

Division 602 Summary of Public Comment and Department Response

Topic	Summary of Public Comment	OWRD Response
Purpose (690-602-0100; previously 690-602-0001)		
Noticed Rule: “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.”	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.	<i>Rule Changed as a Result of Comment</i> The purpose statement has been modified as indicated in red below to more accurately encompass the scope of the rulemaking. “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 program 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.”
Definitions (690-602-0200; previously 690-602-0002)		
Noticed Rule: “(13) "Match" is any contribution to a project that is non-Department funds.”	“Match”: 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.	Match will include in-kind and volunteer contributions. Eligible match is described in “Match Requirements” (690-602-0005).
Grant Application Process (690-602-0300; previously 690-602-0003)		
Noticed Rule: (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	Specify that the Department will develop a predictable solicitation cycle that occurs no less than 2 years.	Since being able to offer grants will always be dependent on available funds and capacity, it is unnecessary to add a temporal requirement as well. Enforcing a timeline would hinder the Department in being adaptive to program needs.

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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.	<i>Rule Changed as a Result of Comment</i> The word “periodically” was removed to eliminate the implication that the grants would be announced sporadically and without regularity or predictability.
Noticed Rule: (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.	Specify when/how the decisions of the Director will be announced. There should be a public announcement of grant awards.	<i>Rule Changed as a Result of Comment</i> The following language was added “ The Department shall make decisions publicly available. ”
Eligible Grant Types (690-602-0400; previously 690-602-0004)		
Noticed Rule: 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.	Administering grants is just one action authorized under statute. Suggest modifying the language to reflect this.	<i>Rule Changed as a Result of Comment</i> While it is true that administering grants is just one action authorized under statute, this section is specifically related to eligible grant types. The language in red below has been edited for clarity. “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 Eligible grant types include Planning Readiness Evaluation and Preparation Grants, Planning Grants, Post Plan Coordination Grants, and Plan Update Grants.”
Match Requirements (609-602-0500; previously 690-602-0005)		

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<p>Noticed Rule: “(1) Match requirements shall be included in the announcement for each grant offering. Match requirements shall not exceed 50% of the application request.</p>	<p>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.</p>	<p>In a resource abundant environment, the match would be set lower. However, in considering the future and the longevity of these rules in different resource environments, allowing the Department to use its discretion up to 50% allows for the adaptability and flexibility for grants to be awarded and planning to be done in a range of resource environments.</p>
<p>Noticed Rule: “(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.”</p>	<p>Allow for the release of funding even if the full match is not secured and tie final disbursement of funds to secured match. 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 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.</p>	<p>Requiring match be secured prior to distribution of funds is standard practice for OWRD and other state funding opportunities. Part of the reason for this is to ensure that the investment of state dollars will result in completed plans/projects. Additionally, requiring match upfront could help shorten the time it takes to plan. Applying for money during the planning process takes time and can extend the length of the planning process, which can lead to planning fatigue.</p> <p>Match shows the commitment of the grantee and the community to engage in place-based water planning, whether its in-kind match in the form of volunteer hours or cash match from collaborative members. PREP grants are meant to provide an entry point for basins with lower capacity to prepare for plan development. Recognizing that PBP funds can be used as “seed” funding, the rules allow 18 months for grantees to secure pending match funds.</p>
<p>Noticed Rule: (3) Match contributions may include: (a) Associated and documented expenditures that were incurred</p>	<p>Include that volunteer hours can be counted towards match. One of the biggest sources of match for the place-based planning efforts was volunteer hours. The time and energy</p>	<p>Volunteer hours are very important for place-based planning efforts and will continue to be considered a source of match. Adding additional language here is</p>

