



Oregon

Tina Kotek, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904
www.Oregon.gov/OWRD

MEMORANDUM

TO: Water Resources Commission

FROM: Ivan Gall, Director

SUBJECT: Agenda Item F, March 13, 2025
Water Resources Commission

PROPOSED RULEMAKING FOR DIVISION 602: PLACE-BASED WATER PLANNING

I. Introduction

During this agenda item the Commission will be asked to adopt the proposed Division 602 rules establishing the Place-Based Water Planning program and fund. *This is an action item.*

II. Integrated Water Resources Strategy Recommended Actions

- 9.A – Continue to Undertake Place-Based Integrated Water Resources Planning
- 9.B – Coordinate Implementation of Existing Natural Resource Plans
- 9.C – Partner with Federal Agencies, Tribes, and Neighboring States in Long-Term Water Resources Management
- 13.C – Invest in Local or Regional Water-Planning Efforts

III. Background and Focus of Rules

In 2015, the Department received legislative authority and initial funding to launch a place-based water planning pilot phase. Place-based water planning is a voluntary, locally led process where a balanced representation of water interests collaborate with the state to understand and meet their water needs. It emphasizes the importance of local context, integrated and coordinated water management activities, and collective planning to secure a balanced water future for Oregonians. This rulemaking ensures a clear, consistent, and effective process for funding, developing, recognizing, and implementing place-based integrated water resources plans.

In 2016, four planning areas were selected to receive funding and pilot the [2015 Draft Planning Guidelines](#). In addition to grant funding, the Department and other state agencies provided programmatic, planning, and technical assistance to support planning collaboratives as they developed and implemented their place-based water plans. In 2021, the Department contracted with the National Policy Consensus Center at Portland State University to conduct an

[independent evaluation](#) of the pilot phase. Additionally, the State-Supported Regional Water Planning and Management Work Group, created in 2021 by House Bill 5006, developed a set of [recommendations](#) for the future of place-based water planning. Legislative authority for the pilot phase sunset in June 2023.

In 2023, House Bill 2010 was passed, and Oregon Revised Statutes 537.872 and 537.873 were established. These statutes made the Place-Based Water Planning Fund permanent and authorized the Department to award place-based water planning grants and develop rules for the administration of place-based water planning.

This rulemaking implements the statutes passed in 2023, creating a coordinated and transparent framework for place-based integrated water resources planning, promoting collaboration among diverse water partners and fostering equitable water resource solutions. The rules align with state water management goals and statutory authority, balancing both in-stream and out-of-stream water interests.

IV. Rulemaking Process

In July 2024, the Department began forming a Rules Advisory Committee (RAC) for Division 602 rules related to the Place-based Water Planning Fund and program. The Department drafted proposed rules for the Place-Based Water Planning Fund and program which were shared with the RAC for input. The Department convened four virtual RAC meetings between August and November 2024 (8/19, 9/16, 10/28, 11/15). RAC meetings were publicly accessible and recorded for publication on the Department's website. The RAC consisted of 23 members representing diverse interests (Attachment 1). Throughout the process, the RAC and members of the public provided input on the draft rules as well as the draft statements of Need, Racial Equity Impacts, and Fiscal and Economic Impacts.

The Department published the Notice of Proposed Rulemaking December 2, 2024, in the Oregon Bulletin (Attachment 2). The public comment period was December 2, 2024, through January 15, 2025. The Department hosted one hybrid public hearing in Salem on January 7, 2025, which was recorded and published on the Department's website. See Attachment 3 for a full outreach calendar table.

V. Tribal Coordination and Consultation

Consistent with Government-to-Government coordination and consultation responsibilities, on July 16, 2024, the Department mailed and emailed formal letters 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. To date, none of the Tribes have requested to initiate formal consultation.

Representatives of the Burns Paiute Tribe and the Confederated Tribes of the Umatilla Indian

Reservation served on the RAC. For more information on tribal outreach please see Attachment 3.

The proposed rules include provisions that may affect Tribes, recognizing federally recognized Tribes as eligible “convenors” and “community” members. The rules also include Tribal notification provisions.

During the public comment period, the Department received comments from two of Oregon’s nine federally recognized Tribes: Confederated Tribes of the Umatilla Indian Reservation and Confederated Tribes of the Grand Ronde Community of Oregon (Attachment 4).

Brief Summary of Tribal Comment: The Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of the Grand Ronde support the proposed rules for the Place-Based Water Planning program, recognizing them as a necessary step forward. They have concerns about ensuring meaningful engagement from disadvantaged communities and regulatory agencies. Additionally, the Confederated Tribes of the Grand Ronde expressed interest in joining the application review team to contribute their historical and technical expertise to evaluating grant applications.

Department’s Response: The Department acknowledges and appreciates the tribal participation and support in this rulemaking process. As Tribes are eligible recipients of grant awards, they would not serve on an Application Review Team but will be contacted directly if they are within the proposed planning boundary of an application and invited to provide input, including their historical and technical expertise. State agency roles and community engagement will be discussed in the Place-Based Water Planning Handbook.

In addition to the points raised, the Department recognizes the invaluable contributions that Tribes can bring to place-based water planning efforts. Their deep historical knowledge and technical expertise are essential for crafting comprehensive and culturally sensitive water management strategies.

VI. Public Comments and Department Response

During the public comment period between December 1, 2024, and 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. Attachment 5 includes a table listing the written and oral public comments submitted and a record of all written public comments received. Attachment 6 summarizes the public comments (written and oral) received as well as Department responses to those comments.

