

# Division 602 Place Based Water Planning

October 17, 2024, 12pm-3pm



This document is a summary of Division 602 Rules Advisory Committee (RAC) meeting number three held over Zoom on October 17, 2024, from 12pm to 3pm. For more information, see the Meeting Presentation, Draft Rules, and other Meeting Materials, available on our [rulemaking website](#).

## [Video Recording RAC 3](#)

The Department will be hosting a fourth and final RAC Friday, November 15, 2024, from 9am-11am. Registration information can be found [here](#).

## Meeting Attendees

RAC Members in attendance: Lisa Brown, Debbi Bunch, Mike Buettner, Harmony Burrignt, Anton Chiono, Danette Faucera, Kate Fitzpatrick, Brandon Haslick, Peggy Lynch, Steve Parrett, Tom Pattee, Holly Stanitsas, Brian Wolcott.

Oregon Water Resources Department (OWRD) staff in attendance: Lili Prah, Kim Fritz-Ogren, Margo Mashkovskaya.

## Agenda (Lili Prah)

This meeting covered the following topics:

- Summary of draft rule updates in [10/3/2024 version](#) and [RAC feedback](#)
- State Recognition (690-602-0007) wrap-up
- Match Requirements
  - 690-602-0003(2) (Grant Application Process)
  - 690-602-0005 (Grant Application Requirements)
- Grant Administration
  - 690-602-0003 (Grant Application Process)
  - 690-602-0008 (Grant Agreement and Conditions)
  - 690-602-0009 (Public Notice and Comment)
  - 690-602-0010 (Distribution of Funds)
- Rule Scope Discussion
- *Planned but not covered*: Racial Equity Impacts & Economic and fiscal impact
- Public comment period (*No public comment was made*)

## Draft Rule Updates

- **690-602-0002(18)**: “Shared Governance Agreement” was added to the definitions section “(18) “Shared Governance Agreement” means a written document adopted by a collaborative through consensus that governs the collaborative’s organizational structures, decision-making processes, roles, commitments, communications, and other provisions needed to support group governance or collaboration.”

**OWRD Explanation** (Lili Prah): The term was added to version 9/3/2024 as a requirement of the plan development grants and staff thought it would be helpful to be clear about what it means, so added a definition in version 10/3/2024. Staff looked at governance agreements that that were used during the pilot and in other similar planning efforts to determine the fundamental pieces that make up this type of document.

**RAC Member** (Lisa Brown): Agreed that it’s good to have a definition for shared governance agreement.

Suggested need for more substantive requirements in the definition, for example, what kind of decision-making process fulfills the requirements of a PBP process, who's eligible to participate in PBP process. The definition should include more detail on what is appropriate for the shared governance agreement.

**RAC Member** (Peggy Lynch): This is a shared governance agreement amongst people sitting at the table, but where are the state agencies in this document?

**OWRD Response** (Lili Prah): The requirement in statute is that collaboratives are in consultation with state agencies, so whether we should include them here is a question.

**RAC Member** (Anton Chiono): Echo Peggy and Lisa's points. Figuring out who is eligible and what the role of state agencies is should be inclusive and to the extent that we can capture that here is in our best interests. Water is a public resource and everybody, including those inside and outside the basin and state agencies, should be included. How we capture that is the challenge.

**RAC Member** (Peggy Lynch): We need to know that state agencies are going to be there, whether or not they are signed to the governance agreement.

**RAC Member** (Holly Stanitsas): Agree with Lisa, would be open to having more specifics (i.e. consensus tool used, eligibility, etc.) in guidance as well.

**OWRD Response** (Lili Prah): The definitions of collaborative/community might address some of these inclusion pieces. We'll look back and make sure it exists and if it doesn't, see where it best fits. For the specific tools, whether it belongs in guidance or rule is a question, but it should be included somewhere.

**RAC Member** (Anton Chino): Challenge with past planning groups was agency funding and staff capacity to participate at a level that was needed, which was detrimental in making progress in a timely fashion. State agencies should have appropriate funding for this work.

➤ **690-602-0004: Eligible Grant Types**

**Changes to Grant Names:**

- Pre-planning Grants-> Planning Readiness Evaluation and Preparation Grants (PREP)
- Planning Grants -> Plan Development Grants
- Implementation Coordination Grants-> Post Plan Coordination Grants
- Plan update Grants (unchanged)

**RAC Member** (Lisa Brown): Language in this section is confusing because it is describing required outcomes. OWRD should consider moving substantive outcome requirements into following section. More detailed comments about this were supplied over email.

**OWRD Response** (Lili Prah): We tried to get at some of this by changing the section name, but if it's still not right, we can look at how we can make it better.

**Proposed New Changes in blue (not in version 10/3/2024):**

“(2) Eligible Plan Development Grants must:

(a) Develop a shared governance agreement adopted by the collaborative [according to the process, content, and structure required by the Department and necessary to govern Place-Based Integrated Water Resources Planning as defined in ORS 537.873\(1\)\(f\)](#); and

(b) Develop a place-based integrated water resources plan for a planning area [according to the process, content, and structure required by the Department and necessary to meet the definition of](#)

a Place-Based Integrated Water Resources plan as defined in ORS 537.873(1)(e).”

