

## Division 602 Compilation of Public Comments Received

During the public comment period for the Division 602 Place-Based Water Planning (December 1, 2024, through January 15, 2025), the Department received written comments and oral comments from nine individuals or groups. Seven commenters signed the same comment letter, and two commenters provided both oral and written comments. Table 1 lists all public written and oral comments received (tribal comments can be found in Attachment 4). Any stated affiliation is noted. Any stated support or opposition is noted. In some instances, support or opposition might be inferred, but we opted not to make that inference and have indicated apparently neutral or indeterminate positions as “N/A.” If the commenter suggested specific rule language revisions, that is also noted. All written public comments are attached.

**Table 1. Public Written and Oral Comments Received**

Commenter	Stated Affiliation	Support / Oppose	Propose Rule Language Changes	Written (W) / Oral (O) Comments
Harmony Burright	Professional Water Planner and former OWRD Planning Coordinator	Support	Yes	W (1/15/2025)
Brenda Smith	Director of the High Desert Partnership and Co-convener of the Harney Community Based Water Planning effort	Support	Yes	W (1/15/2025)
Adam Denlinger	Manager of the Seal Rock water District and Co-convener of the Mid-Coast Water Planning Partnership	Support	Yes	W (1/15/2025)
Scott Aycock	Community and Economic Development Director at the Central Oregon Intergovernmental Council, Facilitator of the Deschutes Basin Water Collaborative	Support	Yes	W (1/15/2025)
Herb Winter	Gillam SWCD District Manager, Co-convener of the Lower John Day Planning Group	Support	Yes	W (1/15/2025)
N/A	AOC	Support	Yes	W (1/15/2025)
N/A	LOC	Support	Yes	W (1/15/2025)
Stephanie Tidwell	Water Climate Trust	N/A	No	O (1/7/2025) W (1/15/2025)
Lisa Brown	WaterWatch of Oregon	N/A	Yes	W (1/15/2025)



## **WaterWatch of Oregon**

### **Protecting Natural Flows In Oregon Rivers**

January 15, 2025

Margo Mashkovskaya  
Oregon Water Resources Department  
725 Summer St. NE, STE A  
Salem, OR 97301  
Sent via email to: WRD\_DL\_rule-coordinator@water.oregon.gov.

Dear Ms. Mashkovskaya:

Thank you for the opportunity to comment on the proposed Division 602 rules pertaining to Place Based Planning. As a member of the Rules Advisory Committee (RAC), WaterWatch very much appreciates the work of the Oregon Water Resources Department staff in developing these rules and in considering the input provided by the RAC. While WaterWatch continues to have concerns about aspects of the Place Based Planning program, these rules provide important provisions regarding administration of the grant program. Included as Attachment A are our comments in track edit and comments regarding the proposed text of the rules.

Thank you for your consideration.

Sincerely,

Lisa A. Brown

Lisa A. Brown  
Staff Attorney  
WaterWatch of Oregon  
lisa@waterwatch.org

Attachment: (A) WaterWatch of Oregon's Comments on Proposed Division 602 Rules

## Attachment A

## WaterWatch of Oregon's Comments on Proposed Division 602 Rules

January 15, 2025

**General Comments**

1. Lack of clarity and agreement regarding what OWRD does with place based plans is concerning and resolving those disagreements appears to exceed the scope of this rulemaking.

The discussion in the Rules Advisory Committee (RAC) process highlighted the lack of clarity and lack of agreement regarding the responsibility of OWRD and other agencies to carry forward any or all strategies coming out of the place based planning (PBP) processes. Some have advocated for “shall support implementation” language that is *not* in statute, with further divergent opinions regarding what “shall support implementation” would actually mean. It is concerning to have significant public money and significant time going into PBP given these disagreements.

Further, while we think that *Proposed* OAR 690-602-007(5)-(6) provides significant improvement over earlier drafts on this topic, in our view, declaring in these rules that OWRD, or any other agency, must take any particular action with PBP strategies is not consistent with statute and conflicts with the stated purpose of this rulemaking as stated on OWRD’s webpage:

“The Oregon Water Resources Department (OWRD) is developing new rules for the Place-Based Water Planning Fund. 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.*”<sup>11</sup>

(Emphasis added). This scope does not include establishing OWRD duties to take any action on or implement PBP strategies. It simply states that the rules will govern the “process” for state recognition. While the *Proposed* rules may go too far in that regard, we certainly would not want to see the *Proposed* rules revert to any of the previous language attempting to require OWRD (or other agencies) to implement PBP plans or strategies, which is not supported by statute and is outside the scope of the rulemaking.

2. The *Proposed* rules will help provide needed standards for PBP, but more is likely needed.

The *Proposed* rules provide improved direction to help ensure PBP reflects a fair and balanced set of instream and out-of-stream interests and strategies -- but more is likely needed. The program has had a lack of substantive requirements, quality controls, and oversight, and is often operating with a lack of adequate data, which can raise significant issues and lead to unbalanced outcomes. We also highlight that the plans often do not reflect balanced representation by all stakeholders. This is because not all stakeholders have the capacity to participate in collaboratives or in multiple collaboratives, and also because some “collaboratives” have deliberately excluded some groups and interests. To ensure that the program contributes to a better water future for Oregon, OWRD and other involved agencies should work further to ensure the integrity of the program and provide oversight to ensure that it is balanced and fair. Again, while we think that *Proposed* OAR 690-602-007(5)-(6) provides significant improvement over earlier drafts regarding what agencies may do with the plans, these issues are one reason to avoid any language forcing OWRD (or any other agency) to implement PBP plans or strategies. In the context of this program, we encourage the Department to focus on making needed improvements in the PBP process and its oversight to ensure balanced and fair processed, and to work on implementation of provisions in the *Proposed* rules that will aid in this.

**Specific Comments on Proposed Rule Language**

## RULES PROPOSED:

690-602-0001, 690-602-0002, 690-602-0003, 690-602-0004, 690-602-0005, 690-602-0006, 690-602-0007, 690-

<sup>11</sup> <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/Place-Based-Water-Planning.aspx> (visited 10-24-2024).