The majority of comments received during the public comment period were in support of the proposed rules and included recognition that the proposed rules are an important step in

formalizing support for place-based water planning and improving the program to help ensure it reflects a fair and balanced set of instream and out-of-stream interests and strategies.

Several comments noted specific ways that the rules could be improved and clarified. These included clarifying the purpose, reorganizing the rules to follow a more intuitive structure, clarifying the process for how a collaborative might lose state-recognition of their plan, and clarifying when notification of Tribal and county governments would take place in relation to public notice for grant applications. Resulting rule changes are indicated in Attachment 7.

There also were comments expressing concern for the Department's approach. In brief, the following concerns were raised: (1) the value of state recognition and related state support for plan implementation remains unresolved; (2) requiring match be secured before disbursement of funds is unnecessarily restrictive and could hinder fundraising abilities of place-based water planning groups, (3) there are not enough requirements in rule for the frequency of different program elements (e.g., grant cycles, communication of state-support, program evaluations), (3) there is a general need for more standards for place-based water planning, (4) there is the potential to exclude instream users from the planning process, (5) there is a lack of rule clarity, and (6) there was inadequate public and tribal engagement of the rulemaking. Detailed responses to these concerns and a summary of all public comments are included in Attachment 6.

VII. Summary of Rule Language Changes Made to Public Comment Draft

In response to public and Tribal comments, the Department made the following modifications to the proposed rules. The Department also made several minor changes that are not detailed below. See Attachment 7 for the Draft Rules with redline changes made after public comment.

- 1) Modified the "Purpose" to reflect the true scope of the rules
- 2) Reorganized the rules to follow a more intuitive structure
- 3) Clarified the process of how a collaborative might lose state-recognition of their plan
- 4) Clarified when notification of tribal and county governments would take place in relation to public notice for grant applications and decisions regarding state recognition

VIII. Conclusion

The proposed rules establish procedures for administering the Place-Based Water Planning Fund and program, including processes related to grant administration, the consideration of state-recognized place-based integrated water resources plans by the Department and in Oregon's Integrated Water Resources Strategy, actions related to consultation with other relevant state agencies, entering into agreements or contracts, and the provision of technical information and assistance to support place-based integrated water resources planning.

IX. Alternatives (all)

The Commission may consider the following alternatives:

1. Adopt final proposed rules as modified by the Department following public comment (Attachment 7)
2. Adopt final proposed rules as modified by the Commission
3. Not adopt final proposed rules and request the Department to further evaluate the issues

X. Recommendation

The Director recommends Alternative 1, that the Commission adopt the modified proposed rules as reflected in Attachment 7.

Attachments:

1. Division 602 Rules Advisory Committee Roster
2. Division 602 Notice of Proposed Rulemaking (including Proposed Rules, List of Documents Relied Upon, and the Statements of Need, Racial Equity Impacts, and Economic and Fiscal Impacts)
3. Division 602 Rulemaking Outreach Overview
4. Division 602 Tribal Comments Received and Department Responses
5. Division 602 Compilation of Public Comments Received
6. Division 602 Summary of Public Comment and Department Response
7. Division 602 Draft Rules with Redline of Changes Made After Public Comment

Lili Prah
503-871-5868

Margo Mashkovskaya
503-507-7313

Adair Muth
971-301-0718

Division 602 Rules Advisory Committee Roster

Name	Affiliation/Organization
Caylin Barter	Wild Salmon Center
Donna Beverage	Union County Commissioner
Lisa Brown	WaterWatch of Oregon
Debbi Bunch	Mid John Day Watershed Council
Mike Buettner	Central Oregon Cities Organization
Harmony Burrignt	Professional Water Planner
Adam Denlinger	Seal Rock Water District
Danette Faucera	Oregon Department of Fish and Wildlife
Kate Fitzpatrick	Deschutes River Conservancy
Brandon Haslick	Burns Paiute Tribe
Jim Johnson	Oregon Department of Agriculture
Peggy Lynch	League of Women Voters of Oregon
Margaret Magruder	Columbia County Commissioner, Association of Oregon Counties
Chris Marks	Confederated Tribes of the Umatilla Indian Reservation
Michael Martin	League of Oregon Cities
Steve Parrett	Oregon Department of Environmental Quality
Tom Pattee	Oregon Health Authority
Lauren Poor	Oregon Farm Bureau
Roselyn Poton	Verde
April Snell	Oregon Water Resources Congress
Holly Stanitsas	GSI Water Solutions
Brian Wolcott	Oregon Watershed Enhancement Board
Kevin Young	Oregon Department of Land Conservation and Development

*Over half of the RAC members have been associated with place-based water planning groups. They will be representing their own experiences and do not speak on behalf of their planning collaboratives.

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690
WATER RESOURCES DEPARTMENT

FILED
11/25/2024 2:06 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rulemaking for the administration of the Place-based Water Planning Fund and state recognition process.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/15/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Margo Mashkovskaya
503-507-7313
margo.a.mashkovskaya@water.oregon.gov

725 Summer St NE A
Floor 3
salem,OR 97301

Filed By:
Margo Mashkovskaya
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/07/2025

TIME: 11:00 AM - 12:00 PM

OFFICER: Margo Mashkovskaya

IN-PERSON HEARING DETAILS

ADDRESS: North Mall Office Building, 725 Summer St NE A, Room 124B, Salem, OR 97301

SPECIAL INSTRUCTIONS:

All hearings will be recorded and available for viewing within 48 hours of each hearing on the rulemaking website:
<https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/Place-Based-Water-Planning.aspx>

For all hearings, auxiliary aids for persons with disabilities will be available upon advance request. Please email WRD_DL_rule-coordinator@water.oregon.gov or call (503) 507-7313 as soon as possible, but at least 48 hours in advance of the hearing for which an aid is needed.