**OWRD Explanation** (Lili Prah): We received a suggestion from RAC Member Lisa Brown that we should add some language for the Plan Development Grants to ensure that the shared governance agreement and the place-based water plan both contain language that require them to meet requirements in OWRD guidance. We agreed, so we drafted this language for Plan Development Grants. It describes what is required for this grant type and is specific in saying what type of requirements will need to be followed – process, content, and structure, which reflects what Plan Review Team has evaluated in considering a plan for state recognition. This is just an introduction to this language to start a conversation, but there will be an opportunity for more comment on it in the next version of the draft rules.

**RAC Member** (Lisa Brown): Had an overarching concern with the rules, that they weren’t tied to the requirements of the PBP process. Needs more time to review new modifications but preliminary reaction that WRD edits may address concerns.

**RAC Member** (Danette Faucera): Will this be in the guidance document or addressed in rule? Will it be a requirement or guidance?

**OWRD Response** (Kim Fritz-Ogren): Structurally, it would be included in PBP guidelines, and we would be clear in that document of what is required and what are options the groups can consider. Having clarity about requirements upfront has been a lesson learned and recommendation from the workgroup; any guidelines would call out what is required if you want to move towards state recognition. The rules delineate what is necessary and the guidance will clarify.

➤ **690-602-0006 “Grant Evaluation Criteria”**: Major Changes discussed (additions in red)

- **For every grant type**
  - Added “**The proposed approach to public participation and engagement of environmental justice communities**”
  - Added “**Strategic Priorities determined by the Director**”
  - Removed “Cost Effectiveness”
- **(1) PREP Grants shall be evaluated on:**
  - (a) The expected ability of the grantee to effectively engage a balance of instream and out-of-stream water interests on place-based water resources issues;
  - (b) The **need for the community to assess its readiness or prepare for place-based water planning** ; ~~clear and immediate need for capacity to be built~~
  - (c) **The proposed approach to public participation and engagement of environmental justice communities**
  - (d) **Strategic Priorities determined by the Director**
- **(2) Plan Development Grants shall be evaluated on:**
  - ~~(a) A collaborative’s readiness to engage in planning, which includes but is not limited to:~~
  - (a) The convener and **potential** collaborative members ability to meaningfully engage and collaborate **in a neutral process over multiple years** with a balanced representation of instream and out-of-stream water interests, the public, **Tribes, local governments**, and state agencies.
  - ~~(b) The history of collaboration in the planning area and among collaborative members.~~
  - (b) The proposed data, technical information, and planning tools that would support planning in the area;
  - (c) The proposed **approach to public participation and** engagement of environmental justice communities.
  - (d) Strategic priorities determined by the Director.
  - (e) The value of place-based integrated water resources planning in the planning area and the

demonstration of a clear and immediate need for a Plan; and  
(f) State agency capacity to support the proposed planning process.

- **(5) Additional evaluation criteria** for Place-Based Water Planning grants may be added by the ~~Commission~~ to reflect lessons learned by the Department through the administration of the grant program. Fund solicitation and application materials must reflect any new evaluation criteria before the commencement of a grant application cycle.

**RAC Member** (Peggy Lynch): What does “Strategic priorities determined by the director” mean?

**OWRD Response** (Lili Prah): This is an opportunity to prioritize planning in places where we know could really benefit from planning based on experience on the ground.

**OWRD Response** (Kim Fritz-Ogren): There are three potential sources of information: (1) Integrated Water Resources Strategy, (2) Agency Strategic Plan (3) Our understanding of where conditions on the ground, recent or upcoming groundwater studies, where the timing is really important for moving that place forward.

**RAC Member** (Peggy Lynch): How would I know that if I were going to fill out a grant application?

**OWRD Response** (Kim Fritz-Ogren): The first two are publicly available and clear. The third one, we can reflect on and see if that is fair, clear, and transparent; or how to make it so.

**RAC Member** (Peggy Lynch): Perhaps part of it could be in the guidance, but it would be important to know how one could score better.

**RAC Member** (Lisa Brown): Criteria missing for plan development grants would be something related to “commitment and ability to develop a plan that adheres to state guidelines and balances instream and out-of-stream interests”. Maybe something similar should be added to subsections (1) and (3).

**RAC Member** (Peggy Lynch): Lisa’s suggested edit is reasonable. It is certainly what we want as an outcome.

**RAC Member** (Mike Buettner): What is missing from the existing rules that this addition resolves? Is the key addition balancing instream and out-of-stream interests?

**RAC Member** (Lisa Brown): This is about the development of a plan that adheres to the guidelines. It is already in subsection (a) that the process must have a balance of instream and out-of-stream interests, but no other criteria talk about the ability to develop the required plan.

