

Division 602: Place-Based Water Planning Rules Advisory Committee

RAC Feedback

This document summarizes feedback received on the draft PBP rules ([v. 11/1/2024](#)). Redline edits to the draft rules are available in an accompanying document (Div 602 Draft Rules Version 12/2/2024). Earlier feedback and OWRD response is available on the [PBP Rulemaking Webpage](#).

Topic (<i>Draft Rules v. 11/1/2024</i>)	Feedback Received on Draft Rules v. 11/1/2024	Action or Explanation
Definitions (690-602-0002)		
General	A RAC member expressed concerned that it is not clear in the draft rules who is allowed to participate in a place-based water planning process and thinks that the rules should prohibit funding/state-recognition of any effort that prohibits or restricts membership or participation of groups or individuals.	<p>The sideboards of who is allowed to participate in place-based water planning processes are in the definitions section. By definition, a collaborative is made up of a “balanced representation of instream and out-of-stream water interests from the community”, and the community includes “the people impacted by the water resources of the planning area, entities with an interest or obligation related to water resources or ecosystems in or impacted by the planning area, and federal, state, local, and tribal governments”.</p> <p>This will also be addressed in the Place-Based Water Planning Handbook/Guidelines.</p>
Match Requirements (690-602-0005)		
(2) All applicants must demonstrate the required matching contribution has been secured or is being sought at the time of application. Department funding may not be released prior to secured commitment of the other funds. Pending match funds must be secured within 12 months from the date of the place-based water planning award.	RAC members expressed concern that requiring match be secured before distribution of funds was unnecessarily restrictive. Suggestion was made that grantees need more flexible funds to attract other funding that PBP funding can be used as “seed” or “magnet” funding especially for low-capacity communities that are just beginning their place-based planning journey and that requiring match funds to be secured prior to fund distribution will exacerbate existing inequities and bias the funding towards higher capacity basins and organizations.	<p>Requiring match be secured prior to distribution of funds is standard practice for OWRD and other state funding opportunities. Part of the reason for this is to ensure that the investment of state dollars will result in completed plans/projects.</p> <p>Match shows the commitment of the grantee and the community to engage. In-kind match is accepted as match for all grant types, and a large amount of human capacity required for place-based planning, much of which is volunteer hours.</p> <p>Additionally, requiring match upfront could help</p>

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		<p>shorten the time it takes to plan. Applying for money during the planning process takes time and can extend the length of the planning process, which can lead to planning fatigue.</p> <p>PREP grants are meant to provide an entry point for basins with lower capacity to prepare for plan development.</p> <p>Recognizing that PBP funds can be used as “seed” funding, the rules have been updated to increase the amount of time grantees have to secure pending match funds from 12 months to 18 months.</p>
Grant Evaluation Criteria (690-602-0006)		
<p>(3) Post Plan Coordination Grants shall be evaluated as follows:</p> <p>(a) If a Collaborative’s Plan has received state-recognition for the first time within the last 2 years and it has not received a Post Plan Coordination Grant previously, its application may be given priority by the application review team.</p>	<p>A RAC member expressed concern over email that this rule means that if you just finished a plan, you’ll receive a post plan grant with little consideration for additional criteria and that this rule seems unnecessarily limiting.</p>	<p>The language has been updated to add evaluation criteria to this type of grant that mirror (3)(b): (A),(C), & (D). The language states that an “application MAY be given preference” but does not require that preference be given.</p>
State Recognition of Plans (690-602-0007)		
<p>(5) The Department, in consultation with other relevant state agencies, shall identify, document, and communicate to collaboratives which Plan strategies are consistent with an agency’s mission, authorities, and priorities, and whether and how they may be supported by</p>	<p>A RAC member expressed 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.</p>	<p>The statute ORS 537.873(11)(e) says that the Commission may adopt rules that “describe how the implementation of actions outlined in a state-recognized place-based integrated water resources plan may be considered and supported”. This rule is within that scope.</p>

