

H - Water Right Related Rulemaking

Water Resources Commission Meeting

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Integrated Water Resources Strategy – Recommended Actions

- 10F – Strengthen and Improve Water Quantity and Water Quality Permitting Programs
- 11B – Develop Additional Instream Protections

Rulemaking Need

The “4-Legged Stool”

- Legislation
- Internal Improvements
- Resources (budget)
- Rulemaking



Rulemaking Need

- Expectations from legislature and governor
- 2025 Legislative Session
 - House Bill 3544 – contested case processes
 - House Bill 3342 – water right transactions
 - Senate Bill 1154 – portions related to consolidation of group domestic uses
- Outdated rules that do not conform to statute; other recent legislation
- Policy & process improvements
- Creating consistent processes where possible
- Minor (grammar, spelling, statutory references, etc.)

House Bill 3544 – Contested Cases

- Uniform Processes
- Standardized Schedule and Timelines
- Oral Testimony
- Accessible Hearing Locations
- Efficient Final Orders
- Settlement Opportunities
- Streamlined Standing and Intervention
- Consistent Protest and Party Status Requirements

House Bill 3342 – Water Rights Transactions

- Electronic documentation
- Shift public notice to OWRD weekly notice
- Credit/debit card processing
- Withdrawal of waters from appropriation technical fix
- Efficient review where water is restricted
- Phased application processing and fee payment
- Limits on extensions

Rulemaking Process

Internal & State Agency Support

- Internal subject matter experts
- Department of Justice
- Oregon Department of Fish and Wildlife
- Oregon Department of Environmental Quality
- Office of Administrative Hearings
- Department of Land Conservation and Development

RAC Roster (22 members)

- Jeremy Austin, Central Oregon LandWatch
- Glenn Barrett, Water for Life
- Anton Chiono, Confederated Tribes of the Umatilla Indian Reservation
- Leah Cogan, GSI Water Solutions
- J.R. Cook, Northeast Oregon Water Association
- Genevieve Hubert, Deschutes River Conservancy
- James Fraser, Trout Unlimited
- Chris Hall, Water League
- Keri Morin Handaly, Confederated Tribes of Grand Ronde
- Ryan Krabill, Oregon Farm Bureau
- Greg Kupillas, Oregon Groundwater Association
- Mark Landauer, Special Districts Association
- Karen Lewotsky, Oregon Environmental Council
- Sarah Liljefelt, Oregon Cattlemen Association
- Michael Martin, League of Oregon Cities
- Austin Patch, Summit Water Resources
- Lauren Poor, Portland General Electric
- Kimberley Priestley, WaterWatch of Oregon
- Branden Pursinger, Association of Oregon Counties
- April Snell, Oregon Water Resources Congress
- Jeff Stone, Oregon Association of Nurseries
- Jessi Talbott, Central Oregon Irrigation District

Tribal Engagement

- Sept 5 - Letter inviting formal G2G consultation, RAC participation, informal engagement
- Sept to Nov - RAC meetings
 - Confederated Tribes of the Grand Ronde
 - Confederated Tribes of the Umatilla Indian Reservation
- Sept 19 - Briefing for Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- October 21 - Consultation with Klamath Tribe
- Updates during LCIS Natural Resources Working Group & Cultural Resources Cluster quarterly meetings

RAC Meeting Schedule

- Sept 17 - Orientation, Div 14, 52, 53, 54, 320, 325, 340
- Sept 24 - Div 2, 300, 305
- Oct 14 - Div 18, 310, 315
- Oct 15 - Div 17, 380
- Oct 21 - Div 380
- Oct 29 (am; pm) - Div 77, 382
- Oct 31 - Revisions: Div 2
- Nov 12 - Revisions: Div 305, 315, 325, 340, notice docs
- Nov 21 - Revisions: Div 2, 17, 18, 77, 310, 380, notice docs

Tracking RAC/Public Input (Excerpt)

Version 2 -10/27/2025

Proposed Rule Revision Tracker

Division 300 – DEFINITIONS

| Section / Version comment | Issue | Response/ Modified Language | Status / Version change made in |
|---------------------------------|--|---|------------------------------------|
| 690-300 v1 | RACM - suggested that several definitions could be cleaned up. | Only planning to update those definitions within scope but advised RAC to submit any suggestions. | Complete. No change made. |
| 690-300-0010(16) v1 | RACM - capitalize "geologic" | Change incorporated. | Complete. Changed in v2 draft. |

