F. Other communities that face barriers to meaningful involvement in public processes.
- (2) "Meaningful Involvement" means that members of disproportionately impacted communities have appropriate opportunities to participate in water projects that will affect their environment or health and the outcomes of a water project.
- (3) "Community Engagement Plan Grantee" means individuals or entities that receive 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.
- (4) "Community Engagement Plan Applicant" means eligible individuals or entities that apply to receive grants or loans from OAR 690-600 or OAR 690-093 for a water project Community Engagement Plan.
- (5) "Department" means the Oregon Water Resources Department.

- (6) "Community Engagement Plan" has the meaning given to the term in ORS 541.551.
- (7) "Water Project" has the meaning given to the term in ORS 541.551.
- (8) "Best Practices" has the meaning given to the term in ORS 541.551.

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551

Funding
690-601-0003

- (1) The Department may provide funding for community engagement plan development, implementation, or both to increase participation by representatives of disproportionately impacted communities in water projects supported by grants or loans through OAR 690-600 or OAR 690-093.
 - A. For the purposes of grants and loans pursuant to OAR 690-093, Water Supply Development Account, a community engagement plan for a water project may be funded if the plan is used to inform the ~~identification, planning, development, and or~~ implementation of a water resource projects funded by the account.
 - B. For the purposes of OAR 690-600, Water Conservation, Reuse, and Storage Grant Program, a community engagement plan for a water project may be funded if the plan is used to inform ~~project identification and~~ project planning studies funded by the program that are performed to evaluate the feasibility of developing a water ~~conservation, reuse, or storage~~ project.
- (2) Community engagement grantees shall follow all laws and guidelines for water projects that are supported by grants or loans issued pursuant to OAR 690-600 or OAR 690-093.
- (3) Community engagement grantees shall follow all applicable state and federal funding and procurement laws and guidelines for ~~ineligible~~ and eligible costs and activities.
 - A. Ineligible costs and activities are not reimbursable, these include but are not limited to, spending funds on the acts of lobbying and fundraising.
 - B. Eligible costs and activities that may be reimbursable, if conditions of the granting agreements are met, include but are not limited to, ~~design and~~ facilitation of meetings ~~and associated costs, meeting development and distribution of outreach materials, capacity for organizations to conduct outreach, meeting venues,~~ and compensation of disproportionately impacted communities for meaningful involvement in community engagement opportunities.

Commented [HB1]: Oftentimes community engagement is too late and just perfunctory/performative if a project is already identified and the project proponents are set on something particular. Consider expanding this so that the community engagement plans can actually be used to inform the identification of projects. I believe both funding programs have sufficient statutory flexibility for this.

Commented [HB2]: It's strange that this is included. Are you saying they must follow laws and guidelines for ineligible costs even though they're ineligible and can't be funded?

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551

**Best Practices of Water Projects for use in Community Engagement Plans
690-601-0004**

(1) The Department recognizes ten best practices to support meaningful involvement of disproportionately impacted communities in water projects supported by grants or loans pursuant to OAR 690-600 or OAR 690-093. Department recognized best practices for use in the development implementation, or development and implementation of community engagement plans include:

- A. Identifying disproportionately impacted communities interested in engaging in water project planning.
- B. Defining the water project’s purpose and goals, including what will be done to meaningfully involve disproportionately impacted communities.
- C. Developing new, or assessing current, decision-making processes to identify opportunities to enhance access to the project decision-making process for disproportionately impacted communities.
- D. Inviting tribal communities in Oregon to participate in the water project, acknowledging their preferences and capacity for collaboration, regardless of whether tribal members are represented in the community demographics.
- E. Co-creating water project capacity opportunities that are inclusive, including to disproportionately impacted communities, with the community and across water project participants.
- F. Building collaborative relationships with disproportionately impacted communities.
- G. Coordinating with the community and across water project participants to leverage resources, staff, and data.
- H. Ensuring water project communications and information are shared in a timely, transparent manner, and in languages, and formats commonly used or preferred by disproportionately impacted communities.
- I. Evaluating the effectiveness of community engagement before, during, and after the water project, based on the purposes, goals, and capacities of communities and projects.
- J. Striving to monitor and document the positive and negative impacts of the water project on disproportionately impacted communities and their environments.