**RAC Member** (Mike Buettner): Appreciates the spirit of the suggested language, no objections.

**RAC Member** (Mike Buettner): Talking about Evaluation Criteria Changes: Same comment as Peggy on “strategic priorities determined by the director”. This language could be interpreted as the Director picking winners and losers. Adding some language about the criteria for what it actually means would make it more transparent to folks that are going through this process. For example, “stated strategic priorities as determined by the Department, such as the IWRS...”.

**RAC Member** (Brian Wolcott): Question on 690-602-0006(5). If additional criteria can be added, what happens if criteria changes while application is being reviewed?

**OWRD Response** (Lili Prah): The rule language now reflects that all evaluation criteria would be set before the commencement of a grant application cycle, so there would be no new criteria added during the application cycle. Applicants would know the criteria they are being evaluated on before any grant

solicitation or application materials were distributed.

**OWRD** (Lili Prah): Adding the definition of facilitator was suggested by RAC member Lisa Brown by email prior to our meeting today. This was discussed at the last RAC meeting, and we initially thought it was a better fit for guidance but are open to hearing more on this.

**RAC Member** (Lisa Brown): Suggestion that for PREP and Plan Development Grants, we should add to existing evaluation criteria that the grantee/convener/collaborative commit to using a “neutral facilitator”. Propose new definition of “Facilitator” means a neutral party with subject matter expertise to facilitate meetings and ensure planning documents meet PBP guidelines and reflect work of the collaborative”. Being in PBP processes, it is clear that this is a really important part of it, so it seems worthy to include in rule.

**RAC Member** (Peggy Lynch): Fine with neutral party but if we ask them to have water expertise, it would be hard to find someone who is considered a neutral facilitator. Are there enough people who would fit this description?

**RAC Member** (Anton Chiono): Agrees with Peggy’s point. We are looking for someone to run meetings and draw out collaboration, and we don’t necessarily need to prioritize subject matter expertise. Agrees that it might be difficult to find people that would fit that description. Running a meeting is a very different skill set than knowing a lot about water. It’s a difficult role for an agency to fill while also being a regulatory entity. Strongly agree with including a facilitation requirement but would recommend reconsidering that subject matter expertise requirement.

**RAC Member** (Kate Fitzpatrick): Understands why subject matter expertise is helpful because water is so complex and can be difficult to navigate. The way that it is handled in the Deschutes, is that we have neutral facilitation without subject matter expertise, which is supported by technical expertise from the DRC. It can work in different ways, but it might be useful to not require subject matter expertise in rule so that there can be some of that flexibility.

**RAC Member** (Lisa Brown): All great points - okay with removing subject matter expertise language.

**OWRD** (Kim Fritz-Ogren): Interested in folks’ thoughts: The spirit is to make sure products coming out of collaborative are in line with principles of place-based planning. Are people suggesting the facilitator review the planning material to make sure the content follows the place-based planning guidelines? Because if that is the case, they would need subject matter expertise. We see the facilitator as a process guide rather than a document reviewer.

**RAC Member** (Peggy Lynch): A facilitator with skills should be able to read a guideline and be able to determine if it reflects the work of the collaborative. Not sure have same concern as the one Kim highlighted.

**RAC Member** (Lisa Brown): The thinking is that there is someone accountable for what is coming out of the collaborative and that it is meeting standards. Maybe that is a given and doesn’t need to be stated here, but it is an important role. It may not always be the facilitator that is responsible for that task, so maybe it’s extraneous language.

**RAC Member** (Mike Buettner): Collaboratives could assign that responsibility to people within their effort; worried about tying too many specific responsibilities to the facilitator.

**OWRD Response** (Kim Fritz-Ogren): Wants to make sure language is clear and that it would be interpreted similarly by everyone and reflects the underlying intent.

**RAC Member** (Peggy Lynch): It’s good to make sure that someone in the planning process is doing these things, but it might not be the facilitator’s responsibility, so it would be helpful to have language reflecting that.

**RAC Member** (Lisa Brown): It could be the convener, but someone has to be responsible for this task and it’s not written into the rules.

## State Recognition (690-602-0007) Wrap-up

Began conversation at the previous RAC and discussed (1) the process of achieving and maintaining state recognition and (2) what state recognition means in terms of agency support and consideration in the IWRS.

- **690-602-0007(1)(2)(3)(4):** No additional RAC feedback.
- **690-602-0007(5): Agency Support of State Recognized Plans**  
“(5) The Department, in consultation with other relevant state agencies, shall support implementation of state-recognized Plans appropriate to their mission, authorities, and priorities, as capacity allows. **The Department shall document and communicate to collaboratives which Plan strategies may be supported by the Department according to the Department’s mission, authorities, priorities, and capacity.”**

**RAC Member** (Lisa Brown): We do not support the language that the “department shall support implementation”. There is no statutory basis for it. “Shall support” is also vague – does it mean seek funding, change a rule? Additionally, we have a PBP process that is not well defined enough to be able to say whatever comes out of that, “the agency shall implement”. We feel very strongly that it is not consistent with statute and suggested change to “may” not “shall”, because there is good stuff coming out of PBP and the Department should have discretion to take some of those ideas. Also, instead of “as appropriate to mission”, it should be “only if consistent with” their mission. Language on “shall communicate” places a burden on the agencies that is sort of ambiguous and is not in statute.