Tracking RAC/Public Input (Excerpt)

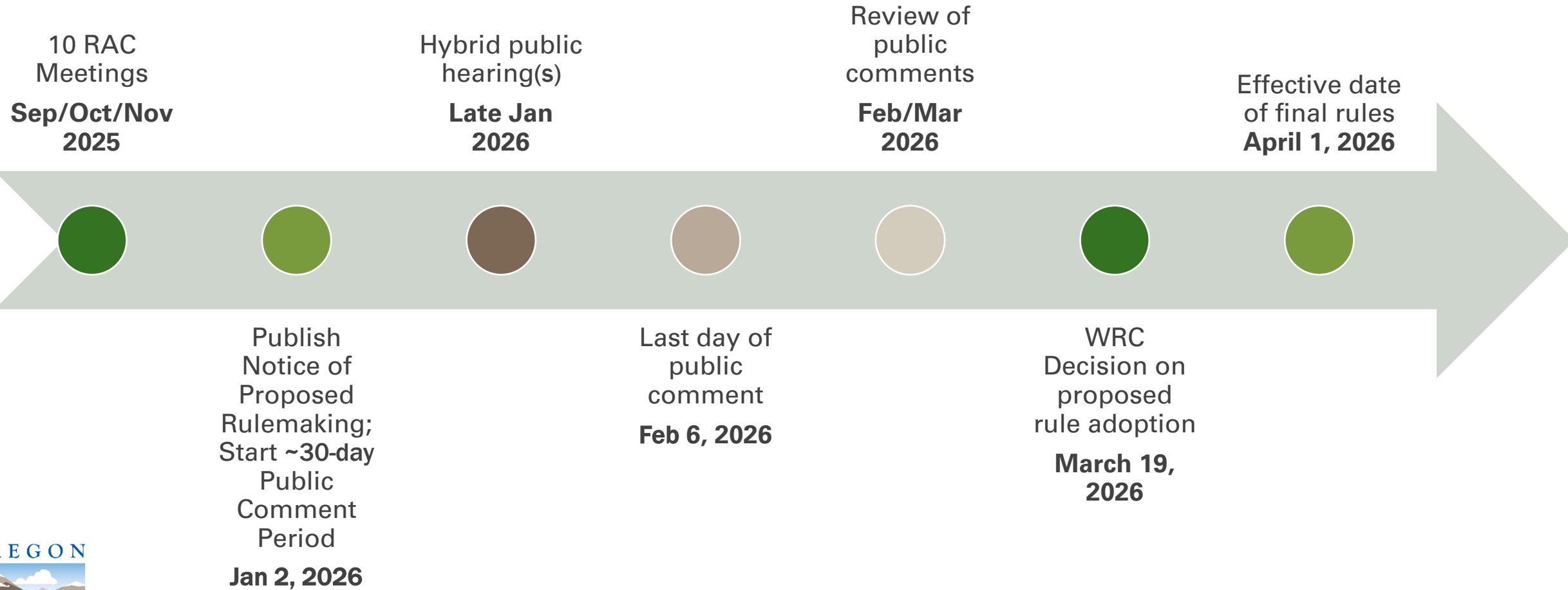
Documents Table: Update 11/20/2025

| Division | V1 / Date emailed to RAC | V2 / V3 Date emailed to RAC |
|--|--|---|
| 300 - Definitions | Division 300 Email: 9/8 | Division 300 (Revised 102725) Rule Revision Tracker – Div 300 (102725) Email: 10/28 |
| 305 – General Map Criteria Division | Division 305 Email: 9/3 | Division 305 (Revised 110625) Rule Revision Tracker – Div 305 (110625) Email:11/7 |

RAC 9: “Table – Roadmap for Rule Revisions by Division Documents”