602-0008, 690-602-0009, 690-602-0010, 690-602-0011, 690-602-0012, 690-602-0013

ADOPT: 690-602-0001

RULE SUMMARY: This new rule describes the purpose and applicability of OAR Chapter 690 Division 602.

CHANGES TO RULE:

690-602-0001

Purpose

OAR 690-602-0001 to OAR 690-602-0013 establish procedures for the Oregon Water Resources Department's administration of the Place-Based Water Planning Fund and the process and consideration of state-recognized place-based integrated water resources plans by the Department and in Oregon's Integrated Water Resources Strategy pursuant to ORS 537.872 through 537.873.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873



ADOPT: 690-602-0002

RULE SUMMARY: This new rule defines terms used in OAR Chapter 690, Division 602.

CHANGES TO RULE:

690-602-0002

Definitions

- (1) "Application Review Team" means state agencies identified in ORS 537.873(7) or invited by the Department with relevant knowledge or expertise, that have the capacity to participate in application review.
- (2) "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.
- (3) "Collaborative" means the balanced representation of instream and out-of-stream water interests from the community that develop, implement, or update a place-based integrated water resources plan consistent with their shared governance agreement.
- (4) "Commission" means the Oregon Water Resources Commission.
- (5) "Community" means 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.
- (6) "Department" means the Oregon Water Resources Department.
- (7) "Director" means the director of the Oregon Water Resources Department or the director's designee.
- (8) "Environmental Justice Community" as referenced in ORS 537.873(1) and defined in ORS 182.535.
- (9) "Facilitator" means a neutral party that works to ensure a collaborative process and supports consensus building.
- (10) "Fund" means the Place-Based Water Planning Fund.
- (11) "Grant Agreement" means the legally binding contract between the Department and the funding recipient. It may consist 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.
- (12) "Grantee" means the recipient of the grant funding.
- (13) "Match" is any contribution to a project that is non-Department funds.
- (14) "Place-based integrated water resources planning" as defined in ORS 537.873(1).
- (15) "Place-based integrated water resources plan" as defined in ORS 537.873(1).
- (16) "Plan" means place-based integrated water resources plan.
- (17) "Plan Review Team" means state agencies identified in ORS 537.873(7) or invited by the Department with relevant knowledge or expertise, that have the capacity to participate in plan review.
- (18) "Planning area" means a shared hydrologic area that is within hydrologic and size limitations defined by the Department.
- (19) "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.
- (20) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government.
- (21) "State-recognized place-based integrated water resources plan" as defined in ORS 537.873(1), means a place-based integrated water resources plan that has been reviewed by the Water Resources Commission and recognized by a commission resolution stating that the completed place-based integrated water resources plan adheres to applicable requirements.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873, ORS 182.535

ADOPT:690-602-0003

RULE SUMMARY: This new rule outlines the Department's Place-Based Water Planning grant application process.

CHANGES TO RULE:

690-602-0003

Grant Application Process

- (1) The Department shall periodically announce deadlines for submitting applications for grant funding, dependent upon the availability of Place-Based Water Planning funds and state agency capacity to support grantees and planning processes. ¶
  - (2) Applications shall be submitted on the most current form provided by the Department. ¶
  - (3) The Department shall review applications based on the evaluation criteria in 690-602-0006 and may use an application review team to assist in conducting this review. ¶
  - (4) The Department shall provide an opportunity for public comment on funding recommendations prior to the Directors funding decision. ¶
  - (5) The Director shall make grant funding decisions based on the grant evaluation criteria in 690-602-0006 and any associated recommendations of an application review team, availability of fund resources, Department capacity to support grantees, and received public comments.
- Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873
- Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

ADOPT:690-602-0004

RULE SUMMARY: This new rule describes the types of Place-Based Water Planning grants.

CHANGES TO RULE:

690-602-0004

Eligible Grant Types

The Place-Based Water Planning Fund may fund the costs of any action supporting place-based integrated water resources planning as outlined in ORS 537.873(2) through the administration of Planning Readiness Evaluation and Preparation Grants, Planning Grants, Post Plan Coordination Grants, and Plan Update Grants.¶

(1) Eligible Planning Readiness Evaluation and Preparation Grants prepare for or assess a community's readiness to engage in Place-Based Integrated Water Resources Planning for a proposed planning area.¶

(2) Eligible Plan Development Grants develop a place-based integrated water resources plan for a planning area consistent with a shared governance agreement, using place-based integrated water resources planning, and following the process, content, and structure provided by the Department.¶

(3) Eligible Post Plan Coordination Grants support implementation coordination of a state-recognized place-based integrated water resources plan.¶

(4) Eligible Plan Update Grants support updates to a state-recognized place-based integrated water resources plan.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

ADOPT:690-602-0005

RULE SUMMARY: This new rule outlines the match requirements for the Place-Based Water Planning grants.

CHANGES TO RULE:

690-602-0005

Match Requirements

(1) Match requirements shall be included in the announcement for each grant offering. Match requirements shall not exceed 50% of the application request. ¶

(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 18 months from the date of the place-based water planning award. ¶

(3) Match contributions may include: ¶

(a) Associated and documented expenditures that were incurred prior to an award and approved by the Department for match purposes: ¶

(b) Cash on hand: ¶

(c) Secured funding commitments from other sources: ¶ (d) Pending match funds from other sources:

or ¶

(e) The value of in-kind labor, equipment rental and materials essential to the planning process, based on local market rates.

Statutory/Other Authority: ORS 536.027, ORS 537.872-ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872-ORS 537.873

ADOPT:690-602-0006

RULE SUMMARY: This new rule describes the Place-Based Water Planning grants application evaluation criteria.

CHANGES TO RULE:

690-602-0006

Grant Evaluation Criteria

(1) Planning Readiness Evaluation and Preparation Grants shall be evaluated on:

- (a) The commitment and 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;
- (c) The proposed approach to public participation and engagement of environmental justice communities; and
- (d) Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or by the Director, and included in grant solicitation materials.

(2) Plan Development Grants shall be evaluated on:

- (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. PBP collaboratives should be facilitated by a neutral facilitator. Neutral facilitators should be selected by the collaborative using consensus.