**RAC Member** (Danette Faucera): Same question as Lisa, what does it mean to “support.” Also, why is it limited to OWRD, rather “in consultation with other agencies?”

**OWRD Response** (Lili Prah): We cannot put in our rules that ODFW must do something, but it would be great if we could all get on the same page in how we do things.

**OWRD Response** (Kim Fritz-Ogren): WRD wanted to be mindful of sister agencies autonomy and our own authority. The intent behind that language of documenting and communicating was added in response to other feedback and questions about what the agencies are going to do and at a minimum we can document what actions align with our mission and have the authority or capacity to do. Support can mean a number of different things but it ties back to that authority piece.

**RAC Member** (Peggy Lynch): Concerned that this only focuses on WRD’s role in supporting groups. Understands these are WRD rules but there must be some way to add language that other agencies have roles to support the work of collaboratives.

**RAC Member** (Harmony Burrig): Strongly supportive of including this language – it was a long-standing question of the groups doing planning and was of great interest to the Commission. Agrees with Lisa’s suggested changes regarding “consistency with” and inclusion of capacity. The Department has discretion within this language about what it can and cannot support and will clarify that support in writing and that clear communication back to planning groups is important. Agrees strongly with Peggy’s point on inclusion of some language around consulting with other state agencies to clarify what those agencies might do. This is mostly about clear communications about that is expected as collaboratives move to implementation.

**RAC Member** (Lisa Brown): “May” rather than “shall” would reflect the discretionary authority of agencies. Appreciate the desire to be clear about what these plans mean and what the Department would do with them, but this language does not do that.

**RAC Member** (Harmony Burrig): Believes “shall” is the right term, and the degree of support is up to the discretion of the agencies.

**RAC Member** (Peggy Lynch): Understands both of those arguments for “shall” versus “may.” “Shall support” might imply that it is something state will fund but that is a separate conversation when you get to project implementation. Also, are we going to have to ask other agencies to adopt similar rules since they are all part of the planning process and not just OWRD?

**OWRD Response** (Kim Fritz-Ogren): Other agencies do not have the authority to adopt rules related to this, unless they have general rulemaking authority. We hear the concern about having other agencies articulate or identify that commitment, and we just need some time to reflect on ways we can do that.

**RAC Member** (Lisa Brown): Since there are differing opinions on what “shall” means here, maybe the structure of this section is not adequate. Suggest reconsider organization to capture the message - one sentence may not be enough.

**RAC Member** (Mike Buettner): Suggests “shall recognize” as an alternative. Suggested addition of temporal language of when the department will consider – for example “at time budget development.”

**RAC Member** (Danette Faucera): Can the two sentences be combined, keep “shall” but limited to the capacity and authority. “The Department, in consultation with other relevant state agencies, shall document and communicate to collaboratives which Plan strategies may be supported consistent with each agency’s mission, authorities, priorities, and capacity.”

**RAC Member** (Harmony Burrig): Elegant suggested language.

**OWRD Response** (Lili Prah): Feels like we came to a solution. OWRD will take all this into consideration in the next version of the draft rules.

➤ **690-602-0007(6): Consideration of State-Recognized Plans in the IWRS**

“Plans that achieve state recognition before the Department begins updating the state’s next Integrated Water Resources Strategy shall be considered in the update. The Department shall identify and may incorporate common themes or strategies emerging from state-recognized Plans into updates and any associated workplans, as appropriate to the Department’s mission, authorities, and priorities, and as capacity allows.”

**RAC Member** (Peggy Lynch): This implies that only OWRD may incorporate common themes and strategies and not other agencies and the IWRS does involve other agencies.

**OWRD Response** (Kim Fritz-Ogren): Perhaps this can be addressed by adding similar language around “in consultation with other relevant state agencies.”

**RAC Member** (Harmony Burrig): Encourage the Department to think about the different, more specific aspects of a place-based plan, that may roll-up and inform a state-wide strategy, including place-specific information, identification of critical issues, and implementation strategies. Is the state only going to include those “common themes” or also recognize those place-specific issues and strategies? Recognizing place-specific issues/strategies in the state-wide strategy is consistent with how other western states use regional planning and would encourage the Department to follow suit.

**OWRD Response** (Lili Prah): We did have this laid out in a previous draft as two separate bullets for “common themes” and “strategies,” and for the sake of conciseness, we merged it together here, but recognize it might not be as clear as it was before.

**OWRD Response** (Kim Fritz-Ogren): Appreciates hearing how others interpret this language. For example, “common themes” doesn’t mean it’s experienced by all places; there might be common themes

experienced by basins on the east side or the west side. Want to make sure that language is clear if others don't have the same understanding of it how it is written. Also, per the statute change for the IWRS, the IWRS will be required to identify critical issues by basin in the next iteration and place-based plans could be a source for that information.

