

Division 602 Place Based Water Planning Rules Advisory Committee Meeting 2



September 16, 2024, 12am-2pm

This document is a summary of Division 602 Rules Advisory Committee (RAC) meeting number two held over Zoom on September 16, 2024, from 12pm to 2pm. For more information, see the Meeting Presentation, Draft Rules, and other Meeting Materials, available on our [rulemaking website](#).

[Video Recording RAC 2](#)

Meeting Attendees

RAC Members in attendance: Caylin Barter, Donna Beverage, Lisa Brown, Debbi Bunch, Mike Buettner, Danette Faucera, Kate Fitzpatrick, Peggy Lynch, Michael Martin, Steve Parrett, Tom Pattee, Lauren Poor, April Snell, Holly Stanitsas, Brian Wolcott, and Kevin Young.

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

Agenda (Lili Prahli)

This meeting covered the following topics:

- RAC #1 Summary and Grant Types/Eligibility Wrap-up
- Grant Evaluation Criteria
- State Recognition

RAC #1 Summary and Wrap-Up (Lili Prahli)

Reviewed redline edits made to OAR 690-602-0002 (Definitions), and OAR 690-602-0004 (Eligible Grant Types). Modifications were made based on RAC feedback and can be seen in their entirety in [Div 602 Draft Rules version 9/3/2024](#). A table summarizing OWRD's response to RAC feedback can be found in [Div 602 Response to Feedback Version 9/3/2024](#).

OAR 690-602-0002 (Definitions)

Definitions that were modified or added included:

- Application and Plan Review Teams: "means all state agencies identified in ORS 537.873(7) **and any other invited state agency with relevant knowledge or expertise** that have the capacity to participate in application review.
- "State agency" means any officer, board, commission, department, division or institution in **the executive or administrative branch of state government**.
- "Convener" means the persons, public bodies, Indian tribes, or nonprofit organizations that bring together a balanced representation **of instream and out-of-stream water** interests to undertake place-based water planning, **ensure an open, equitable, and transparent process, and impartially guide and support the planning and implementation processes**.
- "Collaborative" means the ~~group of interested parties~~ **balanced representation of instream and out-of-stream water interests from the community** that ~~developing, implementing, or updating~~ **developing, implementing, or updating** a place-based integrated water resources plan **consistent with their shared**

governance agreement.

- “Community” means the people impacted by the water resources of the planning area, entities with an interest or obligation relative to water and ecosystems in the planning area, and federal, state, local, and tribal governments.
- "Grant Agreement" means the legally binding contract between the Department and the funding recipient. It consists of the conditions specified in these rules, the notice of funding award, special conditions to the grant agreement, a certification to comply with applicable state and federal regulations, the scope of work to be performed, and the budget.
- “Planning area” means a shared hydrologic area that is within hydrologic and size limitations defined by the Department.

RAC member (Caylin Barter): Caylin emailed proposed revisions with the intention of having the definitions of “community” and “convener” better align with the HB 5006 workgroup report: “Community” means the people impacted by the water resources in or downstream of the planning area, entities with an interest or obligation relative to water resources or ~~and~~ ecosystems in or downstream of the planning area, and federal, state, local, and tribal governments.

OWRD Response (Lili Prah): OWRD considered this language for the original definition, but stopped short of adding it because it was wondered about where “downstream” ended for very large basins, but open to hearing from other folks about this addition.

RAC Members (Donna Beverage & Lisa Brown): Like suggested edit

RAC Member (Peggy Lynch): With “interest and obligation relative to water and ecosystems in the planning area”; Are we assuming that “downstream doesn’t count in that definition?”

RAC Member (Caylin Barter): Caylin’s perspective is that as it reads now, “in the planning area” does not include downstream of the planning area.

RAC Member (Donna Beverage): Donna took downstream to mean downstream in the same basin, suggests defining downstream so it is clear it doesn’t mean downstream many basins away.