In addition to presenting oral comments at the hearings, anyone may submit written comments until 5 P.M. on January 15, 2025, which is the close of the public comment period. Written comments should be sent to "Margo Mashkovskaya" at Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301 or by email to WRD_DL_rule-coordinator@water.oregon.gov.

Comments received after 5 P.M. on January 15, 2025 will not be reviewed or considered by the agency unless the agency decides to extend the public comment period for everyone.

This hearing will be hybrid, providing an opportunity to give oral testimony. Each person attending the hearing who wishes to comment will be asked to sign in on a sign-up sheet upon arrival. Oral testimony will be taken in the order reflected on the sign-up sheet. The hearing will close no later than 12:00p.m.

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 253-215-8782

CONFERENCE ID: 86708893823

SPECIAL INSTRUCTIONS:

To attend virtually, please click on the URL link provided above and complete the registration steps. Alternatively, you may email WRD_DL_rule-coordinator@water.oregon.gov no later than noon (12:00 p.m.) on January, 3, 2025 to receive the registration link.

To attend by phone, please email WRD_DL_rule-coordinator@water.oregon.gov no later than noon (12:00 p.m.) on January, 3, 2025 to receive the conference ID and passcode for the phone number provided above.

Each person attending the hearing virtually or by phone who wishes to comment will be asked to identify themselves so their names may be added to the virtual sign-up sheet. During the hearing, the hearing officer will alternate between those commenting in person, virtually, and by phone, proceeding in the order in which attendees have registered to comment. The hearing will close no later than 12:00 PM PST.

Close captioning will be enabled for virtual participants.

In addition to presenting oral comments at the hearings, anyone may submit written comments until 5 P.M. on 01/15/2025 which is the close of the public comment period. Written comments should be sent to "Margo Mashkovskaya" at Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301 or by email to WRD_DL_rulecoordinator@water.oregon.gov. Comments received after 5 P.M. on 01/15/2025 will not be reviewed or considered by the agency unless the agency decides to extend the public comment period for everyone.

NEED FOR THE RULE(S)

Oregon Revised Statutes 537.872 and 537.873 establish the Place-Based Water Planning Fund and authorize the Oregon Water Resources Department (Department) to award place-based water planning grants and develop rules for the administration of place-based water planning.

This rulemaking is necessary to provide a coordinated and transparent framework for the implementation of place-based 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.

Water is crucial to Oregon's economic vitality. In 2023, over 48% of the state's total economic output and nearly 44% of its employment were directly linked to water. (Pilz et al. 2023) Water's value extends across various sectors, including housing, infrastructure, health, manufacturing, agriculture, energy, recreation, and the food and beverage industries (Pilz et al. 2023). As drought conditions in Oregon intensify and population centers grow, water scarcity concerns increase. Inclusive place-based water project solutions are essential to address these challenges.

The purpose of place-based water planning is to help communities plan for a secure water future through consideration of water quantity, water quality, and ecosystem needs and identification of actions that promote and sustain a healthy economy, environment, and society. Place-based water planning is a voluntary, locally-led process, through which a balanced representation of water interests work in partnership with the state to understand and meet their instream and out-of-stream water needs. Place-based water planning is rooted in the concept that local context matters, water

management activities should be integrated and coordinated, and planning helps Oregonians collectively envision and chart a path towards a balanced and secure water future.

In 2015, the Department received legislative authority (ORS 536.220) and initial funding to begin a place-based water planning pilot phase. In 2016, four planning areas were selected to receive funding and pilot the 2015 Draft Planning Guidelines. In addition to grant funding, the Department and other state agencies provide programmatic, planning, and technical assistance to support planning collaboratives as they develop and implement their place-based water plans. In 2021, the Department contracted with the National Policy Consensus Center at Portland State University to conduct an independent evaluation of the pilot phase.

Additionally, the State-Supported Regional Planning and Management Work Group, created in 2021 by House Bill 5006, developed a set of recommendations for the future of place-based water planning. Legislative authority for the pilot phase sunset in June 2023.

ORS 537.872, ORS 537.873, and this rulemaking are the culmination of a multiyear effort to advance, study, and support place-based water planning. This rulemaking aims to ensure a clear, consistent, and effective process for the funding, development, recognition, and implementation of place-based integrated water resources plans.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

This is an abbreviated list of the principal documents relied upon for the proposed rulemaking. Please contact the Oregon Water Department for a complete list of documents relied upon and the location(s) of those documents.

ORS 537.872 and 537.873, available at:
https://www.oregonlegislature.gov/bills_laws/ors/ors537.html

Oregon's Place-Based Integrated Water Resources Planning Program: A Participatory Evaluation (2022) available at:
<https://www.oregon.gov/owrd/Documents/McLain%20et%20al%20april%2027%202022%20place%20based%20planning%20>

Draft Guidelines A Tool for Conducting Place-Based Integrated Water Resources Planning in Oregon (2015), available at:
https://www.oregon.gov/owrd/WRDPublications1/2015_February_Draft_Place_Based_Guidelines.pdf

Pilz, D., et al. (2023) The Business Case for Investing in Water in Oregon. Available at
https://www.oregon.gov/owrd/WRDPublications1/230721_FINAL_Business_Case_for_Water_in_OR_Exec_Summ.pdf