**RAC Member** (Lisa Brown): Suggests replacing "as appropriate" with "only if consistent". May not be necessary but suggests saying that the Department "may identify and maintains discretion to incorporate common themes or strategies". Legislation focuses on themes not strategies, so we need to be careful about how we say that. Also, these rules are putting some more rigor into the process, so suggests adding language on what happens to plans that have already been recognized without these rules in place.

**OWRD Response** (Lili Prah): If we don't add any additional language about collaboratives that have already achieved state recognition, those groups would maintain their state recognition as per these new rules. Their process for achieving state recognition was not substantively different from what is in the rules now – they went through a plan review team process and were recognized by the Commission based on the guidance that was available to them at the time. They would have to be maintain state recognition according to the new rules to have access to the post-plan recognition funding and plan updates.

**RAC Member** (Lisa Brown): Processes in past did not meet definitions under the new rules for example, who could be eligible to participate. Does not think all plans that went forward that did not substantively adhere to these new rules, so they would have concern about that approach.

**RAC Member** (Peggy Lynch): In response to Harmony's comment, incorporating "individual" before strategies may resolve the issue.

**RAC Member** (Lisa Brown): Concerned about taking site-specific strategies and placing them into the IWRS. Suggests additional language to clarify the scope of what could be included.

**RAC Member** (Peggy Lynch): The rule says "may" not "shall," so that should address Lisa's concern.

## Match Requirements Discussion (690-602-0005; -0003(2))

**RAC Member** (Kate Fitzpatrick): This language is consistent across state grant programs, so it might not be productive, but as someone who manages a lot of grants: if every grantor required that other matching funds were in-hand before funds were distributed, we'd never get a project done, because it's a bit of a chicken/egg problem. Most other funders require match by the end of the project. In this case, with so much potentially being in-kind match, it might be less of an issue, but foundation funding is often on a yearly basis, so it comes in throughout the process.

**OWRD Response** (Kim Fritz-Ogren): Important to understand that secured does not mean cash in hand. For example, an award letter could demonstrate that there is funding coming even if it is not in hand, especially as grants will often operate on a reimbursement basis. We can make sure that is clarified if it's unclear and a concern in the language.

**RAC Member** (Harmony Burrigh): Imagines that this is coming from other grant programs in the agency. PBP is unique in that a single entity, or multiple entities, are taking on a monumental planning process on behalf of a geography and with that comes significant expenditure of time and capacity and it's really not for the benefit of the individual convener or fiscal agent – it's really for the benefit of the whole. Encourages department to think about the challenges of the role of the convener/fiscal agent and how barriers erected around this funding will disincentive people from being the fiscal agent or convener of these processes because they are such difficult roles. Thinks that -0005 is overly restrictive and has significant concerns about how this will be managed by grantees because these aren't specific projects like Feasibility Study Grants and Water Projects Grants and Loans. Believes it requires greater flexibility. Sees



the Department as the magnet for other funds and shouldn't require applicants to have their ducks in a row for what will be a multi-year, multi-stakeholder process.

**RAC Member** (Peggy Lynch): In selecting the grant, is the amount/type of match part of the evaluation criteria?

**OWRD Response** (Kim Fritz-Ogren): We have removed cost effectiveness as a grant evaluation criteria until we figure out how to do it in an equitable manner. Generally, we look at match in the eligibility space, not in grant evaluation. It is demonstrating commitment by showing that you are not completely reliant on state dollars. It's showing that you are ready and committed to engage in this process and then the application will be evaluated according to the evaluation criteria.

**RAC Member** (Peggy Lynch): Wants to ensure equitable opportunities across the state. Agrees there needs to some match requirement to show commitment, but wants to ensure that it doesn't exclude people or groups that have less money.

**OWRD Response** (Kim Fritz-Ogren): At the application stage, match does not have to be secured. Sometimes it is a matter of identifying sources of funding and noting eligibility for that funding. It's a way to promote having financial or other stake in it without excluding individuals.

**RAC Member** (Debbie Bunch): Is WRD anticipating different levels of match requirement for different grant types? When will the decision be made, where will it be spelled out, how often will it change?

**OWRD Response** (Lili Prah): Match would be included as part of the grant solicitation materials. We want to be responsive to how much we have in the fund, changes in the economy, and how the match requirement seems to be working. How often match requirements will change is dependent all those factors. Whether or not grant types would have a different match is possible.

**RAC Member** (Harmony Burrig): Suggests adding language clarifying what Kim said around identification of match; "commitments" suggests people need to know with some degree of certainty.

**RAC Member** (Brian Wolcott): Is it possible to set a minimal match requirement of 5% or 10% match to make sure under-resourced parts of the state can participate?

**RAC Member** (Peggy Lynch): Good idea. Seeing the 50% might have groups walk away w/out that better understanding.

## Grant Administration Discussion (690-602-0003; -0008; -0009; -0010)

Much of this mirrors language in other OWRD funding opportunities.