Commented [HB3]: Something missing here?

(2) Community engagement plans for water projects supported by grants or loans pursuant to OAR 690-600 or OAR 690-093 shall:

- A. Be designed to promote meaningful involvement of disproportionately impacted communities.

- B. Be conducted using the Departments recognized best practices. Plans shall include, but are not limited to, the following components:
 - a. A framework for how the water project will engage with and provide meaningful involvement of disproportionately impacted communities.
 - b. Metrics to evaluate the community engagement plans for participation by disproportionately impacted communities.

Statutory/Other Authority: ORS 536.027, ORS 541.551
Statutes/Other Implemented: ORS 541.551

Application Requirements
690-601-0005

- (1) Community engagement plan applicants shall comply with all application requirements associated with OAR 690-600 or OAR 690-093.
- (2) Community engagement plan applicants may propose to not incorporate one or more of the Department recognized best practices in community engagement plans for a water project. If a community engagement plan applicant requests to the Department not to incorporate one or more Department recognized best practices, then:
 - A. The community engagement plan applicant shall provide evidence to the Department explaining why the recognized best practice does not meet the community engagement plans desired outcomes or advances disproportionately impacted community involvement.
 - B. The Department shall determine whether the recognized best practice should be used, waived, or replaced with an alternative best practice proposed by the community engagement plan applicant.
- (3) Community engagement plan applicants may propose alternative practices not recognized by the Department for use in community engagement plan. If an alternative practice is proposed to the Department, then:
 - A. The community engagement plan applicant shall provide evidence to the Department showing that the proposed alternative meets the community engagement plans desired outcomes or advances disproportionately impacted community involvement.
 - B. The Department shall determine whether these alternative practices can replace a Department recognized best practice in the community engagement plan. In assessing alternatives, the Department may consider, but is not limited to, size and scope of the water project and the identified needs of the disproportionately impacted community.

Commented [HB4]: I can see a scenario in which the applicant is really focused on one aspect of engagement. For instance, they need financial support to conduct more meaningful outreach to tribes. If these community engagement plans are more focused or targeted, does that mean they likely won't qualify?

09.03.24 DRAFT OAR

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551

**Grant Agreement and Reporting on Community Engagement Plans
690-601-0006**

- (1) Community engagement plan grantees shall comply with all grant agreement conditions and reporting requirements associated with OAR 690-600 or OAR 690-093.
- (2) Community engagement plan grantees shall submit progress and final reports to the Department on a form provided by the Department. The reporting frequency will be specified in the grant agreement and will align with the timing of other related funding program reporting requirements. Reports shall include but are not limited to the following:
 - A. Progress made toward the use of Department recognized best practices and approved alternative practices, and the success of these best practices in increasing meaningful involvement of disproportionately impacted communities in water projects.
 - B. A description of when and how disproportionately impacted communities were engaged and considered during the development, implementation, or development and implementation of the community engagement plans.
 - C. Any feedback received from disproportionately impacted communities through a community engagement plan, and how the feedback has been or will be incorporated into the water project.

Commented [HB5]: Strange wording.

Statutory/Other Authority: ORS 536.027, ORS 541.551

Statutes/Other Implemented: ORS 541.551



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

September 30, 2024

Oregon Water Resources Department
Attn: Charlotte Regula-Whitefield
725 Summer Street NE, Ste A
Salem, OR 97301
Email: charlotte.m.regula@water.oregon.gov

RE: Comments, Community Engagement Funding, OAR 690-601 draft rules

Dear Ms. Regula-Whitefield,

Thank you for the opportunity to provide comments on the draft OAR 690-601 rules to supplement verbal comments made at the RAC meeting.

Definitions OAR 690-601-0002

Local Organizations: please add definition found in statute

Community Engagement Plan, Water Project and Best Practices: Please add the actual definitions rather than just referring to statute. As is, it would require someone to toggle back and forth between the statute and rules which could lead to inefficiencies both for the applicant and agency staff.

Meaningful involvement: WaterWatch would suggest tying the definition a bit more closely with the statutory directives found in HB 3293, Section 1(2)(a) which lays out what the funding can be used for. As is, the proposed definition just ties to “water projects”. We would suggest the specific over the broad so the reader can better understand the scope. If you do not agree it should be placed here, then we would recommend putting the specifics in Section OAR 690-601-0003.