Report of the Work Group on State-Supported Regional Water Planning & Management (2022), available at:
[https://www.oregon.gov/owrd/Documents/HB%205006%20Work%20Group_FINAL%20REPORT.docx%20\(2\)%20\(2\).pdf](https://www.oregon.gov/owrd/Documents/HB%205006%20Work%20Group_FINAL%20REPORT.docx%20(2)%20(2).pdf)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rules, within the newly created Division 602, aim to increase the engagement of the "community" in Place-Based Water Planning. The rules define "community" as:

"[T]he 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"

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:

"[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"

The proposed rules have an intersection with racial equity, as they require that grant applications be evaluated on an applicant's proposed approach to public participation and engagement of environmental justice communities. Additionally, grants may assist with building the capacity of a community to engage in relevant planning. This approach helps create a more transparent, equitable, and effective place-based water planning process. Because of this, these rules are anticipated to foster more inclusive and equitable water resource management, ultimately leading to a more secure water future for impacted communities. Additionally, consideration of state recognized place-based water plans in the development of the Oregon Integrated Water Resources Strategy offers the opportunity for diverse voices to have a further reaching impact into statewide planning efforts.

The Rules Advisory Committee (RAC) included interests from Oregon's environmental and social justice organizations, local governments, and state agencies.

No unintended adverse consequences on racial equity are expected from the rule. Further public comments on this rulemaking and its impact on racial equity in the state are encouraged throughout the posted public comment period.

Tribal Engagement:

Consistent with Government-to-Government coordination and consultation responsibilities, on July 16, 2024, the Department mailed and emailed formal letters 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 January, February, July, and September of 2024), again offering to consult and/or coordinate with interested Tribes.

To date, none of the Tribes have requested to initiate formal consultation. However, representatives of the Burns Paiute Tribe and the Confederated Tribes of the Umatilla Indian Reservation served on the Rules Advisory Committee.

The proposed rule includes provisions that may affect tribes, recognizing federally recognized Tribes as eligible "convenors" and "community" members. The rule also includes Tribal notification provisions.

Public comments on this rulemaking and its potential impact on Tribes in the state are encouraged throughout the designated public comment period.

FISCAL AND ECONOMIC IMPACT:

Place-based Planning grants may be awarded to persons, public bodies, Indian tribes, and nonprofit organizations. These rules may positively impact the Oregon economy through the funding of eligible place-based planning collaboratives. Additionally, ORS 537.873(6) permits the Water Resources Director to use funds to further place-based integrated water resources planning by entering into specified agreements or contracts, potentially benefiting the Oregon economy.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

(1) The proposed rules outline the requirements for persons (as defined in ORS 536.007), public bodies, Indian tribes, and nonprofit organizations applying for funding pursuant to ORS 537.872-873, otherwise known as the Place-Based Water Planning Fund. While applying for this funding is voluntary, eligible grantees who receive funding from the Department for Place-Based Water Planning must adhere to the requirements established by these rules. This may create costs related to reporting, administrative activities, and professional services. Awarded funds are intended to help cover compliance costs, ensuring that projects meet the proposed standards without placing an undue financial burden on the grantees.

In addition to grantees, participants in place-based water planning include “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”. These groups may commit time and resources to support planning processes, which can include, but is not limited to, travel to meetings, meeting attendance, technical assistance, plan development, and organizational support.

OWRD may experience a fiscal impact through the administration of the Place-Based Water Planning Fund including impacts related to application and reporting review, contract drafting and administration, provision of technical assistance and planning support, program evaluation, interagency coordination, and public notice requirements.

The agencies identified in ORS 537.873(7) that have the capacity to participate or provide information and assistance may experience a fiscal impact related to participation in place-based water planning, provision of information and assistance to planning groups, interagency coordination, and serving on application/plan review teams.

The Department recognizes that these rules may have varying impacts on different governments, organizations, and members of the public, including non-profit organizations. Interested parties are encouraged to provide feedback on the anticipated fiscal impacts during the public comment period to help the Department refine and improve the proposed rules and impact analysis.

(2) Effect on Small Businesses:(a) Estimate the number and type of small businesses subject to the rule(s);(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(2)(a) Eligible grant applicants include persons, public bodies, Indian tribes, and nonprofit organizations. Place-Based Water Planning grantees may contract with small businesses in pursuit of their planning efforts. However, the proposed rules do not dictate the elements of that contractual relationship.

(2)(b) The reporting, record keeping, and administrative activities required by the rules are principally borne by grantees that are voluntarily entering the program and are not likely to be small businesses.

(2)(c) Similar to section b, the cost of professional services, equipment, supplies, labor, and increased administration to

comply with the rules will be borne principally by grantees that are not likely to be small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A variety of nonprofit organizations, interest groups, and representatives of local government were invited to participate in the RAC. The RAC included trade groups that represented small business interests.

Small businesses and others are encouraged to provide feedback on the anticipated fiscal impacts and cost of compliance during the public comment period and help the Department refine and improve the proposed rules and impact analysis.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

690-602-0001, 690-602-0002, 690-602-0003, 690-602-0004, 690-602-0005, 690-602-0006, 690-602-0007, 690-602-0008, 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. Commitment to a neutral process may be demonstrated 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.

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

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 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. ¶

(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

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 consider entering into agreements or contract to support of place-based integrated water resources planning during the upcoming reporting period.