Commitment to a neutral process may be demonstrated, in part, through the use of neutral facilitator;

- (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 identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or by the Director, and included in grant solicitation materials;
- (e) The value of place-based integrated water resources planning in the planning area and the demonstration of a clear need for a Plan; and
- (f) State agency capacity to support the proposed planning process.

(3) Post Plan Coordination Grants shall be evaluated as follows:

- (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 preference and shall be evaluated on:

- (A) Demonstration of plan strategies and actions that represent a balance of instream and out-of-stream water interests and a commitment to collaboration and place-based planning principles;
- (B) The proposed approach to public participation and engagement of environmental justice communities; and

(C) Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or determined by the Director, and included in grant solicitation materials.

- (b) If the Collaborative's Plan received state-recognition two or more years before the application deadline, its application shall be evaluated on:

- (A) Demonstration of the pursuit of Plan strategies and actions that continue to represent a balance of instream and out-of-stream water interests and a commitment to collaboration and place-based planning principles; and
- (B) Progress made towards Plan implementation, including how progress aligns with the Plan's implementation strategies and continues to represent a balance of in-stream and out-of-stream water interests;

(C) The proposed approach to public participation and engagement of environmental justice communities; and

(D) Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or determined by the Director, and included in grant solicitation materials.

(4) Plan Update Grants shall be evaluated on:

- (a) Demonstration of the pursuit of Plan strategies and actions that continue to represent a balance of instream and out-of-stream water interests and a commitment to collaboration and place-based planning principles;

(b) Demonstration of a need to update or develop new planning strategies and/or demonstration of significant changes in local conditions, data availability, or climate change information that would impact the Plan;

(c) The proposed approach to public participation and engagement of environmental justice communities; and

(d) Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or determined by the Director and included in grant solicitation materials.

(5) Additional evaluation criteria for Place-Based Water Planning grants may be added 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.

**Commented [LB1]:** This would aid in selecting a neutral facilitator (vs., e.g., the convenors doing this).

**Commented [LB2]:** A neutral facilitator is critically important (and in our view should be a foundational requirement for any PBP process), but depending on how decisions are made and other factors, is not adequate to ensure a neutral process.

ADOPT:690-602-0006

RULE SUMMARY: This new rule describes the Place-Based Water Planning grants application evaluation criteria.

CHANGES TO RULE:

690-602-0006

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

ADOPT:690-602-0007

RULE SUMMARY: This new rule describes the Place-Based Water plan state recognition process, how to maintain state recognition, agency support mechanisms, and Integrated Water Resources Strategy considerations.

CHANGES TO RULE:

690-602-0007

#### State Recognition of Plans

- (1) A collaborative is eligible to apply for state-recognition of their Plan after it is adopted by the collaborative through consensus as defined in the collaborative's shared governance agreement. ¶
- (2) The Plan Review Team shall review plans for adherence to the definition of a place-based integrated water resources plan, place-based integrated water resources planning, and the related process, content, and structure provided by the Department. The Plan Review Team shall make a recommendation to the Director about state recognition of the Plan within 120 days of plan submission. If the Plan Review Team requires changes to recommend the Plan for state recognition, the Collaborative will be given an opportunity to amend its plan before a final recommendation is made. ¶
- (3) A Plan may be recognized by the Commission if it meets the definition of a place-based integrated water resources plan, was developed using place-based integrated water resources planning, follows the process, content, and structure provided by the Department, and upon recommendation by the Director. ¶
- (4) To maintain Plan state recognition, the collaborative must submit biennial reports on progress made towards Plan implementation on a form provided by the Department. Plans may lose state recognition if: ¶
  - (a) Reporting requirements are not met; ¶
  - (b) Reporting or other information received by the Department indicates that progress made towards implementation does not align with the Plan's implementation strategies or represent a balance of in-stream and out-of-stream water interests; or ¶
  - (c) The Collaborative is no longer demonstrating a commitment to collaboration and adherence to principles of place-based integrated water resources planning and the state's current Integrated Water Resources Strategy. ¶
- (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 those agencies as resources and capacity allow. ¶
- (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, critical issues, or individual strategies emerging from state-recognized Plans into updates and any associated workplans, consistent with the agency missions, authorities, and priorities, and as capacity allows.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

**Commented [LB3]:** This doesn't address how to handle state recognition of plans that occurred prior to (presumed) adoption of these rules, not all of which likely met the requirements in these rules regarding balanced participation.

**Commented [LB4]:** While this is a significant improvement over previous draft language discussed in the RAC, we are concerned that this goes beyond what is stated or contained in statute. The use of "shall" here goes beyond statute.

ADOPT:690-602-0008

RULE SUMMARY: This new rule describes the Place-Based Water Planning grant agreement and conditions.

CHANGES TO RULE:

690-602-0008

Grant Agreement and Conditions

- (1) The Director or designee shall establish conditions for each grant agreement.¶
  - (2) The Department shall only enter into new agreements or amendments to existing agreements with prior grantees of the Place-Based Water Planning Fund if all reporting obligations and conditions under existing or earlier grant agreements from this Fund have been met.¶
  - (3) The Grantee must:¶
    - (a) Submit a report at least every 6 months to the Department on a form provided by the Department that provides information regarding the expenditure of program and match funds, progress toward completion, compliance with special conditions and requirements in the grant agreement and any other information required by the Department.¶
    - (b) Comply with all federal, state, and local laws and ordinances applicable to the work to be done under the grant agreement.¶
    - (c) Account for funds distributed by the Department, using expense forms provided by the Department.¶
    - (d) Ensure a collaborative process and adherence to the definitions of a place-based integrated water resources plan and place-based integrated water resources planning and principles of the state's Integrated Water Resources Strategy. ¶
    - (e) Follow the process, content, and structure provided by the Department and necessary to meet the definitions of a "Place-Based Integrated Water Resources Plan" and "Place-Based Integrated Water Resources Planning".¶
    - (f) Pursue state-recognition of any Plan or Plan update resulting from the collaborative's work.¶
  - (4) Upon notice by the Department to the Grantee in writing, the Director may terminate funding for collaboratives not complying with the grant agreement requirements and conditions. The money allocated to the collaborative but not used may be available for reallocation by the Department.
- Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873
- Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873



ADOPT: 690-602-0009

RULE SUMMARY: This new rule identifies the public notice and comment process for the Place-Based Water Planning funding and state recognition.

