

PBP RAC #3 Discussion: Proposals for PBP Rule Scope Expansion

Rules to clarify the Department’s authority to contract directly for services. (Emails from Harmony Burrigh 8/16/24 & Steve Parrett 8/21/24)

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 Text from RAC Member	OWRD Initial Response
<p>"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."</p>	<p>This requires further discussion with the RAC. It seems like the proposed language is intended to clarify who might request a situation assessment to be performed. Is there a benefit to limiting the sources that could prompt a situation assessment?</p> <p><i>Note:</i> the definition of "situation assessment" from statute is "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."</p>
<p>"In consultation with a balanced representation of interests representing a planning area, including tribes and county governments within the planning area, the Department or agencies may use available funds to develop technical or planning documents or contract for facilitation and planning services to support the development of a place-based integrated water resources plan in a defined planning area."</p>	<p>This suggestion clarifies who must be consulted when developing technical or planning documents for an area or contracting for facilitation and planning services (ORS 537.873(6)(k)).</p> <p>This requires further discussion with the RAC. While there might be situations where the Department directly contracts for services for a specific group, because these are locally led processes, these services will mostly be paid for by a collaborative through a grant agreement.</p> <p>The program might benefit from having the Department contract for services like technical writing or neutral</p>

	<p>facilitation, that the planning groups would have access to use, this is already allowed by statute, so is there a benefit to clarifying this in rule? As proposed, this text would add the requirement for the Department to consult a balanced representation of interest in a planning area (including tribes and county governments) if it is to use this contracting authority.</p>
<p>"The Department will work with an interagency team to develop and maintain a system for ongoing evaluation and improvement of the program, including development of a program improvement plan no less than every 4 years."</p>	<p>Developing a program improvement plan every 4 years is resource/capacity intensive and might not be appropriate at every 4-year interval. The Department suggests the following language to increase the Department's ability to be adaptable and responsive to the needs of the program as they arise: "The Department, in consultation with other relevant state agencies, shall periodically conduct a program evaluation and implement strategies for improvement."</p>
<p>"Each year? Biennium?, the Department will work with an interagency team to develop a spend plan for approval by the Commission that specifies how a portion of the moneys in the fund will be used by to undertake activities through agreements or contracts that advance place-based integrated water resources planning for specific areas or the state as a whole. The spend plan shall not exceed 25% of available funds."</p>	<p>This would lead to difficulty in getting funds out the door to grantees. The place-based planning fund is not a part of the agency's base-budget and requiring this process will likely lead to unnecessary delays. Depending on the type of funds appropriated, this could lead to difficulty in sustaining groups across the biennia.</p> <p>As items are identified by an interagency team or by the Department, the PBP statute allows the Department to address them in real time, instead of waiting for the next year or biennium to be included in the next spend plan. Contracts take time to scope and the planning process is ideally only 3 years long. If the Department has to wait a year or two before starting that process, it will be less able to adapt to planning group needs.</p> <p>Proposed changes will not be added to the rules.</p>
<p>"The Department will actively seek to partner with qualified entities that can provide needed expertise or support or fill capacity and information gaps identified by places or the state."</p>	<p>The statute already allows the Department to do this as is necessary according to the needs of the Department and the program. There may be times when it is not necessary or appropriate for the Department to be "actively seeking to partner with" other entities.</p> <p>Proposed changes will not be added to the rules.</p>

Rules around Interagency Coordination (e.g., receiving and responding to requests for assistance; development of technical products to support planning) *(Emails from Harmony Burrigh 8/16/24 & Peggy Lynch 8/17/2024)*

- (7) 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:
- (a) Participate in place-based integrated water resources planning.
 - (b) Provide information and assistance described in subsection (9) of this section.
- (9) The Water Resources Department, 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 may provide technical information and assistance to, and enter into contracts or agreements with, a person, public body, Indian tribe or nonprofit organization to facilitate implementation of this section.

Proposed Text from RAC Member	OWRD Initial Response
<p>"The Department will work with an interagency team to develop and maintain a system for receiving and responding to requests for assistance from planning groups, with a preference given to active grant recipients, and will maintain a publicly available repository of requests received and information provided."</p>	<p>This is likely unnecessary to put into rule. OWRD is updating its Technical Assistance Provision/Request Process as part of standing up the new PBP Fund. All TA requests are available via public records request.</p> <p>The Department does not have the authority to put requirements of other agencies into these rules.</p> <p>Proposed changes will not be added to rules.</p>
<p>"The Department will work with an interagency team to develop a set of guidelines with requirements, standards, and best practices to aid in fostering consistency between planning efforts and ensuring that all plans meet minimum standards set by the Department, including requirements for consulting with the Department at set milestones during plan development to ensure minimum standards are met."</p>	<p>This is likely unnecessary to put into rule. OWRD, in consultation with other listed agencies, is already updating its PBP Guidance, which will include the pieces listed here.</p> <p>The Department does not have the authority to put requirements of other agencies into these rules.</p> <p>Proposed changes will not be added to rules.</p>
<p>"For each biennium, the Department shall establish written agreements with the named agencies that document:</p> <ul style="list-style-type: none"> • available capacity to participate in place-based integrated water resources planning • information and assistance the agency proposes to provide • capacity gaps that may limit participation and assistance • information gaps that may affect planning <p>The Department may enter into intergovernmental agreements with agencies and use available funds to support their participation or capacity to gather and provide information and assistance consistent with a spend plan described above."</p>	<p>The language as suggested is likely unattainable. The Department does not have the authority to put requirements of other agencies into these rules, so it cannot require named agencies to establish a written agreement with the Department. Additionally, staff capacity might change over the course of the biennium as staff retire or switch jobs.</p> <p>Proposed changes will not be added to rules.</p>