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<p>prior to an award and approved by the Department for match purposes;</p> <p>(b) Cash on hand;</p> <p>(c) Secured funding commitments from other sources;</p> <p>(d) Pending match funds from other sources; or</p> <p>(e) The value of in-kind labor, equipment rental and materials essential to the planning process, based on local market rates.</p>	<p>contributed by unpaid community members should be valued and counted towards match.</p>	<p>unnecessary as “in-kind labor” includes volunteer time (OWRD Grant Budget Procedures and Allowable Costs, p. 6).</p>
Grant Evaluation Criteria (690-602-0600; previously 690-602-0006)		
General Structure	<p>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.</p>	<p>This suggestion was considered, but it was ultimately decided that having to reference a different subsection when looking at each the grant evaluation criteria for a specific grant type could also be a challenge, so the structure was kept as is.</p>
<p>Noticed Rule:</p> <p>(2) Plan Development Grants shall be evaluated on:</p> <p>(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. Commitment to</p>	<p>One commenter expressed that a neutral facilitator is critically important and should be a foundational requirement for any PBP process. Another commenter expressed support for not requiring a neutral facilitator.</p>	<p>The requirement for a neutral facilitator was discussed extensively during the RAC. While RAC members agreed that there is value in neutral facilitation, there was disagreement about whether it should be a requirement of a plan development grant. The Department agreed that requiring neutral facilitation could be limiting and difficult to enforce through grant evaluation, but that it is of high value for planning collaboratives, so it was added as a way to demonstrate a commitment to a neutral process.</p>

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a neutral process may be demonstrated through the use of neutral facilitator;	Depending on how decisions are made and other factors, use of a neutral facilitator is not adequate to ensure a neutral process.	<i>Rule Changed as a Result of Comment</i> The language in red was added to convey that there are other ways to demonstrate a commitment to a neutral process: “Commitment to a neutral process may be demonstrated, in part , through the use of neutral facilitator;”
Noticed Rule: (3) Post Plan Coordination Grants shall be evaluated as follows:...	Simplify the Post-Plan Coordination Grant Section. 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.	The separation between those that have received state recognition within the last two years and those that have held state recognition for longer is because of the difference in implementation history between the two groups. It allows for those with an implementation history to be evaluated on progress made towards implementation without penalizing those groups who have not yet started implementing their plans.
State Recognition of Plans (690-602-0900; previously 690-602-0007)		
Noticed Rule: (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.	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.	Planning collaboratives invested 6+ years piloting the planning guidelines to achieve state recognition, in part to learn from those processes and develop the current statute, draft rules, and draft guidelines. State recognition was awarded to their plans because they satisfied the requirements at the time they applied. Moving forward, to maintain state recognition, collaboratives must demonstrate a commitment to collaboration and adherence to principles of place-based integrated water resources planning. To help them prepare for that, they will be eligible for post-plan coordination grants which would help set them up for success in maintaining their state recognition.

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<p>Noticed Rule:</p> <p>(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:</p> <ul style="list-style-type: none"> (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. 	<p>Provide more clarity on how state recognition would be lost and how it would be determined. 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?</p>	<p><i>Rule Changed as a Result of Comment</i></p> <p>The rule language has been updated to provide clarity about the process of losing state recognition. The amount of time given to a collaborative to fix issues would depend on the specific circumstance.</p> <p>“(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. If the Department determines that a collaborative is at risk of losing state recognition, the Department shall notify the Collaborative in writing and may provide additional time to correct any issues. Plans may lose state recognition if:...”</p> <p>Inherent in this rule is that all biennial reports will be reviewed by the Department to determine if a plan is at risk for losing state recognition. The schedule for updating plans will likely vary by Collaborative depending on when there is a need to update or develop new planning strategies and/or significant changes in local conditions, data availability, or climate change information would impact the Plan.</p>
<p>Noticed Rule:</p> <p>(5) The Department, in consultation with other relevant state agencies, shall identify, document, and communicate to collaboratives which Plan strategies are consistent with an agency's mission, authorities, and priorities, and whether and how they may be</p>	<p>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 about actions they support, there should be a sense of commitment. Agencies should not make</p>	<p>The Department will have to be adaptive to the timelines of other agencies and the collaboratives, so adding a temporal requirement here could be unnecessarily restrictive.</p>