CHANGES TO RULE:

690-602-0009

Public Notice and Comment

(1) Prior to the award of Place-Based Water Planning funding, the Department shall **simultaneously** 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 **with a minimum 45-day comment period.** ¶

(2) Prior to a decision of state recognition of a plan, the Department shall provide public notice with a minimum 45-day public comment period and report all public comments received to the Commission for consideration.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

**Commented [LB5]:** To maintain the integrity and fairness of the process, all interested entities should be notified at the same time.

ADOPT:690-602-0010

RULE SUMMARY: This new rule describes the conditions for grant fund distribution.

CHANGES TO RULE:

690-602-0010

Distribution of Grant Funds

(1) The Director may withhold payments to a Grantee if the Grantee is not in compliance with grant agreement requirements and conditions.¶

(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.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

ADOPT:690-602-0011

RULE SUMMARY: This new rule requires the Department to periodically identify uses of contract funds to further Place-Based integrated water resources.

CHANGES TO RULE:

690-602-0011

Agreements or Contracts

(1) The Department, in consultation with other relevant state agencies, shall produce and publish a report at least every 4 years that:

(a) Identifies specific purposes for which the Department may use funds consistent with ORS 537.873(6) to consider entering into agreements or contracts in support of place-based integrated water resources planning during the upcoming reporting period.

(b) Documents how funding was spent pursuant to ORS 537.873(6) through contracts and agreements since the previous report.

(2) The Department may use moneys in the fund to further place-based integrated water resources planning for purposes consistent with ORS 537.873(6).

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

**Commented [LB6]:** I think this needs to specify ORS 537.873(6) throughout, or it reads as applying to the entire PBP funding program (which I don't think is the intent).

ADOPT:690-602-0012

RULE SUMMARY: This new rule assigns the Department the responsibility of developing a technical assistance intake, prioritization, and response system to support Place-Based integrated water resources planning.

CHANGES TO RULE:

690-602-0012

Provision of Technical Assistance

The Department, in consultation with other relevant state agencies, shall develop, maintain, and communicate a system for receiving, prioritizing, and responding to requests for technical assistance to support place-based integrated water resources planning.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

ADOPT:690-602-0013

RULESUMMARY: This new rule requires the Department to conduct periodic program evaluation and update of the Place-Based Water Planning program.

CHANGESTORULE:

690-602-0013

Program Evaluation

The Department, in consultation with other relevant state agencies, collaboratives, and other interested parties, shall periodically conduct a program evaluation and if necessary, may implement strategies for improvement.

Statutory/Other Authority: ORS 536.027, ORS 537.872 - ORS 537.873

Statutes/Other Implemented: ORS 536.027, ORS 537.872 - ORS 537.873

January 15, 2025

To: Margo Mashkovskaya

Subject: Place-Based Planning Rulemaking Public Comments

We appreciate the Department's rulemaking efforts to clarify and formalize support for place-based integrated water resources planning in the form of grants, technical assistance, state recognition of plans, and other actions authorized by statute. This is an impressive milestone we will be celebrating. We appreciated the contributions of RAC members and the thoughtful approach Department staff took to responding to RAC comments. We believe the draft rules reflect robust discussion of the RAC and are much improved. Please accept these written comments on the Draft Place-Based Planning Rules (see the Table for specific comments and proposed language). If comments are not provided on a specific section or specific language, please assume that we are enthusiastic supporters of what is proposed.

At a high level we would offer the following priority comments:

- Secured match should be required prior to final disbursement of funds, but should not be required prior to the Department disbursing any funds. This language is very concerning. This is overly restrictive and would greatly inhibit future planning efforts. Place-based planning is difficult enough without the extra challenge of aggressive timelines to secure match. Please provide flexibility as an "anchor" funder for these types of efforts. Place-based planning funds from the state serve an important function as a "seed" or "magnet" for other funding, but oftentimes it took time and effort for those other sources to come through. If match is important, it could be used as an evaluation criteria during the application review stage rather than a condition for any disbursement of funds.
- The Department and Commission have discussed for years, and have not yet resolved, the question regarding the value of state recognized place-based integrated water resources plans. This is a longstanding question that has been raised by place-based planning groups since their inception. We were disappointed to see that the Department continues to punt on this issue despite the clear support from the Legislature for this program. We encourage Department staff to take this issue up with agency partners and the Commission and develop a resolution or some other statement regarding the value of state-recognized plans as well as an action plan with concrete steps for how the Department will support implementation.

We appreciate you taking these comments into consideration.

The individuals and organizations below support these comments (signatures represent support from the individuals and are not submitted on behalf of the planning groups),

- Harmony Burright, Professional Water Planner and former OWRD Planning Coordinator
- Brenda Smith, Director of the High Desert Partnership and Co-convener of the Harney Community Based Water Planning effort
- Adam Denlinger, Manager of the Seal Rock water District and Co-convener of the Mid-Coast Water Planning Partnership
- Scott Aycock, Community and Economic Development Director at the Central Oregon Intergovernmental Council, Facilitator of the Deschutes Basin Water Collaborative
- Herb Winter, Gillam SWCD District Manager, Co-convener of the Lower John Day Planning Group