<https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>

Rulemaking Timeline

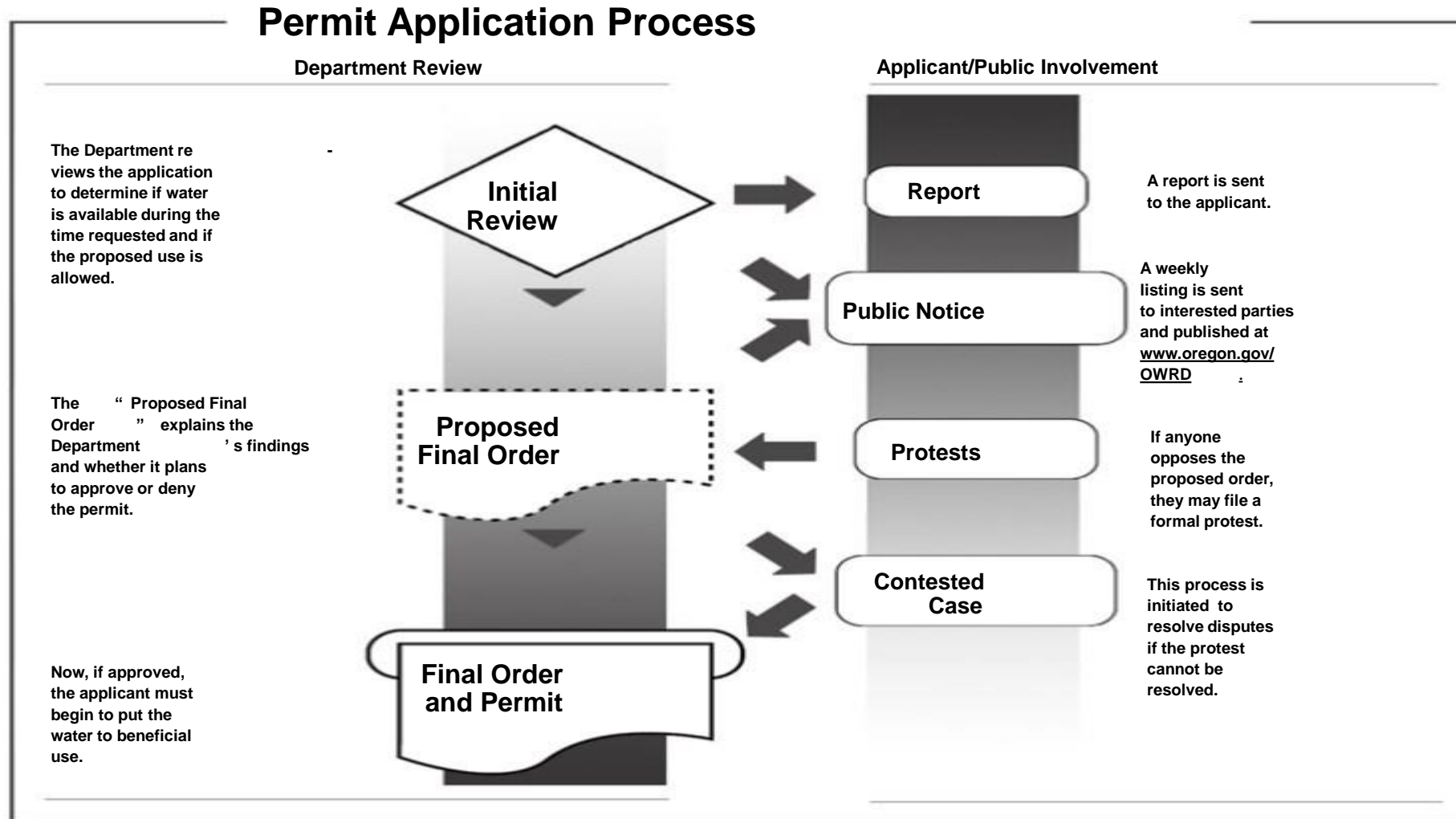


Rules Overview

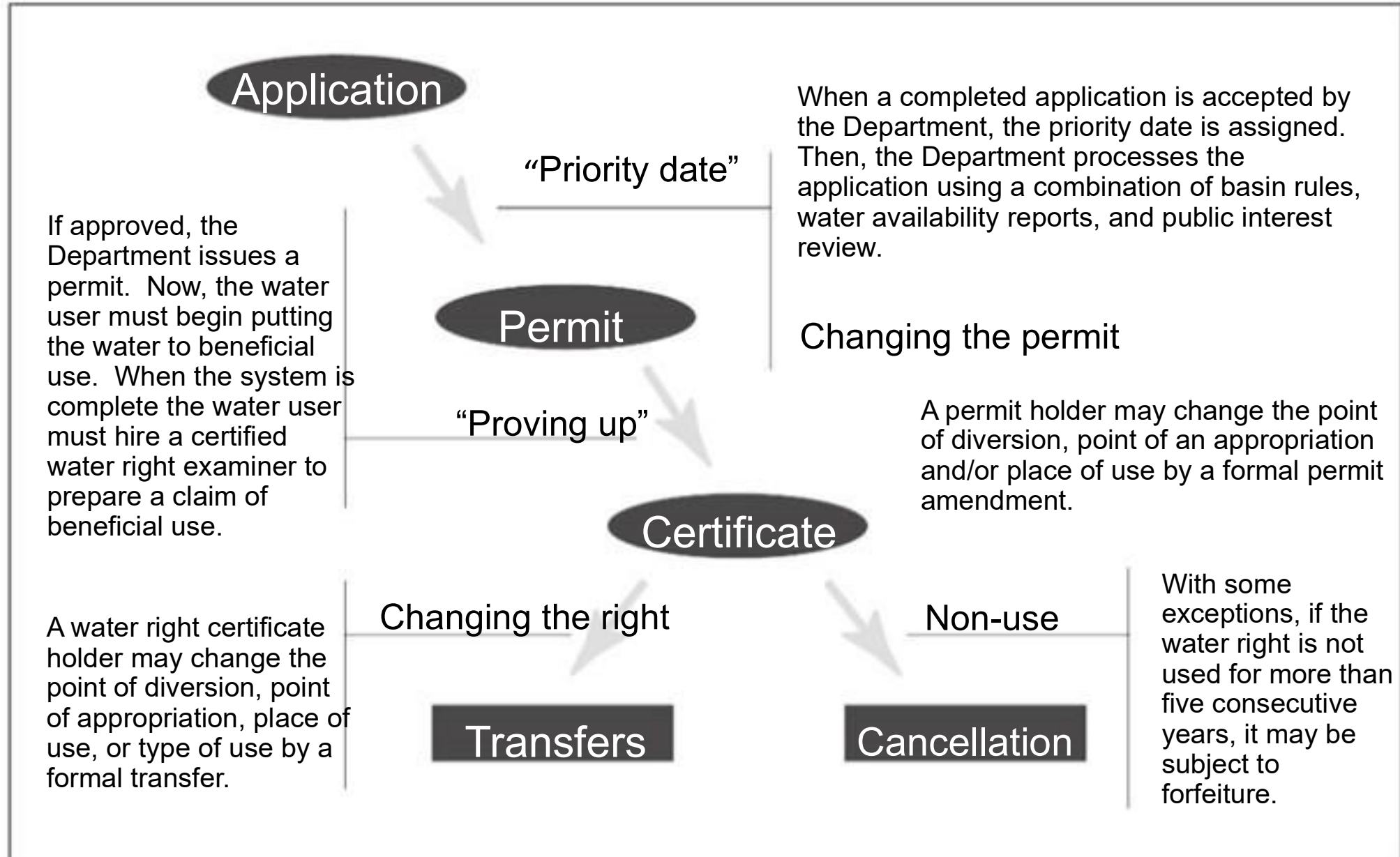
OAR Chapter 690 - 18 Divisions Impacted

| | |
|-----------|--|
| 2 | Protests and Contested Cases |
| 14 | Certified Water Right Examiners |
| 17 | Cancellation of Perfected Water Rights |
| 18 | Allocation of Conserved Water |
| 52 | Decommissioning Rules for Non-FERC Projects |
| 53 | Hydroelectric License, Power Claim and Certificate Amendments |
| 54 | Conversion of a Hydroelectric Water Right to an Instream Water Right |
| 77 | Instream Water Rights |
| 300 | Definitions |
| 305 (new) | General Map Criteria |
| 310 | Water Right Application Processing |
| 315 | Water Right Permit Extensions |
| 320 | Water Right Permits |
| 325 | Assignment of a Water Right Permit & Request for Issuance of Replacement Permits |
| 330 | Water Right Certificates |
| 340 | Water Use Authorizations |
| 380 | Water Right Transfers |
| 382 | Groundwater Registration Modifications |