### ➤ 690-602-0003(1)(3)(4): Grant Application Process

**RAC Member** (Lisa Brown): Suggests addition of the department "shall" use an application review team.

**RAC Member** (Harmony Burrig): Do you have any idea what "periodic" means? Maybe no less than once per year or once per biennium?

**RAC Member** (Peggy Lynch): Probably if/when there's money.

**RAC member** (Harmony Burrig): That's already in there "dependent upon funding."

**OWRD Response** (Lili Prah): Periodically means as often as we can, but it's hard to know for sure because

of external factors. Also, the type of grants offered will change over time – for example plan update grants will not need to be offered for a number of years.

**RAC Member** (Harmony Burrigh): Suggests including something like “no less than every two years” because “periodic” seems too vague. Having some degree of reliability for folks tracking the program so that people can be planning to plan. Encourage communication around when people can expect this opportunity to be available.

**RAC Member** (Peggy Lynch): Assumes that this is the Department’s responsibility on its webpage and in communications, for the reasons Harmony stated.

➤ **690-602-0003(5)(6): Grant Application Process**

**RAC Member** (Lisa Brown): Shouldn’t sub (6) say something like “the Director shall make grant funding decisions based on the standards set forth in these rules and may consider recommendations of the Application Review Team...” because otherwise there is nothing in here that says the Department is going to use these rules to make these decisions.

**OWRD Response** (Kim Fritz-Ogren): Those criteria and evaluation are encapsulated in the Application Review Team, but it would be good to call out criteria specifically for the funding decision and would be consistent with other grant programs.

**RAC Member** (Harmony Burrigh): Wouldn't it be the Commission? Or would it be the Director?

**OWRD Response** (Kim Fritz-Ogren): The statute gives the Director to make funding awards, it does not give the Commission to make funding awards. It is similar for Feasibility Study Grants.

➤ **690-602-0008(1)(2)(3): Grant Agreement and Conditions**

**RAC Member** (Harmony Burrigh): Suggest maintaining flexibility around “(3) No geographic area may be served by more than one grant from the Fund at a time”. Department has a linear understanding of these grants as it currently stands, but it might play out that way exactly in practice. Is it possible to have support for both implementation coordination and updates at the same time? Not advocating for entities to hold multiple grants at the same time, but it is unnecessary to be so restrictive in rule.

**RAC Member** (Debbie Bunch): Could see a state-wide organization being involved in different efforts in different geographic areas.

**OWRD Response** (Lili Prah): The intent with this rule is that an entity could hold multiple grants, just not for the same geographic area.

**RAC Member** (Harmony Burrigh): Feels like this language is a solution in search of a problem and wants to maintain flexibility as we get into implementation. Worries that this language would unnecessarily bind our own hands to solve issues that have not envisioned yet.

**OWRD Response** (Kim Fritz-Ogren): The intent behind this is, in part, signaling that we want to promote collaboration – we aren’t going to fund multiple entities pursuing parallel processes. We hadn’t contemplated what would happen if an entity is in the midst of transitioning is fiscal agents, which might be a different spot for overlap. We have found it can be very troublesome for good grant management if an entity holds multiple grants for similar things, which can get really murky in the accounting.

➤ **690-602-0008(4): Grant Agreement and Conditions**

**RAC Member** (Lisa Brown): It seems like we need something in this section that says, “grantee must

demonstrate a continuing commitment to collaboration and adherence to principles of PBP and the states IWRS". This section is lacking that substantive piece which applies after the plan is state recognized but does not have an equivalency here.

**RAC Member** (Harmony Burrigh): Suggested that the 6-month reporting requirement seems to frequent and would suggest 1 time per year.

**RAC Member** (Peggy Lynch): Reporting frequency depends on the complexity of the form. The form should be simple, but it's good to have accountability and for the state to have some assurance that people are paying attention to the funds and having some accountability.

**RAC Member** (Harmony Burrigh): Department uses progress reports for multiple things. Encourages thought about purpose of the reports and how they will be used internally. Doing anything with reports takes time and capacity. Harmony encourages the department to avoid arbitrary reporting requirements and to think about how to reduce the burden on the applicants.

**RAC Member** (Peggy Lynch): Perhaps 6-month financial reporting and 12-month programmatic reporting. Concern about mismanagement of funding, especially since this type of program is susceptible to mismanagement because of the varying skill sets of those using the money.

**RAC Member** (Brian Wolcott): 6-months to 1-year reporting seems reasonable based on OWEB reporting requirements for planning and capacity type grants. More frequent reporting does mean you'll catch mismanagement sooner.

**RAC Member** (Debbi Bunch): Is there something that asks for frequency of fund requests/financial reporting versus the progress type? Seems more frequent financial reporting - quarterly funding reporting makes sense for reimbursement purposes.

➤ **690-602-0008(5): Grant Agreement and Conditions**

**RAC Member** (Lisa Brown): Suggests need for a substantive point - "grantee must demonstrate a continuing commitment to collaboration and adherence to principles of PBP and the states IWRS". As written now, you have a provision for terminating funding but do not explicitly say that is a cause for termination.