**AOC** ASSOCIATION OF  
OREGON COUNTIES

**LOC**  
League of Oregon Cities

## Specific Comments on Place-Based Planning Rules

Section	Overview	Suggested Language	Additional Feedback/Rationale
609-602-0001 Purpose	Broaden purpose statement to include actions in support of planning (beyond grants and state recognition).	OAR 690-602-0001 to OAR 690-602-0013 establish procedures for the Oregon Water Resources Department's administration of the Place-Based Water Planning Fund, <del>and</del> the process and consideration of state-recognized place-based integrated water resources plans by the Department and in Oregon's Integrated Water Resources Strategy pursuant to ORS 537.872 through 537.873, <u>and actions to be taken by the Department in consultation with other state agencies to support place-based integrated water resources planning.</u>	The statute and rule include other actions to support place-based integrated water resources planning in addition to administering the Planning Fund and overseeing the state recognition process. Broadening the purpose statement signals the state support beyond providing funding and reviewing final plans.
690-602-0002 Definitions	Under the definition of "match" ensure that this includes in-kind and volunteer contributions	(13) "Match" is any contribution to a project that is non-Department funds.	Confirm that this definition includes in-kind and volunteer contributions. The planning groups relied heavily on in-kind contributions and thousands of volunteer hours from collaborative members.
609-602-0003 Grant Application Process	Specify that the Department will develop a predictable solicitation cycle that occurs no less than 2 years.	(1) The Department shall <del>periodically establish a</del> <u>predictable solicitation cycle that</u> announces deadlines for submitting applications for grant funding <u>no less than every two years</u> , dependent upon the availability of Place-Based Water Planning funds and state agency capacity to support grantees and planning processes.	Including the word periodically infers that these grants may be announced sporadically. We highly recommend that the Department adopt a regular and predictable solicitation cycle to allow interested parties to have some understanding of whether and when grants may be available and to have ample time to plan ahead. We recommend that this occur no less than every two years.
609-602-0003 Grant Application Process	Specify when/how the decisions of the Director will be announced.	(5) The Director shall make grant funding decisions based on the grant evaluation criteria in 690-602-0006 and any associated recommendations of an application review team, availability of fund resources, Department capacity to support	There should be a public announcement of grant awards.

Section	Overview	Suggested Language	Additional Feedback/Rationale
		grantees, and received public comments <u>and will publicly announce the funding decisions at the Commission meeting immediately following the funding decision.</u>	
690-602-0004 Eligible Grant Types	Minor edits to the language.	The Place-Based Water Planning Fund may fund the costs of any action supporting place-based integrated water resources planning as outlined in ORS 537.873(2), <u>including through but not limited to</u> the administration of Planning Readiness Evaluation and Preparation Grants, Planning Grants, Post Plan Coordination Grants, and Plan Update Grants.¶ (1) Eligible Planning Readiness Evaluation and Preparation Grants prepare for or assess a community's readiness to engage in <u>pPlace-bBased iIntegrated wWater rResources pPlanning</u> for a proposed planning area.¶ (2) Eligible Plan Development Grants develop a place-based integrated water resources plan for a planning area consistent with a shared governance agreement, using place-based integrated water resources planning, and following the process, content, and structure provided by the Department.¶ (3) Eligible Post Plan Coordination Grants support implementation coordination of a state-recognized place-based integrated water resources plan.¶ (4) Eligible Plan Update Grants support updates to a state-recognized place-based integrated water resources plan	Administering grants is just one action authorized under statute. Suggest modifying the language to reflect this.
609-602-0005 Match Requirements	Allow for the release of funding even if the full match is not secured and tie final disbursement of	(2) All applicants must demonstrate the required matching contribution has been secured or is being sought at the time of application. <u>Final disbursement of</u> Department fund <u>sing</u> may not be released prior to secured <u>commitment of the other</u>	The requirement to have match secured prior to securing match is unnecessarily restrictive and will hinder the fundraising abilities of place-based planning groups. The state should be a flexible and adaptive funder to allow planning



Section	Overview	Suggested Language	Additional Feedback/Rationale
	funds to secured match.	<del>funds match. Pending match funds must be secured within 18 months from the date of the place-based water planning award.</del> ¶	groups to use state funding as a “seed” or “magnet” for other sources of funding. Funds for planning are limited and difficult to come by and time is necessary and beneficial to attract and secure match.
609-602-0005 Match Requirements	Include that volunteer hours can be counted towards match.	(3) Match contributions may include:¶ (a) Associated and documented expenditures that were incurred prior to an award and approved by the Department for match purposes;¶ (b) Cash on hand;¶ (c) Secured funding commitments from other sources;¶ (d) Pending match funds from other sources; or¶ (e) The value of in-kind labor, equipment rental and materials essential to the planning process, based on local market rates. <u>(f) Volunteer hours and expenses related to the work of the Collaborative valued at a rate determined by the Department.</u>	One of the biggest sources of match for the place-based planning efforts was volunteer hours. The time and energy contributed by unpaid community members should be valued and counted towards match.
609-602-0006 Grant Evaluation Criteria	Simplify this section by identifying the criteria that all grant types have in common – these are criteria of any funding opportunity.		Suggest pulling out the criteria that are the same for each of the grant opportunities so that they are not duplicated. These can be referred to simply as “grant evaluation criteria.” Criteria for specific types of grants can then be specified by grant type.
609-602-0006 Grant Evaluation Criteria	Simplify the Post-Plan Coordination Grant Section.	(3) Post Plan Coordination Grants shall be evaluated as follows:¶ <del>(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 preference and shall be evaluated on:¶</del> (a) Demonstration of plan strategies and actions that represent a balance of instream and out-of-stream water interests and a	We are not sure of the necessity to include the language regarding preferences for new plans in the Post Plan Coordination Grants section. We believe that this could be included in the solicitation materials and doesn't need to be included in rule.