Rules Focus on Process



Rules Span Life of a Water Right



Themes Across Divisions*

- Update rule references, grammar, renumbering, remove obsolete rules, conformance to statute
- Mapping standardization
- **Moving documents to digital age**
- **Automatic Final Orders, Final Orders on Default**
- **Uniform contested case/protest/party status**
- **Weekly public notice instead of others**
- **Initial review->Proposed Final Order -> Final Order**
- Land Use – reference division 5 and SAC, remove receipts***

• Mailing of certain documents under Administrative Procedures Act

Division 2 – Protests & Contested Cases

- 2025 Legislation: uniform protests, party status, and contested case, final orders on default, automatic final orders, electronic documents, default hearing schedule and completion in 180-days, preference for oral testimony and remote hearings
- Efficient and Uniform Process: update accurate contact info, default electronic service upon referral with exceptions, information that must be included with exceptions
 - Consolidation or bifurcation by Dept prior to referral
 - Discovery: limit admissions, interrogatories, hours of staff time for discovery before converting to public records request, deadlines for subpoena, limit site visits
 - Items for pre-referral notice to encourage settlement discussions, case efficiency and reduce discovery need
 - Rule clarity and cleanup, consistency with APA

Division 300 – Definitions

- Clarifies definition of “proposed certificate”
- Expands applicability of definitions to more rule divisions
- Updates definitions to align with statute and Div 2 rules
- Removes obsolete definitions

Division 305 – General Map Criteria

- Establishes general map criteria for water right transactions
- Rule divisions specific to each water right transaction type may contain supplemental mapping requirements

Division 340– Water Use Authorizations

- Expedited secondary (use of stored water):
 - public interest issue that merits the standard process
- 2025 legislation: electronic sending of docs
- Standardized mapping
- Rule cleanup

Division 310 – Water Right Application Processing

- Requires notice to landowner if someone else applies for a water right on that land, and verification of signatory authority
- Removes application information that OWRD can get elsewhere
- Removes requirements to ask agencies to post weekly notice
- Clarity on when an administrative hold may be issued
- 2025 Legislation: Streamlines public interest review of groundwater applications to consolidate drinking water wells in a groundwater quality area; Partial fee payment and phased application processing; Return of applications for sources that are closed to further appropriation; Electronic documents; Automatic final orders; Uniform protest and contested case; Standing with requests for party status.

Rule cleanup/clarity: mapping, land use, APA consistency, etc.

Division 315 – Water Right Permit Extensions

- Aligns extensions for certain new storage projects with internal guidance
- Eliminates the requirement for checkpoint conditions
- Clarity and repeals related to cancellation
- Clarify what factors are evaluated for good cause
- Existing policy of denial when the permit holder has used water prior to compliance with fish-related permit conditions to be met before water use
- 2025 Legislation: Caps on permit extensions for quasi-municipal and group domestic permits, 2-year limits for pending permits, and repeals extension for others after April 1. **Electronic documents, uniform protests and contested cases, automatic final orders.**
 - Rule cleanup/clarity, APA consistency, restructuring

Division 325 – Assignment of a Water Right Permit & Request for Issuance of Replacement Permits

- Clarify application requirements
- Consistency with 380/382
- 2025 Legislation: electronic sending of documents, automatic final orders; uniform contested case and protests
- Rule cleanup/clarity, mapping standardization, APA consistency

Division 320 – Water Right Permits

Division 330 – Water Right Certificates

- Retitle 320 - Miscellaneous Water Right Provisions /
- Retitle 330 – Proof of Appropriation to Perfect a Water Right
- Renumbering (Repeal and Adopt) duplicative rules
- Rule cleanup, repeals, consistency with statute, mapping standardization

Division 14 – Certified Water Right Examiners *and Preparation of Claims of Beneficial Use*

- Connect Pump Test Rules and Claims of Beneficial Use
- Rule cleanup and clarity, electronic documents, standardized mapping

Division 380– Water Right Transfers

- Clarifying: process when forfeiture is submitted as part of a transfer protest; place of use transfer must involve a physical change, clarifying injury and enlargement as criteria, conditioning water rights, Director discretion to waive part of the fee
- Layered water rights issues, criteria for reversion of surface water to groundwater transfers, terminate substitution before transfer, info on quantity of water for specific to general industrial, separate application is required for each right with exceptions, information needed for fish passage and evidence of use, ownership info, clarify processes for consent to injury due to 2025 legislation, application modifications and re-noticing, process for cancellation of transfers unperfected, process to reversion of POD change