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<p>those agencies as resources and capacity allow.</p>		<p>The scope outlined on the rulemaking webpage states that “these rules will govern how OWRD implements the Place-Based Water Planning Fund (ORS 537.872–537.873), including how the place-based planning grant will be administered and the process of state recognition of place-based water plans”. The list after “including” was not meant to be a finite list, which is evidenced by our discussion of scope expansion at various RAC meetings.</p>
	<p>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? What about tying state correspondence to the biennial progress reports?</p>	<p>Adding a timing element here would be unnecessarily limiting and could result in a less thoughtful process. The timing of when a collaborative achieves state recognition is unpredictable, meaning it does not happen on a set schedule or at a certain time of the year. The result is that, depending on timing, agencies might not know their budget/capacity for the coming years and would be unable to identify or document how it may be able to support plan strategies.</p>
<p>(6) 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, in consultation with other relevant state agencies, shall identify, and may incorporate common themes or individual strategies emerging from state-recognized Plans into updates and any associated workplans, consistent with the Department’s mission, authorities, and priorities, and as capacity allows.</p>	<p>A RAC member suggested the following changes over email “(6) 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, in consultation with other relevant state agencies, shall identify, and may incorporate common themes, <u>critical issues</u>, or individual strategies emerging from state-recognized Plans into updates and any associated workplans, as appropriate to consistent with <u>the agency Department’s missions, authorities, and priorities, and as capacity allows.</u>”</p>	<p>Language has been updated.</p>

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Grant Agreement and Conditions (690-602-0008)		
<p>(3) The grantee must: (d) Use a neutral facilitator for plan development;</p>	<p>RAC members agreed that there is value in neutral facilitation but had different opinions about how to represent it in rule/guidance.</p> <p>One RAC member thought that the requirement for a neutral facilitator should be retained because it is critical that participants in these processes are as assured as possible of a fair and neutral process. They noted that this wouldn't necessarily require the hiring of expensive facilitation, only that the requirement be neutrality.</p> <p>Another RAC member thought that the requirement of a neutral facilitator would limit the flexibility of using the funds and used the example of a pilot group being able to accomplish other tasks at a time when they did not have the funds to hire neutral facilitation.</p>	<p>Requiring neutral facilitation as part of the grant agreement is limiting and difficult to enforce, so it was removed from the grant agreement requirements. It is, however, an evaluation criteria that will be considered in 690-602-0006 "(2)Plan Development Grants shall be evaluated on (a)The convener and potential collaborative members ability to meaningfully engage and collaborate in a <u>neutral process</u> over multiple years with a balanced representation of instream and out-of-stream water interests, the public, Tribes, local governments, and state agencies." Additional language was added to this evaluation criteria that "Commitment to a neutral process may be demonstrated through the use of neutral facilitator".</p>
Public Notice and Comment (690-602-0009)		
<p>(1) Prior to the Application Review Team making a recommendation for the award of Place-Based Water Planning funding, the Department shall provide notice as follows: (a) Public notice with a minimum 45-day public comment period. (b) Written notice to county and tribal governments within the proposed planning boundary of an application.</p>	<p>RAC members expressed concern that the rules as written preclude a public comment period in situations where a grant award process may not include an application review team. Additionally, they talked about how when there are limited resources, it is important to preserve the public comment period for any grant decisions.</p> <p>Over email RAC members expressed differing opinions about when public comment periods would be most beneficial, before an Application Review Team meets or before an award decision is made, with one person suggesting having two public comment periods, and another suggestion to set one in rule and allowing the Department to use its discretion for the other.</p>	<p>The language has been adjusted to put one public comment period into rule, prior to the award of funding. This is consistent with the Department's approach to the public comment period for Feasibility Study Grants.</p>
<p>(2) Prior to a decision of state recognition of a plan, the Department shall provide public</p>	<p>Over email, a RAC member questioned whether the public comment period should happen before the Plan Review Team (PRT) meets or after PRT recommendations</p>	<p>As written, this rule allows the Department to use its discretion as to whether the public comment period will take place before after the Plan Review Team</p>

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<p>notice with a minimum 45-day public comment period and report all public comments received to the Commission for consideration.</p>	<p>are developed. They suggested that public comments prior to the PRT might be more valuable for this process and that there would be opportunity for public comment at the Commission meeting to decide state-recognition.</p>	<p>meets. These suggestions will be taken into consideration.</p>
<p>Distribution of Funds (690-602-0010)</p>		
<p>(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.</p>	<p>A RAC member expressed concern over email that that requiring match be secured before distribution of funds was unnecessarily restrictive. They asked what the goal was of this requirement and asked that communities be given ample time to be secure their match and show their investment. The RAC member reiterated that there isn't a ton of planning funding out there and it's hard to pull in money for what otherwise is a process that has the potential to provide broad public benefits and be a significant undertaking for the fiscal agent and convener.</p>	<p>Requiring match be secured prior to distribution of funds is standard practice for OWRD and other state funding opportunities. Part of the reason for this is to ensure that the investment of state dollars will result in completed plans/projects.</p> <p>Match shows the commitment of the grantee and the community to engage in place-based water planning. In-kind match is accepted as match for all grant types, and a large amount of human capacity required for place-based planning, much of which is volunteer hours.</p> <p>Additionally, requiring match upfront could help shorten the time it takes to plan. Applying for money during the planning process takes time and can extend the length of the planning process, which can lead to planning fatigue.</p> <p>PREP grants are meant to provide an entry point for basins with lower capacity to prepare for plan development.</p> <p>Recognizing that PBP funds can be used as "seed" funding, the rules have been updated to increase the amount of time grantees have to secure pending match funds from 12 months to 18 months.</p>

