

# Division 602 Place Based Water Planning

November 15, 2024, 9am-11am



This document is a summary of Division 602 Rules Advisory Committee (RAC) meeting number four held over Zoom on November 15, 2024, from 9am to 11am. For more information, see the Meeting Presentation, Draft Rules, and other Meeting Materials, available on our [rulemaking website](#).

[Video Recording RAC 3](#)

## Meeting Attendees

RAC Members in attendance: Caylin Barter, Lisa Brown, Mike Buettner, Debra Bunch, Harmony Burrigh, Anton Chiono, Danette Faucera, Brandon Haslick, Ryan Krabill, Peggy Lynch, Chris Marks, Michael Martin, Roselyn Poton, Steve Parrett, Tom Pattee, April Snell, Holly Stanitsas, Brian Wolcott, Kevin Young

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 [11/1/2024 version](#) and [RAC feedback](#)
- Expanded Scope Discussion Wrap-up
- Racial Equity Impacts & Economic and fiscal impact
- Public comment period

## Summary of Draft Rule Updates

- 690-602-0002: Definitions
- 690-602-0004: Eligible Grant Types
- 690-602-0006: Grant Evaluation Criteria
- 690-602-0007: State Recognition of Plans
- 690-602-0005: Match Requirements
- 690-602-0003: Grant Application Process
- 690-602-0008: Grant Agreement and Conditions
- 690-602-0009: Public Notice and Comment

**RAC Member** (Caylin Barter): Regarding -0009(1): In a situation where a grant award process may not include an application review team, wants to ensure that public comment would still be available for that process. Right now, the public notice is linked to the application review team.

**OWRD Response** (Lili Prah): Language was added because if we do have an application review team, we would want to have the public comment before the review team would make a recommendation. OWRD can look at adjusting that language to account for public comment in cases when we don't have an application review team.

**RAC Member** (Lisa Brown): Regarding -0007(5): Reiterating written comments, concern that addressing what agencies do with plans is beyond the scope of this rulemaking, which only talked about funding and the process for state recognition. Agrees that this language is a lot better than what we started with, but still does not alleviate that concern. Regarding who gets to participate in these processes: the rules don't seem clear about whether restrictions can be put on to who can participate in these processes. In some cases during the pilot, groups like WaterWatch were not permitted to participate in planning collaboratives. It seems like an important standard to have in here and doesn't think we really got there. Suggests putting something in the definition of a shared governance agreement.

**OWRD Response** (Lili Prah): We talked about who could participate in the definitions for collaborative and community, so it's good to know if it still isn't clear.

**RAC Member** (Harmony Burrigh): Regarding -0005(2) Match Requirements: Continued concerned about the requirement for match to be secured before disbursement of funds and thinks it may exacerbate potential inequities especially regarding capacity for communities that are just getting started on this journey. Thinks match needs to be secured prior to final disbursement of funds to show a partnership approach between the state and the community, but requirement to have it all upfront will create challenges because planning is one of the harder things to fund and would be one of the greatest inhibiting factors for communities just coming on board and trying to do this work. PBP has served as a seed/magnet for other funding, but it takes time to attract that funding. Encouraged the Department to maintain flexibility around match.

Regarding -0008(3)(d): Concerned about the inclusion about the requirement of a neutral facilitator as a condition of the grant. It should be encouraged and part of the process, but there have been times in the pilot where funds were limited and the work was able to continue through support of a project manager or a plan writer. Ideally groups would have funding for all of these things, but concern that making it a condition of maintaining a grant, limits flexibility for using funds for different things and gives preference towards using funds for facilitation.

**RAC Member** (Holly Stanitsas): Agree with Harmony re: match requirements.

**RAC Member** (Steve Parrett): Regarding -0006(5): State support of recognized plans language is not as strong as had hoped but it's headed in the right direction. Question about when agencies would communicate their support to collaboratives in relationship to when the plan receives state-recognition – would it be within 90 days after plan gets recognized? When would the planning groups expect to have this information?