Section	Overview	Suggested Language	Additional Feedback/Rationale
		<p>commitment to collaboration and place-based planning principles; <del>¶ (b) Progress made towards Plan implementation, including how progress aligns with the Plan's implementation strategies and continues to represent a balance of in-stream and out-of-stream water interests;</del> <del>(cB)</del> The proposed approach to public participation and engagement of environmental justice communities; and <del>¶ (dE)</del> Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or determined by the Director, and included in grant solicitation materials. <del>¶ (b) If the Collaborative's Plan received state recognition two or more years before the application deadline, its application shall be evaluated on:</del> <del>¶ (A) Demonstration of the pursuit of Plan strategies and actions that continue to represent a balance of instream and out-of-stream water interests and a commitment to collaboration and place-based planning principles; and</del> <del>¶ (B) Progress made towards Plan implementation, including how progress aligns with the Plan's implementation strategies and continues to represent a balance of in-stream and out-of-stream water interests;</del> <del>¶ (C) The proposed approach to public participation and engagement of environmental justice communities; and</del> <del>¶ (D) Strategic priorities identified in the state's Integrated Water Resources Strategy, the Department's strategic plan, or determined by the Director, and included in grant solicitation materials.</del> <u>¶ (e) If a Collaborative's Plan has received state-recognition for the first time within</u></p>	

Section	Overview	Suggested Language	Additional Feedback/Rationale
		<u>the last 2 years and it has not received a Post Plan Coordination Grant previously, its application may be given preference during the evaluation process.</u> ¶	
690-602-0007 State Recognition of Plans	Provide more clarity on how state recognition would be lost and how it would be determined.	(4) To maintain Plan state recognition, the collaborative must submit biennial reports on progress made towards Plan implementation on a form provided by the Department. Plans may lose state recognition if: ¶ (a) Reporting requirements are not met;¶ (b) Reporting or other information received by the Department indicates that progress made towards implementation does not align with the Plan's implementation strategies or represent a balance of in-stream and out-of-stream water interests; or ¶ (c) The Collaborative is no longer demonstrating a commitment to collaboration and adherence to principles of place-based integrated water resources planning and the state's current Integrated Water Resources Strategy <u>as determined by the Department.</u> ¶ <u>The collaborative will be notified in writing by the Department if any conditions are not met and will be given 6 months to resolve issues to the satisfaction of the Department. Rescinding state recognition will happen by an act of the Commission.</u>	Specify the process by which state recognition would be lost and allow time for the Collaborative to be responsive to Department concerns. Will there be a requirement that plans are updated at regular intervals? Will there be a review at regular intervals?
690-602-0007 State Recognition of Plans	Clarify state support.	(5) <u>On a biennial basis</u> 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	The timing of when this occurs should be specified. This should be ongoing communication that corresponds with the biennia since resources and capacity will fluctuate. If the Department and other agencies communicate

Section	Overview	Suggested Language	Additional Feedback/Rationale
		priorities, and whether and how they <del>may</del> <u>will</u> be supported by those agencies as resources and capacity allow. ¶	about actions they support, there should be a sense of commitment. Agencies should not make commitments they do not intend to follow through on (as resources and capacity allow).
690-602-0009 Public Notice and Comment	Clarify how public comments will be accounted for in decision-making.	No language suggested. Consider relocating (1) to 690-602-0003 and relocating (2) to 609-602-0007. These seem to be better places to clarify the public process associated with the respective processes.	It is unclear when this public comment opportunity would occur relative to the decision and how public comments would be considered by the Department and Director in decision-making. Furthermore, we recommend that written notice to the county and tribal governments be given prior to the decision of state recognition as well as a funding award. It should be clear that tribal and county government will be notified at the beginning of the public comment period to provide ample time for participation.
609-602-0010 Distribution of Grant Funds	Allow for the release of funding even if the full match is not secured and tie final disbursement of funds to secured match.	(1) The Director may withhold payments to a Grantee if the Grantee is not in compliance with grant agreement requirements and conditions.¶ (2) Prior to <u>final</u> disbursement of Department funds, the Grantee must provide the Department satisfactory proof that the required match, based on the total award, has been secured.	See comment above about the importance of flexible match funding from the state. This requirement is unnecessarily restrictive and will hinder the success of grantees and likely limit the amount of match that grantees are able to secure. Consider combining 690-602-0008 with 690-602-0005 and 609-602-0010 in one section to keep all the grant requirement language together in one place.
690-602-0011 Agreements or Contracts	Increase frequency of developing a proposed spend plan.	(1) The Department, in consultation with other relevant state agencies, shall produce and publish a <del>report</del> <u>potential/proposed spend plan</u> at least every <u>24</u> years that:¶ <u>(a) Identifies the funds that will be made available as grants;</u> (a) Identifies specific purposes for which the Department may consider entering into	It makes more sense to match this up with the biennial funding cycle given that resources might fluctuate every two years. This could also be used to determine how much funding will be made available for grants.

Section	Overview	Suggested Language	Additional Feedback/Rationale
		<p>agreements or contract to support of place-based integrated water resources planning during the upcoming reporting period. ¶</p> <p>(b) Documents how funding was spent through contracts and agreements since the previous report. ¶</p> <p>(2) The Department may use moneys in the fund to further place-based integrated water resources planning for purposes consistent with ORS 537.873(6).</p>	
690-602-0013 Program Evaluation	Include the frequency with which this will occur	The Department, in consultation with other relevant state agencies, collaboratives, and other interested parties, shall <del>periodically</del> conduct a program evaluation <u>no less than every 8 years</u> and if necessary, may implement strategies for improvement.	Evaluating and improving the program should be an ongoing task, but we recommend that a more formal evaluation occur on a predictable basis. It would make sense to match this up with the updates to the Integrated Water Resources Strategies so that strategies for improvement could be reflected in the updated statewide strategy.
General Restructuring	Recommend general restructuring of rules to increase readability and to generally keep like sections together.	<p>609-602-0001 Purpose</p> <p>609-602-0002 Definitions</p> <p>690-602-0003 Agreements or Contracts</p> <p>609-602-0004 Eligible Grant Types</p> <p>609-602-0005 Grant Application Process (include public notice and comment for grants)</p> <p>690-602-0006 Grant Evaluation Criteria</p> <p>690-602-0007 Grant Agreement and Conditions (include match requirements and distribution of funds)</p> <p>690-602-0008 Provision of Technical Assistance</p> <p>690-602-0009 State Recognition of Plans (include public notice and comment for grants)</p> <p>690-602-0010 Program Evaluation</p>	The current sequence of the proposed rules is confusing and there are some sections that seem unnecessarily duplicative. Keep grant information distinct from the other sections (e.g., don't include public comment for grants and state recognition in the same section, break them out into their respective sections).