(b) Documents how funding was spent 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

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

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

CHANGES TO RULE:

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

Division 602 Rulemaking Outreach Overview

Date	Action
2022	State Supported Regional Water Planning and Management Workgroup developed 19 recommendations for the next generation of PBP
2023	HB 2010 passed, creating a permanent Place-Based Water Planning Fund
July 16, 2024	Government-to-Government letters/emails sent re: rulemaking efforts, including Place-Based Water Planning Fund (ORS 537.872-537.873), inviting coordination and consultation.
July 23, 2024	Staff-to-Staff Cultural Resources Cluster Roundtable Update on rulemaking efforts, including Place-Based Water Planning Fund, inviting informal and formal engagement.
August 19, 2024	RAC #1 meeting
September 11, 2024	Staff-to-Staff Natural Resources Work Group Roundtable Update on rulemaking efforts, including Place-Based Planning Fund, inviting informal and formal engagement.
September 16, 2024	RAC #2 meeting.
October 17, 2024	RAC #3 meeting.
October 28, 2024	Staff-to-Staff Cultural Resources Cluster Roundtable Update on rulemaking efforts, including Place-Based Planning Fund, inviting informal and formal engagement.
November 15, 2024	RAC #4 meeting.
December 2, 2024	Notice of Proposed Rulemaking published in the Oregon Bulletin; GovDelivery notification sent to subscribers and forwarded to Tribal staff.
December 2, 2024	Open public comment period
December 12 and 13 2024	WRC directors report.
January 3, 2024	Public hearing reminder sent to listservs: water planning, all rulemaking, regional planning and management workgroups.
January 7, 2025	Public hearing.
January 15, 2025	Staff-to-Staff Natural Resources Work Group Roundtable Update on rulemaking efforts, including Place-Based Planning Fund, including reminder regarding close of public comment period.
January 15, 2025	Close of public comment period.

Division 602 Tribal Comments Received and Department Responses

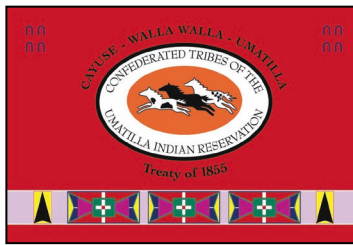
The Department received comment from two of Oregon’s nine federally recognized Tribes: The Confederated Tribes of the Grand Ronde Community of Oregon and The Confederated Tribes of the Umatilla Indian Reservation. Table 1 summarizes and responds to their comments and full comments are attached.

Table 1. Summarized Tribal Comments and Department Responses

Commenter	Comment	OWRD Response
The Confederated Tribes of the Grand Ronde Community	The Tribe, with their historical and technical expertise, would like to join the “application review team” if they receive funding to participate.	As Tribes are eligible recipients of grant awards, they would not serve on an Application Review Team but will be contacted directly if they are within the proposed planning boundary of an application and invited to provide input including their historical and technical expertise.
The Confederated Tribes of the Grand Ronde Community	The Tribe supports water supply projects in specific areas, provided they do not harm river levels, floodplain storage, water quality, aquifer recharge, or cause unmitigated impacts.	Thank you for sharing this information with OWRD.
The Confederated Tribes of the Umatilla Indian Reservation	While the Tribe has outstanding concerns regarding how to ensure disadvantaged communities and regulatory agencies meaningfully engage, they believe the proposed rules represent a necessary and appropriate next step for the program.	State agency roles and community engagement will be discussed in the Place-Based Water Planning Handbook.

Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
First Foods Policy Program



Agenda Item F, Attachment 4
46411 Timine Way
Pendleton, OR 97801

www.ctuir.org ericquaempts@ctuir.org
Phone 541-276-3165 Fax: 541-276-3095

Submitted electronically on January 15, 2025

Margo Mashkovskaya, Rules Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Rulemaking for Place-Based Water Planning Fund

Dear Ms. Mashkovskaya:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to provide comments on the proposed Place-Based Water Planning Fund rule changes announced November 25, 2024. We also appreciate the opportunity to serve on the Place-Based water planning fund Rules Advisory Committee and assist with its efforts to help ensure a coordinated and transparent framework for implementing the place-based integrated water resources planning program and funding.

The CTUIR DNR participated in two of Oregon's initial Place-Based Water Planning processes and many other similarly focused collaborative water planning efforts. We have recognized some key characteristics for success, including (but not limited to): (1) Mutual recognition of shared interests (instream and out-of-stream); (2) Written and available planning and implementation documentation; and (3) Meaningful regulatory agency engagement.

The Rules Advisory Committee meetings included many discussions on those key characteristics and how to incorporate lessons learned from the initial four Place-Based Planning outcomes. The experience of the Rules Advisory Committee members also led to vital discussions and ideas on how to ensure connectivity and consistency with other Oregon water planning efforts, including the Integrated Water Resources Strategy. While we have some outstanding concerns regarding how to ensure disadvantaged communities and regulatory agencies meaningfully engage, the proposed rules represent a necessary and appropriate next step for the program.

The CTUIR Department of Natural Resources supports adoption of the proposed rules. Please contact me at (541) 429-7223, for additional information or if you have any questions. Thank you.

Sincerely,

S: Chris Marks

Chris Marks, Water Policy Analyst
First Foods Policy Program, Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation



The Confederated Tribes of the Grand Ronde Community of Oregon

Engineering & Planning Department
Phone (503) 879-2404
Fax (503) 879-2196

9615 Grand Ronde Road
Grand Ronde, Oregon 97347

Margo Mashkovaskaya

January 15, 2025

Oregon Water Resource Department
725 Summer Street NE, Suite A
Salem, OR 97301
Email: wrd_di_rule-coordinator@water.oregon.gov
Phone: (503) 986-0900

Re: The Confederated Tribes of Grand Ronde Community of Oregon comments on Proposed Oregon State Water Resource Department Rulemaking

Dear Margo Mashkovaskava,

Introduction

The Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) appreciates the opportunity to provide comments on the proposed rulemaking for Oregon Administrative Rule (OAR) 690-601-0001 and OAR 690-601-0006. The Confederated Tribes of Grand Ronde is a federally recognized Tribe that includes more than 30 Tribes and bands from western Oregon, northern California, and southwest Washington.. Since restoration in 1983, the Tribe continues to focus on rebuilding and developing programs to meet the needs of its members, while protecting and enhancing natural resources.