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supported by those agencies as resources and capacity allow.	commitments they do not intend to follow through on (as resources and capacity allow).	
	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.	The Department does not believe this is beyond what is stated or continued in statute. ORS 537.873(11)(e) states that “the commission may adopt rules..., including rules that describe how the implementation of actions outlined in a state-recognized place-based integrated water resources plan <u>may</u> be considered and supported”. This rule aligns with the statute as it describes how the Department shall identify actions/strategies that <u>may</u> be supported “as resources and capacity allow” and are “consistent with an agency’s mission, authorities, and priorities”.
Public Notice and Comment (690-602-1000; previously 690-602-0009)		
General	Clarify how public comments will be accounted for in decision-making. 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.	<p>As specified in 690-602-0003 Grant Application Process public comments will be considered by the Director in making grant funding decisions.</p> <p>As specified in 690-602-0009 (2), the Commission will consider public comments when making a decision about state recognition of a plan.</p> <p><i>Rule Changed as a Result of Comment</i> Language has been added to reflect the intent of notifying tribal and county governments at the beginning of the public comment period for funding awards and decisions regarding state recognition</p>

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<p>Noticed Rule: (1) Prior to the award of Place-Based Water Planning funding, the Department shall provide notice as follows: (a) Public notice with a minimum 45-day public comment period. (b) Written notice to county and tribal governments within the proposed planning boundary of an application.</p>	<p>To maintain the integrity and fairness of the process, all interested entities should be notified at the same time.</p>	<p><i>Rule Changed as a Result of Comment</i> Language has been updated to reflect the intent to notify Tribal and county governments before or at the same time as public notice.</p>
Distribution of Grant Funds (690-602-0800; previously 690-602-0010)		
<p>Noticed Rule: (2) Prior to disbursement of Department funds, the Grantee must provide the Department satisfactory proof that the required match, based on the total award, has been secured.</p>	<p>Allow for the release of funding even if the full match is not secured and tie final disbursement of funds to secured match. 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.</p>	<p>Requiring match be secured prior to distribution of funds is standard practice for OWRD and other state funding opportunities. Part of the reason for this is to ensure that the investment of state dollars will result in completed plans/projects. Additionally, requiring match upfront could help shorten the time it takes to plan. Applying for money during the planning process takes time and can extend the length of the planning process, which can lead to planning fatigue.</p> <p>Match shows the commitment of the grantee and the community to engage in place-based water planning, whether its in-kind match in the form of volunteer hours or cash match from collaborative members. PREP grants are meant to provide an entry point for basins with lower capacity to prepare for plan development. Recognizing that PBP funds can be used as “seed” funding, the rules allow 18 months for grantees to secure pending match funds.</p>
Agreements or Contracts (690-602-1100; previously 690-602-0011)		

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<p>Noticed Rule:</p> <p>(1) The Department, in consultation with other relevant state agencies, shall produce and publish a report at least every 4 years that:</p> <p>(a) Identifies specific purposes for which the Department may consider entering into 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>Increase frequency of developing a proposed spend plan. 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.</p>	<p>The report described in rule would inform how funding could be spent but is not meant to be a biennial “spend plan.” A biennial spend plan would restrict the Department from taking advantage of opportunities that arise between biennia and would be make the Department less adaptable and responsive to planning group needs as they arise.</p>
	<p>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).</p>	<p><i>Rule Changed as a Result of Comment</i></p> <p>The language in red below has been updated to reflect the intent:</p> <p>“(b) Documents how funding was spent pursuant to ORS 537.873(6) through contracts and agreements since the previous report.”</p>
Program Evaluation (690-602-1300; previously 690-602-0013)		
<p>Noticed Rule:</p> <p>“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.”</p>	<p>Include the frequency with which this will occur. Evaluating and improving the program should be an ongoing task, but we recommend that a more normal 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.</p>	<p>The Department elected to not tie the update to the IWRS via rule. The two could still be completed in coordination but maintaining this as an independent evaluation, decoupled from the IWRS reporting requirements, prevents it from being impacted by any potential unforeseen changes/complications in the IWRS reporting process.</p>
<p>Order and Structure of Rules</p>	<p>Recommend general restructuring of rules to increase readability and to generally keep like sections together. 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</p>	<p><i>Rule Changed as a Result of Comment</i></p> <p>The rule structure that is generally consistent with other grant programs is that it follows the trajectory of applying for a grant and is followed by other non-grant-related program elements. The rules have been made to reflect this ordering.</p>