Funding OAR 690-601-0003

This section does not clearly spell out the directives of HB 3293 Section 1(2)(a), (b) and (c), or (3)

Section 1(2)(a) lays out what the funding is available for, namely, to enable local organizations and local governments to develop and implement community engagement plans related to a water project, including funding to increase participation by representatives of disproportionately impacted communities in decisions related to the identification, scoping, design and implementation of water projects.

Section (1)(2)(b) and (c) lay out the requirements that the OWRD must impose on any grantees, namely OWRD:

- (b) Shall require that community engagement plans supported by the OWRD utilize goals and approaches for increased participation of disproportionately impacted communities in decisions related to the identification, scoping, design and implementation of water projects: and
- (c) Shall require that community engagements plans supported by the provider utilize best practices recognized by the OWRD.

HB 3293 Section 1(3) lays out the conditions that OWRD can require of any grantee. While we have addressed this below, we will note here that it might be prudent for the OWRD to put all the requirements up front in the funding section. Regardless of where you land, we feel strongly that the whole of HB 3293 Section 1(3) needs to be somewhere in these rules; these provisions are some of the most detailed directives of the statute and we believe are valuable to meeting the intent of statute.

Additionally, while we recognize that the OWRD has addressed the best practices in section OAR 690-601-0004, we believe the rules would benefit from setting this requirement out up front.

Best Practices, 690-601-0004

Comments on organization of this section: To make it easier for the reader to understand, I would suggest changing the organization so that there is a stand-alone section on what is required under statute, namely, HB 3293 Section 1(2) (b) and (c).

Then in a different subheading I would lay out the Best Practices. As is, the reader is not told at the start of the best practices section (1) that these will be required, that doesn't come until subsection (2). Moreover, then section (2) (B) muddles it a bit by first stating that plans must be utilized using best practices but then lays out two subsections, (B)(a) and (b), which don't necessarily tie to Best Practices, or if they do, that is not clear.

Comments on substance of the Best Practices:

(1)(A): amend to require that these communities be "invited". Simply identifying them without engaging them does not meet the intent of the statute. Moreover, we would suggest expanding this section to mimic language in the statute related to conditioning which ties identifying disproportionately impacted communities and local demographics though use of established systems. In other words, add some structure as to how those leading engagement planning will achieve this metric.

(1)(C): address the fact that this Best Practice directs identifying opportunities to enhance access but does not actually require enhanced access.

Also, as noted in our earlier comments on the Best Practices guidelines, to the extent funding recipients must abide by Best Practices as articulated in statute, the Best Practices themselves should include accountability measures. As the Best Practices currently read, it appears that decisions are left largely to those applying for and receiving the grants for community engagement efforts (setting the table, establishing goals, balance, etc.); this could lead to the use of this tool by project proponents (and/or their consultants) to shape input/outcomes to their advantage. The discretion allowed by HB 3293

Section 1(3) could address some of this by allowing OWRD to require the conditions set forth in that section. However, more could be done there so we would encourage further discussion.

OWRD approval of grant requests

1. The OWRD should include a section on how they will decide to approve or deny a grant. As is, no direction is given which could lead to project developers into believing that everyone who applies will get a grant as long as they check all the boxes. This omission could lead to problems for the OWRD in the future.
2. The rules should be amended to add the conditioning authority granted by statute to OWRD (as a providing agency), namely all the language found in HB 3293 Section 1(3)(a) and (b)(A) through (D). It is this section of the statute that adds some of the most specific and meaningful standards for this funding; we would urge OWRD to include it either in a new grant approval section, or under “application requirements”.

State Oversight: There is no clear agency oversight of the development of community engagement plans funded by the OWRD. Given this is public funding that will be used for these endeavors, and the fact that it is possible that savvy project proponents will use the development of public engagement plans to gain “points” in state and federal funding, it seems prudent to have some sort of state agency oversight to ensure engagement plan outcomes intended by statute. Without this, this process could, as noted by one RAC member, be used to manufacture consent, among other possibilities.

Thank you for all your work on these rules and thank you for the additional opportunity to comment. If you have any questions, please feel free to call.

Sincerely,



Kimberley Priestley
Senior Policy Analyst
WaterWatch of Oregon