January 15, 2025

Margo Mashkovskaya  
Oregon Water Resources Department  
725 Summer Street NE, Suite A,  
Salem, OR 97301  
Via email to [WRD\\_DL\\_rule-coordinator@water.oregon.gov](mailto:WRD_DL_rule-coordinator@water.oregon.gov)

RE: "Best Practices on Community Engagement" rules for OAR 690-602

To Whom It May Concern,

These comments on the proposed "Best Practices on Community Engagement" rules for OAR 690-602 are submitted on behalf of [Water Climate Trust](#) and the [Oregon Water Justice Alliance](#).

We understand that Oregon Revised Statutes 537.872 and 537.873 establish the Place-Based Water Planning Fund and authorize the Oregon Water Resources Department (OWRDt) to award place-based water planning grants and develop rules for the administration of place-based water planning. In theory, the idea of funding for community stakeholder participation in water planning is good. In practice, and as proposed in your draft rules, instream uses and users of water are largely cut out, handing far too much power to commercial agricultural users and other economic enterprises at the expense of Tribal beneficial use, fishing, recreation, and wellness users of our public waters.

Furthermore, the way in which these rules are written is obscure and confusing and makes it difficult for the water-loving public to even recognize that they are being cut out of the process. Considering that I was literally the only member of the public to speak at your January 7th public comment session (the other person who spoke was from the Oregon Water Caucus, which also had concerns), your agency has done an insufficient job of notifying the public about this rulemaking process and its importance. We feel that you need to start over with a draft that is inclusive of ALL water users, not just the ones who financially profit from diverting it.

As I recently stated at the public meeting, my first cursory reading made me think that we could probably live with these rules with some minor modifications. This was largely driven by the rulemaking introduction, which states:

"This rulemaking is necessary to provide a coordinated and transparent framework for the implementation of placebased integrated water resources planning, supporting collaboration among diverse water partners and promoting the development of equitable water resource solutions. These rules advance state water management goals, are in alignment with statutory authority, and balance both in-stream and out-of-stream water interests."

And then further down, the document emphasizes environmental justice:

"Centered in the proposed rules is the inclusion of balanced representation and community involvement, with an emphasis on "environmental justice communities" defined by ORS 182.535 as: Page 3 of 18 "[C]ommunities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote

communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.”

However, a second, closer look, along with conversations with colleagues, made it clear that only out-of-stream water users and local businesses with a vested economic interest in water management are actually eligible for funding from this program. And while others are mentioned as eligible participants, the role and definition of these ‘balanced’ instream and out-of-stream users is vague to the point of being essentially useless. This is a violation of your public trust obligations to manage Oregon's waters for ALL people, as well as ecosystem health and sustainability. There are many, many people who use Oregon's surface waters - and who thus also rely on healthy groundwater levels/aquifers to sustain these waters - without diverting/consuming them for commercial purposes. Fisher people, boaters, swimmers, those who go to their local streams for mental well-being and renewal, and within all of these groups - Native American people who have time immemorial rights to these waters - have vested interests. Despite your attestation that Tribes are eligible for these grants, our detailed reading of the actual terms of the proposed rule that follow below this claim indicates that none of these people are eligible to apply for funding for local planning processes unless they have an economic stake in local water management. Our waters hold values above and beyond people's ability to make a buck off of them, and those of us who rely on them for these many other, valuable uses should not be cut out of the process. Furthermore, doing so is likely illegal.

Additionally, your pro forma Tribal engagement effort was wholly insufficient. Sending a single letter to a general address for each of the nine recognized Tribes in Oregon inviting them to join yet another RAC does not constitute consultation or informed consent, nor does mentioning the opportunity at your quarterly internal meetings. Many of the Tribes in Oregon are under-staffed and lack sufficient resources to engage in YOUR processes on your schedule. It is increasingly considered best practice for agencies' Tribal liaisons to request a meeting with each Tribe to discuss the proposed action and how it might impact them.

And finally, the match requirements of up to 50% of the request could pose an inequitable financial burden for Tribes and other instream users, and again serves to put more resourced entities like irrigation districts at an unfair advantage.

In sum, we are deeply concerned that these grants will only further serve efforts to commodify our already over-allocated waters and solidify the control of the very agricultural interests that have already seriously degraded our community water resources. The final rules need to do much more to ensure that instream water uses and users have an equitable seat at the table, and equitable access to funding for robustly engaging in the decisions that affect them and the watersheds they love.

We have attached a copy of our Water Funding Principles, which we believe should be integral to the decision-making process of any public water funding entity. We would welcome an opportunity to further discuss their importance with ORWD decision-makers and grantmaking team members.

Sincerely,

Stephanie Tidwell, Engagement Director  
Water Climate Trust



# WATER FUNDING PRINCIPLES

## To Enhance, or Minimize Harm to, Environmental Flows

The following principles are **recommended for public agencies** that allocate water-related funding and seek to enhance, or at minimum avoid harm to, environmental flows. For our purposes here, environmental flows are defined as the quantity of water left in rivers and streams for instream beneficial uses and users including fish, wildlife, recreation, river-dependent businesses, and river-dependent Native American Tribes.

The Scott River runs dry next to well-irrigated alfalfa fields

**These principles apply to all water-related funding that can increase or reduce environmental flows.** This includes funding earmarked for water infrastructure, water conservation, water use efficiency, drought resilience, climate resilience, fisheries restoration, and streamflow enhancement.

Public funding agencies have the authority, and in some cases are legally required, to avoid harm or require benefits for environmental flows. Agencies can implement the following principles through funding requirements, grant scoring criteria, data collection procedures, and independent water audits to verify claims of project proponents.