The Tribe appreciates Oregon’s dedication to developing a strategic framework using a collaborative approach to tackle the state’s water deficits. The Tribe believes a cooperative approach to solving water conflicts in response to a changing climate and population growth is essential to protect our people and the natural environment now and future generations.

Comments: Best Practices in Community Engagement OAR Chapter 690, Division 601

The Tribe understands the purpose of the rule changes are to “support meaningful involvement of disproportionately impacted communities in the development and implementation, for water projects supported and funded by Oregon Water Resource Department.” The Tribe has always been a “¹disproportionately impacted community” with regards to water resources, therefore we are glad to see that is defined within the new rulemaking language. Additionally, Tribes are included in the definition of “Local Government” as it relates to operating within an area

¹ 690-601-0002 Definitions. Page 2, (6) “Community Engagement Plan” means a plan to meaningfully engage and provide suitable access to decision-making processes for disproportionately impacted communities, underrepresented communities, tribal communities, and all persons regardless of race, color, national origin, or income in planning for water projects using identified best practices”.

“affected by a water project and is eligible to receive grants or loans pursuant to OAR 690-600 or OAR 690-093.

The Tribe appreciates Oregon’s Water Department recognizes that meaningful engagement must include funding for policy level, technical, and cultural resource staff to attend meetings, develop comprehensive, historically accurate content, provide written and oral comments, and put forth the amount of effort necessary to reach major milestones that with consensus. However, as the rule reads, providing funding for staff engagement is an “²eligible cost” and will be reimbursed to the Community Engagement grantees. The Tribe is concerned that grantees often do not know the costs incurred by Tribes to provide meaningful engagement. As a result, this would allow grantees to dictate the level of funding to disproportionately impacted communities to provide technical input could still see Tribes incurring costs to complete this type of work. We believe the Tribe should have some input of the level of funding provided to Tribes to provide meaningful engagement, and not incur any out of pocket expenses related to this work.

The Tribe feels the rulemaking changes prescribe confirmation our contributions to planning will be a non-discretionary outcome of any Community Engagement Plans that affect the Tribe, its people and its ceded lands. Providing water supply within our ceded lands is a treaty and trust responsibility and giving Tribes a voice in water projects is critical.

The Tribe continues to pursue opportunities to enhance our capacity to develop and manage water resources. Funding to secure active engagement by Tribes to become and support water managers will improve the State’s ability to respond to the potential effects of climate change and restore ecological functions. The Tribe is dedicated to partnering on projects that result in tangible water supply and environmental improvements which contribute positively to the quality of life for the Tribe and surrounding communities. When developing a “framework” to engage communities, the Tribe requests being consulted during the development of the framework to ensure methods to engage with Tribal Members, technical staff, elders, etc. consider cultural traditions. Developing metrics to “³evaluate” engagement success should require consensus to be competitive for future funding opportunities.

Comments: Place-Based Water Planning – OAR Chapter 690-602

The Tribe supports developing water supply projects that provide water for in-stream and out-of-stream uses within a specific geographic area that do not create a deficit in any given reach within the river, reduces floodplain storage capacity, impacts drinking water quality, negatively influences aquifer recharge, or results in impacts that cannot be adequately mitigated. The Tribe, if funded to participate, would like to be on the application review team as we have both the historical and technical expertise to provide meaningful contributions to evaluating grant applications for place-based water planning projects.

² 690-601-0003 Funding for Community Engagement Plans Page 3, (4) (B) “Eligible costs and activities that may be reimbursable, if conditions of the granting agreements are met, include but are not limited to, design and facilitation of meetings and eligible associated costs, development and distribution of outreach and meeting materials, and compensation of disproportionately impacted communities for meaningful involvement in community engagement opportunities.”

³ 690-601-0004 Best Practices of Water Project for use in Community Engagement Page 4 (2) (c) “A set of metrics and timelines to evaluate the community engagement plan progress and success in increasing meaningful participation of disproportionately impacted community in water projects.”

Summary

The Tribe would like to increase our capacity to influence water management in the State of Oregon. We agree with taking a “Shared Governance Agreement” approach when commitments made to the Tribe through trust and Treaty responsibilities are incorporated as “actionable” project elements. We remain committed to working with all levels of governments, NGOs and interested stakeholder groups to increase opportunity to develop, manage and protect water resources on Oregon. Having a Tribal voice in decision-making is critical and we commend the State of Oregon for developing administrative rules that require our contribution at the planning stage. Requiring an integrated approach with Tribal decision-making playing a pivotal role to move forward with identifying projects to implement in the future is a step in the right direction.

We recommend that the Oregon Water Resources Department work with the Tribe to ensure Community Engagement Plans and Place-Based Water Planning incorporate Tribal trust and treaty responsibilities and provide a funding mechanism so our members and staff can provide meaningful engagement and native knowledge.