RAC Member (Debbi Bunch): Thinks that “entities with an interest” would include folks downstream because they have an interest in the water or ecosystems of the planning area, so it wouldn’t be necessary to call out downstream specifically here.

RAC Member (Danette Faucera): If the planning group were to establish goals or flow targets for the planning area, then uses upstream might impact the community’s interests – not sure how to include that here.

RAC Member (April Snell): There were a lot of things that we can pull from the HB 5006 workgroup report, but there were a lot of things we didn’t finalize as a group. Hesitant to add downstream because it would be included in the definition as is and the more you add to a definition the more constraining it might be. Likes the clarifying language on water resources. Value in keeping definitions as simple as possible for administrative purposes and using the guidance as place to provide more details.

OWRD Response (Lili Prah): OWRD will take these comments and feedback and make revisions.

RAC Member (Lisa Brown): Suggested adding definition of a facilitator as per Recommendation U

form HB 5006 Workgroup Report. Convenor and neutral facilitator could be different and have different responsibilities. Also, recommended that application/plan review team definitions should stick to agencies listed in the statute that have expertise in instream and out-of-stream issues. Current language is unclear that OWRD would be inviting agencies to participate.

RAC Member (Peggy Lynch): Likes proposed broadened definition of application/plan review team.

RAC Member (Mike Buettner): Supports what Lisa mentioned about adding a definition for a neutral facilitator.

RAC Member (Debbi Bunch): Agrees with Lisa on limiting application/plan review teams to state agencies already outlined in statute. Plan Review is a cumbersome process already and adding additional state agencies to review those plans would add to the length, cost, and effort required to get to the end point. Also, for the grant agreement definition, when you say scope of work, is adding the application as an appendix as OWEB does what OWRD is envisioning?

OWRD Response (Kim Fritz-Ogren): To make sure grant agreements are legally sufficient, WRD generally uses a short paragraph to describe what will happen and then some very high-level tasks and a category-based budget. WRD also attaches the application to the grant agreement but finds additional refinement is often needed between the application stage and the grant agreement stage.

RAC Member (Caylin Barter): Second suggestion submitted via email to better align with the HB 5006 workgroup report was for the definition of “convenor”, add the phrase “are perceived as neutral” after the word process; also, for clarity, suggested use of semicolons between phrases instead of commas.

RAC Member (Peggy Lynch): What does neutral mean in this context? Assuming person who wants to do this process has interest in process. The facilitator needs to be neutral, but hard to understand how a convenor can be perceived as neutral as they are the initiator for this process.

RAC Member (April Snell): Agrees with Peggy.

RAC Member (Donna Beverage): The neutrality of the convenor depends on who it is and how an MOU is set up. In the case of the Upper Grande Ronde PBP group, they had it written into their MOU that no action could harm another user group, and the convenor was Union County, which as a county was likely more neutral than a group or specific person would be. Also noted that a convenor is not generally a paid position, and facilitator is generally paid and clarifying the difference between these roles is important.

RAC Member (Holly Stanitsas): Agrees more with Peggy and doesn't think that associating neutral with convenor is necessary. Interprets facilitator role to be optional and convenors are required. Harney PBP Group has always chosen to have a facilitator. In her experience facilitators were paid and the convenors are voluntary.

RAC Member (Debbi Bunch): Lower John Day PBP group has had Gilliam SWCD and Mid-John Day WC as co-convenors and that role is held by people that can and want to bring in diverse interest groups to find and meet a shared goal. They are not one-sided or the other, are able to work with

multiple perspectives/viewpoints and get a small amount of funding. Their group has also had a facilitator, who is paid. The facilitator role is the completely neutral person who hears the discussion and puts it all together into a shared or collective voice.

RAC Member (April Snell): It's important to differentiate between what is needed for rules that will administer the program and the guidelines entities would use going forwards with this effort. The more we can avoid terminology that is subjective in the rules themselves, the better off this program will operate. The guidelines are more appropriate for giving examples and the "perceived as neutral" language – especially as perception is highly subjective. The difference between convener and facilitator might need to be flushed out a little bit more in the guidance, especially because some efforts may choose not to have a facilitator.