1

### Measure the Impact on Environmental Flows

To avoid harm or maximize benefits for environmental flows, funding agencies should **collect information needed to measure the impact of proposed projects on environmental flows**. This will require complex water accounting using information from sources that do not have a financial interest in the outcome.<sup>1</sup> A useful methodology is described in the 2016 report, *"Measuring Cost-Effectiveness of Environmental Water Transactions,"* available at : [ampinsights.com/cea-report](http://ampinsights.com/cea-report).<sup>2</sup>

2

### Stop Harming Environmental Flows

Public funding agencies should stop funding projects that reduce environmental flows for threatened and endangered fish, river-dependent Native American Tribes, and other protected instream beneficial water uses.<sup>3</sup> **Projects that can reduce environmental flows include:** (a) new or improved water diversion infrastructure where instream flow requirements do not exist or are not enforced;<sup>4</sup> (b) water conservation or efficiency projects where conserved water is not legally and effectively dedicated for instream use;<sup>5</sup> (c) projects that eliminate water conveyance losses without a corresponding net decrease in water diversions;<sup>6</sup> and (d) environmental water transactions that dedicate surface water rights for instream use, but do not limit extraction of interconnected groundwater.<sup>7</sup>



3

## Dedicate Conserved Water to Environmental Flows

**Water that is conserved with public funding should be legally dedicated for instream use,**<sup>8</sup> particularly when a funding source is earmarked to improve fisheries or environmental flows. Similarly, when land is acquired with public conservation funding, the associated water rights, or a portion thereof, should be legally dedicated for instream uses.

Instream water dedications should be permanent, legally enforceable, and dedicated instream for as many stream-miles as possible to avoid withdrawal by downstream water right holders.

Water and land conservation projects that are not paired with environmental water dedications can reduce environmental flows and/or make it more difficult and costly to secure water for the environment through future transactions.

4

## Prioritize Cost-Effective Environmental Water Transactions

**Agencies that fund environmental water transactions should adopt: (a)** metrics to rank proposed transactions based on relative cost-effectiveness,<sup>9</sup> and **(b)** funding requirements to reject proposed transactions that reduce environmental flows or provide negligible or unverifiable benefits.<sup>10</sup>

5

## Provide Benefits Greater Than Required by Law

**Public funds earmarked for fisheries and ecosystems should provide benefits greater than the minimum required by law.**<sup>11</sup> To this end, funding agencies should require that water dedicated for instream use augments, rather than satisfies, instream flow requirements. Where instream flow requirements have not yet been established, this requirement should apply after instream flow requirements are established.

6

## Instream Flow Studies Should Support Instream Flow Requirements

Publicly funded instream flow studies should provide recommendations that meet the needs of agencies responsible for establishing instream flow requirements. To this end, **recommendations should be based on management goals of existing laws** such as endangered species recovery, extinction prevention, and protection of public and Tribal Trust resources.<sup>12</sup> Uncertainty about the quantity of water that must remain instream to comply with existing law undermines environmental water markets.<sup>13</sup>



## Footnotes and Citations:

- 1** Project proponents have a financial interest in the outcome. Project proponents are often non-profit organizations seeking public grants for water diversion infrastructure on private land.
- 2** Although this report focuses on Environmental Water Transactions, its methodology for measuring impacts on environmental flows can be applied to most water-related projects.
- 3** Instream beneficial uses of water would be protected if states adopted instream flow requirements consistent with key laws including: the Endangered Species Act, Public Trust Doctrine, FGC § 5937, and Clean Water Act. California's Sustainable Groundwater Management Act and Reasonable Use Doctrine, and Oregon's Groundwater Quality Protection Act and Groundwater Management Act, are also relevant. Tribal beneficial uses of instream flows were formally recognized as "beneficial" by the North Coast Regional Water Quality Control Board and the CA Water Board, but have not yet been protected. Oregon has acknowledged them but not yet moved to protect them in any substantive way either.
- 4** Most California and Oregon streams and rivers lack instream flow requirements consistent with existing law. Projects that increase water diversion capacity include ditches, canals, pipes, and diversion dams.
- 5** Water that is conserved but not legally dedicated for instream use is typically used for additional out-of-stream uses (often pursuant to junior appropriative water rights or riparian water rights). In these cases, water conservation projects can reduce environmental flows. "Permissive" instream water dedications are not enforceable or effective.
- 6** Projects that eliminate water conveyance losses include lining water canals and ditches and replacing ditches with pipes. Eliminating conveyance losses reduces environmental flows when water that previously leaked into rivers and aquifers is captured and used for additional out-of-stream water deliveries. To benefit environmental flows, these projects must be paired with a mandatory net decrease in the quantity of water diverted.
- 7** When water right holders receive taxpayer money to dedicate surface water for instream use, they should be prohibited from extracting more interconnected groundwater (thus negating the benefit of dedicating surface water for instream use). The CA Sustainable Groundwater Management Act (SGMA) does not require well owners to report the quantity of water they pump. Most SGMA "groundwater sustainability plans" lack triggers to curtail groundwater use when necessary to protect interconnected surface water. Oregon's groundwater rulemaking process proposes changes that would better track actual use but has yet to be ratified.
- 8** Water can be legally dedicated instream pursuant to CWC § 1707 or a forbearance agreement. Unlike 1707 dedications, forbearance agreements cannot prevent the water from being diverted by downstream water right holders.
- 9** The cost-effectiveness metric should prioritize transactions that are permanent, verifiable, and enforceable for as many stream miles as possible. For an example [wripinsights.com/cea-report](https://wripinsights.com/cea-report)
- 10** Funding requirements should prohibit environmental water transactions that: (a) are "permissive" or "provisional", (b) are temporary, except in emergencies, (c) utilize water rights that lack bypass flow requirements pursuant to FGC § 1602 and consistent with FGC § 5937 and other applicable laws, (d) require a mechanism for monitoring and enforcing instream dedications with sufficient assurances that the funding to carry out these actions are in place. Watermasters generally refuse to enforce instream water dedications.
- 11** In many cases, it is unlawful to use public funds for regulatory compliance. Where the CA Water Board has not determined instream flow levels needed for compliance with laws, funding agencies generally assume it is lawful to pay water right holders to leave water instream.
- 12** Laws include the Endangered Species Act, Public Trust Doctrine, FGC § 5937, Clean Water Act, CA Sustainable Groundwater Management Act, and the CA Reasonable Use Doctrine.
- 13** Most California and Oregon streams and rivers lack instream flow requirements. In other words, regulators have not determined how much water must remain instream to comply with existing laws. In these watersheds, public funding for environmental water transactions may equate to paying water users to comply with existing laws (albeit laws that have not yet been implemented). For this reason, many economists argue that environmental water markets do not function properly where instream flow requirements have not yet been established.