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New rules to clarify the Department’s authority to contract directly for services		
<p>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).”</p>	<p>RAC members expressed support for inclusion of this language, although concerns were raised that this language is too restrictive.</p> <p>Additional suggestion was made over email that if rules were included on this topic, they should include requirements that any identification of ways to spend the money must ensure an equitable and balanced disbursement of funds, including across instream and out-of-stream needs. Further, any identification of the ways to spend the money be made transparent process, including by providing public notice; and the actual disbursement of funds should also be done transparently so that those interested may be informed as to how this fund is being used.</p> <p>The following language was suggested by a RAC member over email: “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).”</p>	<p>Language has been added that requires the Department to produce a report that identifies purposes it may enter into agreements or contract in support of PBP and also provide transparency in how those funds have been spent. These contracts can support many different types of activities as outlined in statute and should be aimed at filling gaps, so adding language requiring “an equitable and balanced disbursement of funds, including across instream and out-of-stream needs” would potentially result in limiting the use of these funds for their purpose.</p> <p>Language was added to allow the Department to contract for purposes that are not identified in the report, but might arise as needs between reports and are consistent with ORS 537.873(6).</p>
	<p>A RAC member suggested adding more specificity to “periodically”, such as linking it to the IWRS biennial report.</p>	<p>A timeline was added of publishing a report every 4 years. Maintaining this as an independent report, decoupled from the IWRS reporting requirements, prevents it from being impacted by any potential unforeseen changes/complications in the IWRS reporting process.</p>

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New Rules to clarify Technical Assistance		
<p>Potential Language “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.”</p>	<p>RAC members expressed support for including this language to provide more transparency on how technical assistance requests are received and fulfilled by the Department.</p> <p>Question about narrowed scope of “technical assistance” versus any kind of “assistance”; RAC member brought up that specificity is important to make sure other types of assistance, like “financial assistance” were not included.</p>	<p>Language was added to the draft rules that reflects the language presented in the RAC meeting, with additional language added to “develop, <u>maintain</u>, and <u>communicate</u>” the system to reflect the suggestion for transparency.</p> <p>Provision of technical assistance is a specific and important role agencies play in PBP, and the system should reflect the specific nature of technical assistance requests.</p>
	<p>A RAC member expressed interest in including a requirement that each collaborative establish and implement a process for how it identifies technical assistance requests from its collaborative members, and how it decides which to provide to WRD, that ensures fair and balanced access to this publicly funded service across collaborative members and for instream and out-of-stream interests.</p>	<p>This suggestion will be considered in guidance. The language about OWRD developing, maintaining, and communicating a system for providing technical assistance will also help address this.</p>
New Rules to clarify program evaluation		
<p>Potential Language “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.”</p>	<p>RAC members expressed support for including a rule for program evaluation and suggested adding a time component, with a suggestion to link it to the IWRS or “no less than every 8 years”.</p> <p>Over email, a RAC member expressed that this program needs continuous assessment to identify and communicate about needed changes both internal and external to the Department. The evaluation should expand beyond the grants to look at the program as a whole.</p>	<p>OWRD proposed language was added to the draft rules.</p> <p>OWRD elected to not tie the update to the IWRS via rule. The two could still be completed in coordination but maintaining this as an independent evaluation, decoupled from the IWRS reporting requirements, prevents it from being impacted by any potential unforeseen changes/complications in the IWRS reporting process.</p>

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New Rules to clarify Interagency Coordination		
<p>Related Statute: (1) Before issuing funding under subsection (2) or (6) of this section, the Water Resources Director shall consult with the Department of Environmental Quality, Department of Land Conservation and Development, Oregon Health Authority, Oregon Watershed Enhancement Board, State Department of Agriculture and State Department of Fish and Wildlife to understand agency capacity to:</p> <p>(a) Participate in place-based integrated water resources planning. (b) Provide information and assistance described in subsection (9) of this section.</p>	<p>A RAC member suggested over email that while interagency involvement is sprinkled throughout the rules, it might be good to have a sentence or two that ties it together given how critical it is. Suggested language was “The Department will periodically meet with relevant agencies to support implementation of these rules, including an ongoing assessment of agency capacity to support place-based integrated water resources planning.”</p>	<p>The spirit of this suggestion is covered in statute and additional language, beyond what is already in rule, is unnecessary to clarify or describe how it will be implemented.</p>