OAR 690-602-0004 (Eligible Grant Types)

The title of this section was changed from "Grant Eligibility" to "Eligible Grant Types" to better describe the contents of the section. Additional language was added to clarify that any of the actions listed in ORS 537.873(2) can be supported through the administration of the different grant types. "Capacity Building" grants were renamed to "Pre-Planning" grants to avoid confusion with actions outlined in ORS 537.873(2). The word "community" was added to pre-planning grants and "planning area" was added to pre-planning and planning grants. A requirement for planning grants to "develop a shared governance agreement adopted by the collaborative" was added and confusing language was removed.

Pre-Planning Grants

OWRD Question: Does "Pre-Planning" accurately describe the work that would be done under this grant type? Is there a different term that would fit better?

RAC Members Caylin Barter and Peggy Lynch are fine with "pre-planning".

RAC Member (April Snell): Additional language would be helpful, especially incorporating language around "pre-planning assessment". Is there the intent that it would include other pieces as well like community engagement, capacity building? If so, Pre-Planning would work.

OWRD Response (Lili Prah): These pre-planning grants would be more than just an assessment and could include actions that help a group get ready to plan, like capacity building and community engagement.

RAC Member (Tom Pattee): Suggested readiness assessment

RAC Member (Mike Buettner): suggested eligibility planning grant instead of pre-planning (Michael Martin agreed)

RAC Member (Holly Stanitsas): suggested preliminary assessment or readiness assessment, foundational planning

Implementation Coordination grants

RAC Member (Holly Stanitsas): What does "support the implementation of" mean? Does it mean implementation of strategies? Implementation coordination sounds like it is support for implementing strategies. Does the Department want to fund supporting roles for this type of

grant?

OWRD Response (Lili Prah & Kim Fritz-Ogren): This would fund the coordination that happens to keep the group meeting, managing the implementation of the plan, just not funding projects. It sounds like that is missing from this description.

RAC Member (Holly Stanitsas): It would be helpful to clarify that there are actions that both (2) Planning grants and (3) Implementation Coordination Grants share.

RAC Member (Peggy Lynch): Agrees

690-602-0006: Grant Evaluation Criteria

Pre-Planning and Planning Grant Evaluation Criteria

RAC Member (Peggy Lynch): Suggests flipping “(B) The history of collaboration in the planning area and among collaborative members” and “(C) The proposed data, technical information, and planning tools that would support planning in the area”, because unless you have the data it is less than a successful data. Also, if you don’t have a history of collaboration, you will be marked down – so does that mean you better get a pre-planning grant first or you aren’t likely to get a planning grant?

RAC Member (Lauren Poor): In addition to talking about engaging with state agencies, environmental justice communities, instream and out-of-stream water interests, it might be worthwhile adding local elected officials, cities/counties, to (2)(a)(A). They are part of the community and should be involved and there’s nothing here now to have that as part of the evaluation criteria.

RAC Member (Holly Stanitsas): (2)(a)(B) It might be better for communities if we think about this planning fund as an opportunity to enhance collaboration in the area. Asking the question of how this grant will help enhance collaboration in the future and then people that are applying can talk about the history of collaboration and the opportunity to enhance collaboration in the future.

RAC Member (Debbi Bunch): Agrees with Holly’s comments. In relation to Peggy’s question about the pre-planning grant: some areas already to have large scale collaborative efforts happening, so the pre-planning grant isn’t always going to be necessary. The (2)(a)(C) (“The proposed data, technical information, and planning tools that would support planning in the area”) should maybe be on the same level as the (2)(c) and (2)(d). It is related to a collaborative’s readiness to engage in planning but is also an important piece on its own.