Sincerely,

Ryan Webb, P.E.
Engineering and Planning Manager
The Confederated Tribes of Grand Ronde
Email: Ryan.Webb@grandronde.org
Phone: (503) 879-2404

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.*"¹¹

(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-

¹¹ <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.

CHANGESTO 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

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

CHANGES TO RULE:

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 Burrigh, 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, 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, <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 periodically establish a <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
		<p>grantees, and received public comments <u>and will publicly announce the funding decisions at the Commission meeting immediately following the funding decision.</u></p>	
690-602-0004 Eligible Grant Types	Minor edits to the language.	<p>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</p>	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 funds <u>ing</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.	funds match. Pending match funds must be secured within 18 months from the date of the place-based water planning award. ¶	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:¶ (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	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; ¶ (b) <u>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;</u> (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. ¶ (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. ¶ (e) <u>If a Collaborative's Plan has received state-recognition for the first time within</u></p>	

Section	Overview	Suggested Language	Additional Feedback/Rationale
		<p><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></p>	
690-602-0007 State Recognition of Plans	Provide more clarity on how state recognition would be lost and how it would be determined.	<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 <u>as determined by the Department.</u> <p><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></p>	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.	<p>(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</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

Section	Overview	Suggested Language	Additional Feedback/Rationale
		<p>priorities, and whether and how they may<u>will</u> be supported by those agencies as resources and capacity allow. ¶</p>	<p>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).</p>
<p>690-602-0009 Public Notice and Comment</p>	<p>Clarify how public comments will be accounted for in decision-making.</p>	<p>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.</p>	<p>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>
<p>609-602-0010 Distribution of Grant Funds</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.</p>	<p>(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.</p>	<p>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.</p>
<p>690-602-0011 Agreements or Contracts</p>	<p>Increase frequency of developing a proposed spend plan.</p>	<p>(1) The Department, in consultation with other relevant state agencies, shall produce and publish a report <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</p>	<p>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>

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 periodically 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

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 Scott River runs dry next to well-irrigated alfalfa fields

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.

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.¹ A useful methodology is described in the 2016 report, *“Measuring Cost-Effectiveness of Environmental Water Transactions,”* available at : ampinsights.com/cea-report.2

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.³ **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;⁴ (b) water conservation or efficiency projects where conserved water is not legally and effectively dedicated for instream use;⁵ (c) projects that eliminate water conveyance losses without a corresponding net decrease in water diversions;⁶ and (d) environmental water transactions that dedicate surface water rights for instream use, but do not limit extraction of interconnected groundwater.⁷

3

Dedicate Conserved Water to Environmental Flows

Water that is conserved with public funding should be legally dedicated for instream use,⁸ 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,⁹ and (b) funding requirements to reject proposed transactions that reduce environmental flows or provide negligible or unverifiable benefits.¹⁰

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.¹¹ 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.¹² Uncertainty about the quantity of water that must remain instream to comply with existing law undermines environmental water markets.¹³



Satellite imagery shows the irrigation ditch leaving Lake Shastina with far higher flows than the Shasta River

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 <https://www.watersheds.org/pinsights.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.

Division 602 Summary of Public Comment and Department Response

Topic	Summary of Public Comment	OWRD Response
Purpose (690-602-0100; previously 690-602-0001)		
<p>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.”</p>	<p>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.</p>	<p><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.</p> <p>“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.”</p>
Definitions (690-602-0200; previously 690-602-0002)		
<p>Noticed Rule: “(13) "Match" is any contribution to a project that is non-Department funds.”</p>	<p>“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.</p>	<p>Match will include in-kind and volunteer contributions. Eligible match is described in “Match Requirements” (690-602-0005).</p>
Grant Application Process (690-602-0300; previously 690-602-0003)		
<p>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</p>	<p>Specify that the Department will develop a predictable solicitation cycle that occurs no less than 2 years.</p>	<p>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.</p>

Topic	Summary of Public Comment	OWRD Response
<p>agency capacity to support grantees and planning processes.</p>	<p>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.</p>	<p>Rule Changed as a Result of Comment The word “periodically” was removed to eliminate the implication that the grants would be announced sporadically and without regularity or predictability.</p>
<p>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.</p>	<p>Specify when/how the decisions of the Director will be announced. There should be a public announcement of grant awards.</p>	<p>Rule Changed as a Result of Comment The following language was added “The Department shall make decisions publicly available.”</p>
<p>Eligible Grant Types (690-602-0400; previously 690-602-0004)</p>		
<p>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.</p>	<p>Administering grants is just one action authorized under statute. Suggest modifying the language to reflect this.</p>	<p>Rule Changed as a Result of Comment 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.</p> <p>“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.”</p>
<p>Match Requirements (609-602-0500; previously 690-602-0005)</p>		

Topic	Summary of Public Comment	OWRD Response
<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>

Topic	Summary of Public Comment	OWRD Response
<p>prior to an award and approved by the Department for match purposes;</p> <ul style="list-style-type: none"> (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. 	<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>
<p>Grant Evaluation Criteria (690-602-0600; previously 690-602-0006)</p>		
<p>General Structure</p>	<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> <ul style="list-style-type: none"> (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>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>

Topic	Summary of Public Comment	OWRD Response
<p>a neutral process may be demonstrated through the use of neutral facilitator;</p>	<p>Depending on how decisions are made and other factors, use of a neutral facilitator is not adequate to ensure a neutral process.</p>	<p><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;”</p>
<p>Noticed Rule: (3) Post Plan Coordination Grants shall be evaluated as follows:...</p>	<p>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.</p>	<p>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.</p>
<p>State Recognition of Plans (690-602-0900; previously 690-602-0007)</p>		
<p>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.</p>	<p>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.</p>	<p>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.</p> <p>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.</p>