**RAC Member** (Harmony Burrigh): What about tying state correspondence to the biennial progress reports?

**RAC Member** (Steve Parrett): Regarding -0003(3): What is the intent for the "may" in "the department may use a grant review team"? Highly encourage a plan review team whenever it is possible and feasible.

**OWRD Response** (Lili Prah & Kim Fritz-Ogren): The "may" allows us flexibility, although we would generally use a plan review team. We might choose not use a plan review team when the value-add is limited, for example: after state-recognition of a plan, collaboratives have just gone through an extensive review process to get state recognition, so if sufficient funds are available, using an application review team might not be worth the time and resources. We would have to think about the implications of that for a public comment period and how we would address that in rule language. If there was just a public comment period in the process for state recognition, it might not be necessary to have another public comment period for the award of post-plan coordination grants.

**RAC Member** (Caylin Barter): Understands the desire to reduce duplication and conserve resources, but with these being two very different decisions – state recognition and distribution of limited state funding – wants to preserve the different intents of public comment for each. In the instance where we have exceptional demand and not enough resources in terms of planning funds, as was the case for the initial call for the pilots, it is important to preserve that public comment during this process.

**OWRD Response** (Kim Fritz-Ogren): We can think about how we might adjust the wording to take into account the difference between when there are limited resources and when there are sufficient resources.

**RAC Member** (Chris Marks): Agree with Caylin regarding need for distinct public comment for different phases/decisions.

Supported by Holly Stanitsas.

**RAC Member** (Harmony Burrigh): Agrees that this needs to be clarified. Thinks that the public should be able to comment on the rankings/funding recommendations before it goes to the Director for a decision.

**OWRD Response** (Kim Fritz-Ogren): Following-up on Lisa's comments on agency support of plans being outside of the scope of the statute, the statute says that "the commission may adopt rules to implement this section, including rules that describe how the implementation of actions outlined in a state-recognized place-based integrated water resources plan may be considered and supported.", which is why we are providing that clarification in the rules here. We'll need to think about Steve's comment about when that will happen, but since we haven't done it before, we'll need to think about different options.

**RAC Member** (Lisa Brown): The scope referred to earlier is what is on the OWRD rulemaking webpage which doesn't identify agency support. The other component of scope is what the statute says, which we've gone over and this language is better.

## Expanded Scope Discussion Wrap-up

➤ **Rules to clarify the Department's authority to contract directly for services.**

**Related Statute:** ORS 537.873(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 Language for Discussion:** "The Department shall periodically identify ways it may use moneys in the fund to most effectively further place-based integrated water resources planning as described in ORS 537.873(6)."

**RAC Member** (Steve Parrett): Having some flexibility to use the fund for these things would be helpful to the program and people running the program. It is in statute, so that authority exists with or without rules. The sample language is well meaning, but doesn't necessarily advance the ball, and might actually limit – "identify ways" seems like a restriction or a limitation as opposed to actually doing it. Suggested addition "use the money as necessary per XXXXX."

**RAC Member** (Danette Faucera): Curious about use of "shall" versus "may" and putting it on a timeline of "periodically"

**OWRD Response** (Kim Fritz-Ogren): We have gone back and forth on the "shall" versus "may", "identify" is not the same as "use", and we don't want the language to be restricting. We heard in the feedback concern that even though the Department has the authority to contract, it might not use that authority and that might be to the detriment of the program. There are times when it is better for the Department to contract directly for services, for example, the Department holding a contract for something that any of the groups can access is more efficient than each of the individual groups needing to subcontract out for the same thing. The "shall" requires the Department to periodically be checking to see how it could deploy contracts as opposed to simply relying on grant dollars. Good to know if folks think that "shall" is

too restrictive.

**RAC member** (Harmony Burrigh): Supports inclusion.

Supported by Rose Poton.

**RAC Member** (Caylin Barter): “The Department may use monies in the fund...”

Supported by Brian Wolcott.

**RAC Member** (Harmony Burrigh): Agree with Steve's comment...and Danette's...suggest consultation with other agencies - for instance, would have loved to see some money go towards ODFW's habitat prioritization project.