➤ **690-602-0010: Distribution of Funds**

**RAC Member** (Harmony Burrigh): On "(2) Prior to disbursement of Department funds, the Grantee must provide the Department satisfactory proof that the required match, based on the total award, has been secured", would strongly encourage "final disbursement", and allow groups to be as flexible as possible to attract other funding sources.

➤ **690-602-0009: Public Notice and Comment**

**RAC Member** (Peggy Lynch): Why only county and tribal governments? Suggests all local jurisdictions be aware. Encourages greater notice because they all may have to be part of conversation. Suggests looking at DLCDC for comprehensive list of local jurisdictions – might be state defined.

**RAC Member** (Lisa Brown): Suggests edits to (2): "prior to any decision regarding state recognition". The way it is written now is that there is only notice if there is state recognition. Also suggests adding a second sentence that says something like the "Department shall provide public notice of any meeting where a decision regarding state recognition of a plan will be made and shall provide public notice of any decision regarding state recognition of a plan." Having robust public notice through the Department's normal public

notice process could also benefit the local jurisdictions and anyone that's interested in this stuff.

**RAC Member** (Harmony Burrig): How do we make sure that public notice has the ability to influence an outcome? We should be clear about how public comment will interface with interagency review teams. There should be a requirement that the grant awards come before the Commission for knowledge/awareness since it is an important place for public process.

**RAC Member** (Peggy Lynch): Assumes that it will be part of the Director's report to the Commission. Based on her experience, it can really slow down the process to have to wait for the Commission when they only meet 4x/year and have a million things on their plate. Feels comfortable that the Director and the Department can make the award, but the Commission should certainly be notified.

## Expanded Scope Discussion

Several RAC members were interested in expanding the scope of the draft rules to do more to describe technical support, interagency coordination, contracting authority, and program evaluation and improvement. Several specific suggestions were made and are described further in this [document](#). Some of the suggestions were outside of what the Department could put into rule. For those, we have described why that is the case in the handout. We have brought the other suggestions to the RAC today to discuss further.

### ➤ Rules to Clarify the Department's authority to contract directly for services

**Related Statute: ORS 537.874(6)** In addition to disbursing moneys in the fund as described in subsection (2) of this section, the Water Resources Director may use moneys in the fund to further place-based integrated water resources planning by entering into agreements or contracting for the following:

- (a) Efforts related to interagency coordination.
- (b) Situation assessments.
- (c) The collection or development of data, data inventories or other technical information necessary for planning.
- (d) Technical assistance.
- (e) The development of guidelines and best practices.
- (f) Providing opportunities for public participation.
- (g) The development or provision of training and learning opportunities.
- (h) Holding events and gatherings.
- (i) Evaluations to identify lessons learned and areas for improvement.
- (j) Consultation with Indian tribes.
- (k) Other actions in support of place-based integrated water resources planning that benefit a specific area in this state or the state as a whole.

**Proposed Rule from RAC Member:** "At the request of the Water Resources Commission, a Commission or Board of another agency, a tribe, or local government, the Department may perform or contract for a situation assessment within a planning area without entering into a grant agreement. Prior to a situation assessment being performed, the Department will notify potentially affected tribal and local governments."

**RAC Member** (Harmony Burrig): The Department currently has \$2 million available and when she was working for the Department, she thought it would be helpful to get started on situation assessments across the state to lay the groundwork for future planning and have the ability for the Department to do that to support a path for future planning, especially in areas where they might have identified significant issues but might have a difficult time identifying a convener or building support but there is a desire to get people working together. It's an opportunity for leadership from the Department.

**RAC Member** (Lisa Brown): What is a situation assessment? How does that differ from the PREP grant that is in the rules?

**OWRD Response** (Lili Prah): A situation assessment is defined in statute as “an assessment conducted for the purpose of understanding the status of an issue, stakeholder perspectives and the needs and conditions that potentially affect the feasibility and design of a collaborative process to develop and implement a place-based integrated water resources plan.” In the statute, it is referred to something the Department can contract for directly, which is different than grant making.

**RAC Member** (Harmony Burrigh): In the collaborative planning space, a situation assessment is considered best practice before you launch into a collaborative process. It’s really laying the scope of the effort, determining, who’s going to be leading the effort, what stakeholders need to be involved, what are the issues they care about? And then using that to design a successful collaborative process. It’s best practice we heard from multiple professionals in the field to think about the optimal design before committing to a multi-year collaborative process. In some cases, the Department might be in a better position to conduct the situation assessment than a local entity to help even identify who would lead.

**RAC Member** (Peggy Lynch): Assume the Department has the authority to do this because it’s part of their job managing water in Oregon, so it seems like the Director could use the agency’s resources to do that. Also, aren’t these outcomes a part of the PREP grant?

**RAC Member** (Harmony Burrigh): It could be a part of the PREP grant. Not advocating for and doesn’t like this specific rule language. The concept is really, that as former Department staff, it would have been awfully helpful for some really critical issues across the state for the Department to take a leadership role and given itself authority to use some money to take a look at what is happening in a basin to advise on a potential collaborative process into the future and would love for that to be a little more explicit in these rules.