RAC Member (Lisa Brown): Wonder if we should add something in the application requirements or evaluation criteria on likely commitment to running a neutral process, which we sort of have in the convener definition, but it doesn’t seem to carry down to the application. It’s important that applicants describe that commitment and how they would implement a neutral process.

RAC Members: Several thumbs up in agreement.

RAC Member (Peggy Lynch): Liked what Lisa said. We know from experience that unless the data

is available for collaborative planning, the planning process will result in wheel spinning around what is the right data to use, so we need to raise data to as high of a level as possible.

RAC Member (Debbi Bunch): Data availability is important for planning as is understanding what data is available. One value coming out of the planning process is identifying what data is missing.

RAC Member (Holly Stanitsas): If an area is data sparse would they score lower?

OWRD Response (Lili Prah): The evaluation criteria for the planning grant in the draft rules would score areas that have less data availability lower because they would be less ready to plan than areas with more data. Pre-Planning Grants would be an appropriate place to start for areas that are more data limited.

RAC Member (Holly Stanitsas): Important to clarify, perhaps in the evaluation criteria for pre-planning, that if an area is data sparse there are funding options to support a planning area's efforts so there isn't a perception that data sparse places are less important.

RAC Member (Peggy Lynch): If a group does not have data, then planning is going to be very difficult to do. That's what the pre-planning step is for: understanding what is needed, what's missing, if agencies can provide missing information, or figuring out how to get that data from somewhere else. The pre-planning step would be setting a planning group up for success. Holly's comments are spot on in that we don't want to exclude people from planning.

BREAK

RAC Member (Peggy Lynch): Implementation Coordination is still planning stuff and not project implementation, but the terminology is confusing. Better defining what the activities are and what they aren't under implementation coordination would be helpful.

RAC Member (Caylin Barter): Agrees with potential confusion – potentially useful to add in another definition of what implementation coordination is; same with pre-planning.

RAC Member (Lisa Brown): Agrees that implementation coordination could be confusing. Additionally, under 3(c), we need some language under progress made towards plan implementation that includes "instream and out of stream actions". In other words, you have a plan that includes both instream and out-of-stream strategies, but we want to make sure that actual implementation achieves both types of actions. Clarify that on the substance and result that there is balance when moving forward.

RAC Member (Kate Fitzpatrick): Supports what Lisa said and agrees that it would be helpful to add some more specificity about what implementation coordination includes – for example writing grants for implementation, choosing projects to pursue, etc. Question about 3(a): what is the rationale for a preference for more recently recognized plans? Even 7 years after a plan is recognized, it is still going to be important to do those projects.

OWRD Response (Lili Prah): Our thinking behind this was that groups that have just been more recently recognized might need more support to get implementation off the ground. Groups that have been recognized for longer would still be eligible for implementation coordination grants, but newer groups would get a boost in the evaluation.

RAC Member (Debbi Bunch): Agree that we could add additional description to be clearer about what implementation coordination could mean. In regards to adding progress made towards “instream and out-of-stream actions” for 3(c), would suggest leaving some allowance for individual planning groups to implement projects according to the priority identified in their plans which was adopted by the group and recognized by the commission. In other words, using the plan to understand progress made towards implementation.

RAC Member (April Snell): This is one of the more challenging/nebulous areas to come up with rules based on what we were given. “Implementation coordination” is very specific in that this grant will not pay for project implementation. Instead, someone could apply for grant that helps the plan forward – coordinating and communicating with interested parties. Activities like coordination, communication, holding meetings, keeping people on board? There needs to be more description here. Also, concern about prioritizing collaboratives who have more recently received state recognition - it seems overly restrictive, especially for a new program.

RAC Member (Debbi Bunch): This could be covered more deeply in guidelines, but what does commitment to collaboration (3(b)) look like? Perhaps add examples into the guidelines. Without funding to support collaboration, those types of activities could fall by the wayside – would that mean that there is no commitment to collaboration?