**RAC Member** (Caylin Barter): Seems like another good place to link to the IWRS biennial report.

**RAC Member** (Harmony Burrigh): Support the idea of a biennial work plan that complements the IWRS. It would be great to tie these things together more intentionally.

Supported by Chris Marks.

**OWRD Response** (Kim Fritz-Ogren): We would have to think about how that might work.

**RAC Member** (Lisa Brown): What is the mechanism/process? “Shall periodically identify” – how would anyone know what is identified. Agrees with Steve’s comments that this might be restrictive – could you use the money in a month, if you haven’t done this yet?

**OWRD Response** (Kim Fritz-Ogren): It could be done in a number of different ways, the rule language maintains flexibility. One way this could be done - the program coordinator could do a review and have it be part of a spend plan along with grants. Looking at what technical products we have ready and where there are gaps, are there themes in what groups needs that a contract could help meet. The specific process would be laid out in guidance.

**RAC Member** (Lisa Brown): Concern for non-transparent process on how contracting funds could be used to give Department authority to something beyond what is just stated in statute. If we are going to use this language, we should lay out some of the sideboards to ensure it is inclusive and balanced use of monies.

**OWRD Response** (Kim Fritz-Ogren): Appreciates the desire for transparency and contracting in the spirit of place-based planning. Also appreciates the concern about not being able to use funds for things that aren’t identified in those periodic reviews. An example would be providing cost match at state-wide water conference to support a tract for PBP groups. We wouldn’t want to create too much process where we would miss these types of opportunities.

**RAC Member** (Caylin Barter): Agree with Lisa/Steve/etc. This language should track the statute, which is “The Department may use monies...”

**RAC Member** (Harmony Burrigh): I like including something in rule but think we should maintain the broad discretion captured in statute. I strongly support public communication about what the Department is/plans to do to support place-based planning. Proposed language “The Department, in consultation with other relevant state agencies, shall produce a biennial work plan that identifies actions in support of place-based integrated water resources planning that benefit a specific area in this state or the state as a whole. The Department may use monies to support actions in the biennial work plan or any other actions consistent with ORS 537.873(6).”

➤ **Rules around Provision of Technical Assistance**

**Proposed Language for Discussion:** “The Department, in consultation with other relevant state agencies, shall develop a system for receiving, prioritizing, and responding to requests for technical

assistance to support place-based integrated water resources planning.”

**OWRD Response** (Kim Fritz-Ogren): Extrapolating from past comments, would people want to add “develop and publish” for transparency so people would know what that system is.

**RAC Member** (Lisa Brown): More transparency on technical assistance and how you can get your request into the queue is helpful. Need process at the collaborative level as well, for how these requests get presented to the Department – perhaps in the shared governance agreement – to ensure requests are equitably moving up the chain before they even get to the Department.

**RAC Member** (Caylin Barter): Support addition of “and publish.”

**RAC Member** (Harmony Burrigh): Strongly support inclusion of this language - technical assistance is critical to the overall success of this effort and there needs to be clear communication.

**RAC Member (Chris Marks)**: Technical Assistance is just one of the direct contract services the Department can provide, so could technical assistance be replaced with direct contracted services? Would need a system to respond to all of the different contracted services. Why are we just calling Technical Assistance out?

**OWRD Response** (Kim Fritz-Ogren): Based on the experience during the pilot, we’ve been thinking about how to most equitably use the internal capacity at OWRD to provide technical assistance. We’ve been thinking about how some of those things might be contracted out versus what is most appropriate/efficient for the Department to do. We’ll think about how best to reflect the spirit of all those things in this language.

**RAC Member** (Harmony Burrigh): Suggests use of “assistance” rather than “technical assistance.” “The Department, in consultation with other relevant state agencies, will develop and maintain a public process for receiving, prioritizing, and responding to requests for assistance to support place-based integrated water resources planning.”

Supported by Brian Wolcott.