**OWRD Response** (Kim Fritz-Ogren): The Department has statutory authority to do this and as drafted, this rule language clarifies when we could do it – at the request of someone else – which would actually be more restrictive. Having both tools available of contracting and grant making, which can be helpful as Harmony noted.

**RAC Member** (Steve Parrett): In order to improve the program and have success, wants the Department to have not just the authority, but also the flexibility and confidence to use contract funds, which includes support of the stakeholder group. If they are just in statute as they are written, do we have the elements needed to use that authority in an effective way?

**RAC Member** (Lisa Brown): Related to the proposed draft rule, there are entities missing for who can request a situation assessment, including non-profits. Generally, there is no public notice about where situation assessments are being requested or conducted, which seems inconsistent with the overall framework of the rules. For all contracting authority, who gets to make these requests? What’s the process? What’s the daylighting of the process? Which types of projects gets this technical assistance? It seems outside of the public realm.

**RAC Member** (Harmony Burrigh): Central concept here is what Steve was talking about. In her time at the Department, we were looking at direct services for Feasibility Study Grants. Despite clear statutory authority in Feasibility Study Grants to contract for direct services, there was an internal opinion that we couldn’t pursue it because it wasn’t captured in rule. So, while statutory authority is clear here, worry that there might be barriers to actually exercising these authorities if it’s not clear in rule. Contracting authority would allow the Department flexibility to be more responsive to the issues raised by the independent evaluation, the HB 5006 Workgroup, former staff, etc. Lack of clarity around this is a significant oversight because all of the things on this list were some of the most significant barriers we faced, and if the Department doesn’t feel like it has sufficient clarity or authority to actually exercise this, it will continue to inhibit Department staff from being effective.

**RAC Member** (Lisa Brown): That is helpful – we all felt that pain in the Harney early on. There would need to be some sideboards around what would go forward, and how the Department is balancing and ensuring that these are per the statute furthering place-based integrated water resources planning and the balance of instream and out-of-stream. If there were to be any rules developed on this, we would need to be really focused on the sideboards, the process, and public notice. Without that further work, we should just leave it at the statute.

**RAC Member** (Steve Parrett): Without rules, would you support the Department spend that money under the statutory authority alone?

**RAC Member** (Lisa Brown): It would depend on what it is – it would need to be balanced between instream and out-of-stream interests. Also, what does the legislature think this fund is for, versus what would it actually be going to under these provisions.

**RAC Member** (Harmony Burrig): We faced significant headwinds during the pilot phase related to every single item in this subsection. Would want to have on record that the Department could exercise this authority without rules before saying we don't need rules around this authority. The Department could face external pressure to not spend this money in the way that it is allowed to under statute if there aren't some agreed upon rules for how it could proceed. It is one of the biggest barriers to success to this program.

**RAC Member** (Kate Fitzpatrick): Agrees with Harmony, we have a better chance of assuring instream and out-of-stream balance with more state support and coordination because the state has those values at its mission. Public comment could potentially be a good idea. Having the state involved and engagement on these things is really helpful in planning, whether that is through contracting or not. It might be a bigger conversation about how the State is going to support regional planning, making sure that the state goals are met and working in partnership with collaboratives.

**RAC Member** (Lisa Brown): Big outcome of the independent evaluation was that it would be really helpful to have all that technical information at the beginning of the process. Concern is with the process that is ill-defined that does not necessarily have the explicit goal of that. Worry that this type of funding pot could move forward unevenly - would need to figure out how to go about it in an equitable and fair way.

**RAC member** (Harmony Burrig): The process Lisa is talking about is really important. This is potentially a place where investments could be made in the technical work and be prepared for Place Based Planning.

**RAC Member** (Lisa Brown): Would this money just go to the Department and external parties, or could it cover other agencies?

**OWRD Response** (Kim Fritz-Ogren): The statute is broad and does not limit who we can enter into agreements with to do these things. State agencies with the expertise and ability to do one of these things, could have an agreement. With how the fund is set up, we have a one-time pot of funds, we don't have a rolling pot. There were no extra limitations on those funds about whether it should be spent on contracts or grant making. It is up to the discretion of the Department and the Director to develop a spend fund for weighing all of these things unless we were to add additional clarifying rules.

**RAC Member** (Harmony Burrig): Encourages the RAC to work on clarifying rules because worry that without them, this part of the statute would not be exercised, and it would just be a grant making program.

## Wrap Up

- **Oct. 25:** Last day to submit any additional feedback on *Draft Rules version 10/3/2024* or Expanded Scope Expansion.
- **Nov. 1:** OWRD will send out Draft Rules version 11/1 and draft fiscal/racial equity impact statement.
- **Nov. 15:** Final RAC Meeting; 9am-11am ([Registration Link](#)). No additional feedback will be considered after this date.

## Public Comment

No written or verbal comments were made.