Topic	Summary of Public Comment	OWRD Response
<p>Noticed Rule: (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> 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: (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>

Topic	Summary of Public Comment	OWRD Response
<p>supported by those agencies as resources and capacity allow.</p>	<p>commitments they do not intend to follow through on (as resources and capacity allow).</p>	
	<p>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.</p>	<p>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”.</p>
<p>Public Notice and Comment (690-602-1000; previously 690-602-0009)</p>		
<p>General</p>	<p>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>	<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>

Topic	Summary of Public Comment	OWRD Response
<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)		

Topic	Summary of Public Comment	OWRD Response
<p>Noticed Rule: (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 consider entering into agreements or contract to support of place-based integrated water resources planning during the upcoming reporting period. (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>Rule Changed as a Result of Comment The language in red below has been updated to reflect the intent: “(b) Documents how funding was spent pursuant to ORS 537.873(6) through contracts and agreements since the previous report.”</p>
<p>Program Evaluation (690-602-1300; previously 690-602-0013)</p>		
<p>Noticed Rule: “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>Rule Changed as a Result of Comment 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>

Topic	Summary of Public Comment	OWRD Response
	<p>recognition in the same section, break them out into their respective sections).</p>	
<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>

Topic	Summary of Public Comment	OWRD Response
	<p>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.</p>	<p>The statute ORS 537.873(11)(e) says that the Commission may adopt rules that “describe how the implementation of actions outlined in a state-recognized place-based integrated water resources plan may be considered and supported.” This rule is within that scope.</p>
<p>Program standards</p>	<p>The Proposed rules will help provide needed standards for PBP, but more is likely needed.</p>	<p>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.</p>
<p>Balanced representation of instream and out-of-stream interests</p>	<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>

Topic	Summary of Public Comment	OWRD Response
		<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. 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>
<p>Rule comprehension</p>	<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>
<p>Public Notice of Rulemaking</p>	<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>

Topic	Summary of Public Comment	OWRD Response
		<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>

Draft Rules with Redline of Changes Made After Public Comment

Chapter 690

Division 602

PLACE-BASED WATER PLANNING

690-602-~~0001~~0100

Purpose

OAR 690-602-~~0001~~0100 to OAR 690-602-~~0013~~1300 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.

Statutory/Other Authority: [ORS 536.027, ORS 537.873](#)

Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

690-602-~~0002~~0200

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 eligible 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 537.873](#)

Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

~~690-602-00030300~~

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 ~~690-602-0006-0600~~ 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 ~~690-602-0006-0600~~ and any associated recommendations of an application review team, availability of fund resources, Department capacity to support grantees, and received public comments. The Department shall make decisions publicly available.

Statutory/Other Authority: [ORS 536.027](#), [ORS 537.873](#)

Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

~~690-602-00040400~~

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). ~~Eligible grant types include 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 ~~P~~lace-~~B~~ased ~~I~~ntegrated ~~W~~ater ~~R~~esources ~~P~~lanning 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 537.873](#)

Statutes/Other Implemented: [ORS 537.872](#) - [ORS 537.873](#)

~~690-602-00050500~~

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~~ matching contribution. Pending match ~~funds~~ must be secured within 18 months from the date of the place-based water planning award.
- (3) ~~Eligible m~~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 537.873](#)

Statutes/Other Implemented: [ORS 537.872](#) - [ORS 537.873](#)

~~690-602-00060600~~

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 ~~the public, tribes, local governments, state agencies, and~~ a balanced representation of instream and out-of-stream water interests, ~~the public, Tribes, local governments, and state agencies~~. 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 ~~two~~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.

Statutory/Other Authority: [ORS 536.027](#), [ORS 537.873](#)

Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

~~690-602-00078700~~

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 ~~six~~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–principles 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 a grantee~~ not complying with the grant agreement requirements and conditions. The money allocated to the ~~collaborative grantee~~ but not used may be available for reallocation by the Department.

Statutory/Other Authority: [ORS 536.027, ORS 537.873](#)
Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

690-602-0~~00810800~~

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 537.873](#)
Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

690-602-0~~00987900~~

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~~shall 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. 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:
 - (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 537.873](#)
Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

~~690-602-0010991000~~
Public Notice and Comment

- (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 ~~prior to or simultaneously with public notice.~~
- (2) Prior to a decision of state recognition of a plan, the Department shall provide ~~written notice to county and tribal governments within the plan boundary and~~ public notice with a minimum 45-day public comment period. ~~and The Department shall~~ report all public comments received to the Commission for consideration.

Statutory/Other Authority: [ORS 536.027, ORS 537.873](#)
Statutes/Other Implemented: [ORS 537.872 - ORS 537.873](#)

~~690-602-00141100~~
Agreements or Contracts

- (1) The Department, in consultation with other relevant state agencies, shall produce and publish a report at least every ~~four~~4 years that:
 - (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 ~~consistent with ORS 537.873(6).~~
 - (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).

Formatted: Indent: Left: 0.44"

Statutory/Other Authority: [ORS 536.027](#), [ORS 537.873](#)
Statutes/Other Implemented: [ORS 537.872](#) - [ORS 537.873](#)

690-602-~~0012~~1200

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 537.873](#)
Statutes/Other Implemented: [ORS 537.872](#) - [ORS 537.873](#)

690-602-~~0013~~1300

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 537.873](#)
Statutes/Other Implemented: [ORS 537.872](#) - [ORS 537.873](#)

DRAFT