**RAC Member (Caylin Barter)**: I like this but adding back “technical assistance” to clarify it’s not financial assistance

Supported by Peggy Lynch.

**RAC Member** (Peggy Lynch): Reality is other agencies might not be provided with \$\$ to respond. I certainly want their interaction, but also want to recognize the funding challenges.

#### ➤ **Rules around Program Evaluation and Improvement**

**Proposed Language for Discussion**: “The Department, in consultation with other relevant state agencies, collaboratives, and other interested parties, shall periodically conduct a program evaluation and implement strategies for improvement.”

**RAC Member** (Caylin Barter): Linking it back to the IWRS biennial report would make a lot of sense, but haven’t looked back at the statute to see if it would be a supportable pathway. Seems like it would be “periodical” and the subject matter aligns.

**RAC Member** (Harmony Burrigh): It would be helpful to have a time component - maybe no less than every 8 years to synch up with IWRS?

**OWRD Response** (Kim Fritz-Ogren): Like the idea making sure we are syncing up with other reports; Not sure an evaluation would work every 2 years with biennial workplans, but the IWRS is intriguing.

**RAC Member** (April Snell): I agree a time component is needed.

Supported by Chris Marks.

**RAC Member** (Harmony Burrigh): Strongly support ongoing program evaluation.

One additional thing re: scope is anything more about interagency coordination? I think it's sprinkled throughout but it might be good to have a sentence or two that ties it together more intentionally.

## Economic & Fiscal Impacts and Racial Equity Impacts Discussion

### Statement of Fiscal Impact (ORS 183.335(2)(b)(E))

- (1) What state agencies, units of local government and the public may be economically affected by the proposed rules and what are those effects likely to be?
- (2) Will there be significant economic effect of proposed rules on businesses?
- (3) What will the cost of compliance on small businesses be (ORS 183.336)?
  - How many small businesses will be subject to these rules? What types of industries will these small businesses belong to?
  - What are the expected reporting, recordkeeping and administrative activities required for compliance with the proposed rules, including costs of professional services?
  - What types of equipment, supplies, labor and increased administration required for compliance with the proposed rules?

**RAC Member** (Harmony Burrigh): On the positive side, this is an opportunity to attract additional money to Oregon from new and different sectors (e.g., private, philanthropic) to solve our water problems. This is laying the foundation for a larger collective investment in water.

**RAC Member** (Caylin Barter): Where do tribes fit in?

**OWRD Response** (Margo Mashkovskaya): OWRD considers Tribes as part of this. Tribal specific impacts are not statutorily required, however, it is something that we are integrating into all of our notices, so if you have something to add to that, please do because it is critical to the analysis of the rule.

**RAC Member** (Caylin Barter): Are non-profits considered businesses or are they public?

**OWRD Response** (Margo Mashkovskaya & Lili Prah): Don't think non-profits are considered businesses but can circle back. Either way, please share impacts to non-profits.

**RAC Member** (Caylin Barter): There is significant time, resources, and travel costs for non-profits to participate in planning collaboratives.

**RAC Member** (Lisa Brown): I agree with Caylin - there is a very significant cost to non-profits to participate in a PBP process. It should be called out.

Supported by Harmony Burrigh.

### Racial Impact Statement (ORS 183.335 (2)(b)(F))

- (1) Who could be affected by the draft rules?
- (2) How could the draft rule affect racial equity?

No further impacts were identified.

## Next Steps

- **Today, November 15:** Last day for feedback to be considered in draft of rules published in the Notice of Proposed Rulemaking.
- **December 2, 2024:** Publication of notice of proposed rulemaking; public comment period opens.
- **January 7, 2025:** Anticipated hybrid public hearing.
- **January 15, 2025:** Closing of public comment period.
- **March 13-14, 2025:** Water Resources Commission consideration for rule adoption.

## Public Comment

**Commissioner Lianne Thompson:** Regarding fiscal impacts, looking at this from a housing standpoint, lack of housing is related to water availability and capacity and willingness of water districts to support or obstruct it. Not sure if it fits in this discussion, but wanted to raise it for consideration.