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	recognition in the same section, break them out into their respective sections).	
<p>Value of State Recognition</p>	<p>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.</p>	<p>The proposed rules reflect statutory language and identify specific outcomes from state-recognition of a place-based plan. These include:</p> <ul style="list-style-type: none"> a) Eligibility for continued funding for coordination during implementation (Post Plan Coordination Grants) b) Commitment of the Department and other state agencies to identify, document, and communicate which 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. c) Consideration in the IWRS <p>Additionally, the value of state-recognized place-based water plans is greater than what can be captured in statute or rule. The formal Commission recognition of a Plan outlines some of these values, including improving understanding of water conditions and needs, identifying critical water issues and strategies to address them, facilitating the implementation of local solutions that will balance instream and out-of-stream water needs now and in the future, and helping to meet the state's instream and out-of-stream water needs and support Oregon's economy, its renowned wildlife and nature, bountiful agricultural products, and healthy and livable communities as described in the IWRS.</p>

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	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 statute ORS 537.873(11)(e) says that the Commission may adopt rules that “describe how the implementation of actions outlined in a state-recognized place-based integrated water resources plan may be considered and supported.” This rule is within that scope.
Program standards	The Proposed rules will help provide needed standards for PBP, but more is likely needed.	Additional standards will be outlined in more detail in the PBP handbook/guidance document. There is benefit in setting the high-level benchmarks in rule, but allowing the process to adapt and be nimble depending on the specific circumstances and to evolve to address lessons learned.
Balanced representation of instream and out-of-stream interests	<p>Concern that 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.</p> <p>Concern 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.</p> <p>Concern that only people eligible to apply for funding for local planning processes are those with an economic stake in local water management.</p> <p>Concern that the role and definition of these ‘balanced’ instream and out-of-stream users is vague to the point of being essentially useless</p>	<p>Representing instream water uses is part of the definition of a place-based integrated water resources plan. As per statute, such a plan must be “developed in collaboration with a balanced representation of interests” and “address current and future instream and out-of-stream needs.”</p> <p>Further, who is eligible to participate in PBP is outlined in the definitions for “community” and “collaborative” in the proposed rules. A planning “collaborative” is defined as being made up “the balanced representation of instream and out-of-stream water interests from the community,” and a “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.”</p> <p>Additionally, all grants are evaluated on their commitment to/demonstration of representing a</p>

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		<p>balance of instream and out-of-stream water interests, as well as their proposed approach to public participation and engagement of environmental justice communities.</p> <p>As per statute, “grants may be awarded to persons, public bodies, Indian tribes and nonprofit organizations.” There is no requirement that the applicant have an economic stake in local water management.</p> <p>The makeup of a planning collaborative will look different depending on the unique characteristics of a place, however decisions, including those regarding state recognition, will require collaboratives to adhere to the definition of place-based water planning as outlined above.</p>
Rule comprehension	<p>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.</p>	<p>The public is an essential part of place-based water planning. The Department worked to keep the rules clear and transparent while fulfilling the precise needs of rule language.</p> <p>Additional place-based water planning guidance will be provided that meets Department standards for readability and comprehension.</p>
Public Notice of Rulemaking	<p>There was an insufficient job of notifying the public about this rulemaking process and its importance. Additionally, Tribal engagement effort on these rules was wholly insufficient. 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.</p>	<p>As outlined in the public notice of rulemaking, the Department made a concerted effort to notice the public about this rulemaking, including GovDelivery notifications, posting on the public transparency website, and posting to the Department website.</p> <p>Additionally, consistent with Government-to-Government coordination and consultation responsibilities, on July 16, 2024, the Department mailed and emailed formal letters</p>

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		<p>to Oregon’s nine federally recognized Tribes, inviting coordination and/or consultation on this rulemaking and other proposed rulemakings. These correspondences included an invitation to join the Rules Advisory Committee. The Department also provided rulemaking updates during quarterly Cultural Resources Cluster and Natural Resources Work Group staff-to-staff meetings (held July and September of 2024, and January of 2025), again offering to consult and/or coordinate with interested Tribes in 2024. Representatives of the Burns Paiute Tribe and the Confederated Tribes of the Umatilla Indian Reservation served on the Rules Advisory Committee.</p>