RAC Member (Mike Buettner): Could OWRD elaborate on what you are looking at for “(d) cost effectiveness”? Are you looking at the grant award versus the outcome?

OWRD Response (Lili Prah): We saw cost effectiveness used in other grant offerings and heard from grant review teams that it would be nice to be able to consider how effective an application is with the same number of grant dollars. OWRD has not used this before in OWRD grant programs.

RAC Member (Mike Buettner): In the final product it would be helpful to have some clarity on what OWRD is looking for here because grant writers are really attuned to cost effectiveness and the different inputs to it.

RAC Member (Danette Faucera): It seems like the word implementation is confusing because it indicates something is shovel ready. If we now have pre-planning and planning, could this be a post-recognition grant instead?

RAC Member (Debbi Bunch): Likes Danette’s idea - post-recognition or post-planning coordination would be clearer. Highlighted need for clarity on cost effectiveness. The original pilots were more resource intensive than was originally envisioned, so cautioned awarding grants to groups that promise to do more with less funds but might run out of money before the process is done.

RAC Member (Holly Stanitsas): Question – If a group is awarded a Pre-Planning Grant and they go through the process to become ready for place-based planning, is there a pathway for that group to receive a Planning Grant? Or if they get a pre-planning grant and successfully complete pre-planning, will they be evaluated differently for a planning grant?

RAC Member (Peggy Lynch): One would hope that provides extra points for getting the actual planning grant.

OWRD Response (Lili Prah): The pre-planning grant would help them get ready and be successful for the planning grant.

Plan Updates Grant Evaluation Criteria

No Comments

Additional Evaluation Criteria

RAC Member (Peggy Lynch): Where in this document can we at least mention that there are Feasibility Study Grants and project grants? Maybe there needs to be a sub 6 that acknowledges existence of these other grants that get things done.

OWRD Response (Kim Fritz-Ogren): In providing clarification in what implementation coordination is and what it is not, we could reference the other programs there.

RAC Member (Kate Fitzpatrick): Likes “(5) Additional Evaluation Criteria” addition. Her experience in the Deschutes is that they are always implementing and always planning, so leaving this in there can help support adaptability as we get more experience in implementation coordination.

RAC Member (Debbi Bunch): Echoes what Kate said for the John Day. What would be helpful funding wise, is taking those funds and being able to connect what is being implemented to our plans and making sure plans are being used in planning of projects and used in the direction the larger collaborative is going.

RAC Member (Steve Parrett): “(5) Additional Evaluation Criteria” implies Commission discretion outside of additional rulemaking? Such as by motion of the Commission?

OWRD Response (Lili Prah): Yes, that is correct.

690-602-0007: State Recognition

State Recognition Process: Achieving and Maintaining State Recognition (1), (2), (3), & (4)

RAC Member (Holly Stanitsas): If a group gets consensus on their plan and goes through the state agency review process and does not get approval, should we consider outlining in rule that there is an opportunity to improve the plan and resubmit it to the state agency review team? Not sure if this is best for rules or guidance.

RAC Member (Debbi Bunch): Similar to what she mentioned before, how do you define a commitment to collaboration and what does that actually look like? Is it annual meetings, what exactly is expected? Might be appropriate for guidance?

RAC Member (Holly Stanitsas): For sub(3), all the pilot groups had to present plans to the commission. If that will be a requirement in the future, it is important to make that expectation clear up front.

RAC Member (Debbi Bunch): Expectations around what it means to have a balance of instream and out of stream water interests would be helpful. For example, some instream projects can take 3-4 years of planning before they are actually implemented, so a balance of instream and out-of-

stream might not be represented 1:1 on project implementation on a 2-year reporting cycle. Using plan priorities might be a better guide as to what actual implementation should look like.

RAC Member (Lisa Brown): Can work on the language of the timing because these things to do have different timelines, but want to assure that the package moving forward is balanced because that is the overarching structure of the plans. Suggests language “...steps being taken to implement”

RAC Member (Debbi Bunch): Totally agree, but just want to make sure that when you are looking at a 2-year timeline, you are not seeing the full picture.

RAC Member (April Snell): Clarification on 4(b), important to recognize it could be unbalanced for instream or out-of-stream components. For reporting purposes, the report should be specific to the plan components, indicating the support of the full collaborative, especially in cases of individual disagreement later.

What does a Plan Mean? Agency Support and IWRS Consideration (5) & (6)

RAC Member (April Snell): Statement under (6) needs to be clarified a little bit because the IWRS is not a stagnant document, so there needs to be some spatial limit or something that recognizes where the plan happens in the process of an IWRS update – the language is not specific to the which IWRS update.

OWRD Response (Lili Prah): The thinking behind this language was that there would need to be a cutoff in the IWRS update process of when a plan would be considered in that update. Wondered if adding language identifying that this is for the next IWRS update would resolve the concern.

RAC Member (April Snell): Yes – that would be perfect. You can't incorporate new strategies into the next IWRS when you are in the middle of updating it.

RAC Member (Lisa Brown): In (5) agency support – we do not support agencies “shall” support implementation. Does not think it was what was intended by this statute and it's unclear what it means. Strategies in PBP have different scales and different specificities, so requiring the Department to support them is not helpful in the long run. For example, a plan might have a strategy for a new storage project or a new dam, but we don't have the environmental or legal analysis for it yet, so it is putting the cart before the horse, and we would strongly oppose that language.

In (6)b, we also have concerns about the language “Agencies may incorporate strategies”, because the plans are hydrologic area specific and are not necessarily importable to the statewide IWRS. Recommends sticking with the statutory language here.

We really need to specify how any language here would apply to already recognized plans because it is not consistent with understanding at time those other plans were recognized.

RAC Member (Steve Parrett): Asked for more details from Lisa about what the state should do about supporting/not supporting implementation of plans?

RAC Member (Lisa Brown): We don't have a lot of clarity about what exactly should be in these plans. It's a great way to bring people together and find agreement on ideas and concepts but as

far as being a vehicle for implementation by the state - there is not enough specificity on the scale of the strategies or what's allowed in the strategies. Without that kind of clarification being done, does not support the language.

RAC Member (Peggy Lynch): Hears Lisa's comments and concerns, but thinks if people are going to spend time doing this planning, they need some guarantee that there will be some positive outcome and reason to do work.

RAC Member (Caylin Barter): How much of this language comes directly from the statute?

RAC Member (April Snell): It would be helpful for the next meeting have the ability to compare statute with proposed rule language. Where have ability to be flexible, let's do that, but if it's coming directly from statute, we need to work with that and clarify where we can.

OWRD Response (Kim Fritz-Ogren): Given time constraints, we will follow up with what is in statute and what text is different in rule, clarifying statute, but here is a start--It does not have newest rule language with revisions from 8/19 RAC:

https://www.oregon.gov/owrd/Documents/Attachment%205_Table_PBP%20Statue%20and%20Related%20Draft%20Rules.pdf

Meeting Wrap-Up

We will start the next meeting wrapping up the state-recognition discussion. Email Lili Prahli (lili.k.prahl@water.oregon.gov) any additional input regarding today's draft rules or potential scope expansion by **September 26, 2024**.

For questions regarding the rulemaking process, email Margo Mashkovskaya (Margo.A.MASHKOVSKAYA@water.oregon.gov)

Next RAC Meeting: Thursday, October 17, 12pm - 3pm; Agenda: Rules Scope, Grant Application Process, Grant Application Requirements, Grant Agreement and Conditions, Public Notice and Comment, Distribution of Funds.

OWRD Question (Lili Prahli): Should we add a November RAC meeting just in case we need it?

RAC Members: Debbi Bunch, April Snell, and Steve Parrett expressed support in scheduling another meeting; cautioned OWRD to make sure that public comment period is not exclusively over the holiday break.

Public Comment

No written or verbal comment were made