Division 380– Water Right Transfers

- Historical POD Changes: limit rule to surface water, claim of injury, applicant required to provide proof that notified affected water right holders, clarify criteria of approval including enlargement, no changing the location of a dam
- Adopts new rules governing permit amendments.
- Temporary Transfers: adopts new rule to allow temporary transfer renewals, delegate authority to Department to issue a final order for exceptions to Administrative Law Judge's proposed order
- 2025 Legislation: remove standing definition and standing statements, initial review and proposed final order terminology and requirement that applicant notify of desire to proceed (phased processing); uniform protest and contested case procedures, automatic final orders, weekly public notice and change in newspaper notice, electronic sending of documents, renumbering,
- Rule cleanup: Land use compatibility with division 5. Standardized mapping requirements. Statutory alignment, etc

Division 382– Groundwater Registration Modifications

- Consistency with Division 380 and alignment of processing steps, specificity on number of rights that can be included in one application, clarity on process for application amendments, clarity on approval criteria and notice
- Consistency with 2025 Legislation: fee increase (\$1,900 - 70% of max for a POU change only and \$2,730 for all other changes/combo of changes); remove 2 step standing and party status; consistent document terminology (IR/PFO instead of DPD/PD); electronic sending of documents; replace newspaper notice with weekly public notice, 45-day protest period, uniform protest and contested case process, automatic final orders
- Rule cleanup, land use, standardized mapping

Division 77 – Instream Water Rights

- OWRD protects water instream within the state's borders
- New Instream Water Rights: notice to special districts, clarify when withdrawal applies to new instream water right applications, removes posting notice in county offices, administrative holds
- Instream Transfers and Leases: align “enlargement” and “injury,” requirements stored water
- Removes estimated natural annual flow (EANF) limit for instream transfers, leases, or ACW
- Instream Leases: modify application requirements, allows district to keep written authorization on file
- New efficient process for instream lease renewals
- Split Season Leases: 2023 legislation, measurement and reporting, etc.

Division 77 – Instream Water Rights

- Minimum Perennial Streamflow Conversions: Aligns to statute. Updates to fit modern workflows, including 2025 legislation.
- Precedence of future uses of multipurpose projects: Dept to make decision not Commission, align with water right processing steps, changing hearing to public comment period, incorporating decision into proposed final order.
- Repeals forfeiture of instream water rights
- Rule cleanup/clarity, mapping standards, land use, and other changes. 2025 Legislation: align/remove repealed language, electronic documents, phased application processing, return of applications in withdrawn areas (new water rights), uniform protest, party status and contested cases, automatic final orders, orders issued without hearing, standardized processing steps and terminology for transfers

Division 18 – Allocation of Conserved Water

- Likely to be Removed:
 - Groundwater rights
 - Waiver of fees discretionary (per statute)
- Standardization with other transfer processes
- Conditions: measurement and reporting
- Procedural clarity: processes for dedicating instream, deadline for finalization, project completion vs project finalization, living certificates
- 2025 Legislation: Uniform contested case, party status, protests; electronic documents, email, weekly public notice; automatic final orders, issuance of initial review, public comment timing
 - Standardized mapping, rule cleanup and reorganization, land use

Division 17 – Cancellation of Perfected Water Rights

- Transfer nexus with forfeiture
- Director rule on exceptions
- Consistency with Statute:
 - Initiation of cancellation – not simply an assertion
 - Statutory exemptions: ready/willing/able and drought
 - Rebuttals to forfeiture
 - Current rule is restrictive on info watermaster needs to support
 - Current rule requires Department staff to submit affidavits
 - 2025 Legislation: final order on default, uniform contested case/protest

Update what information must be in OWRD notice and public affidavits

Division 52 – Decommissioning Rules for Non-FERC Projects

Division 53 – Hydroelectric License, Power Claim and Certificate Amendments

Division 54 – Conversion of a Hydroelectric Water Right to an Instream Water Right

Examples (one or more divisions)

- *Consistency with 2025:* removal of newspaper notice, weekly public notice, default final orders, automatic final orders, standard process for proceeding with hearing (significant disputes)
- 2025 Legislation: electronic documents, repeal of statutes related to OAR 690-310-0170
- Rule cleanup, alignment with APA and division 2, etc.

Closing Thoughts

- Thanks to Team: expertise, professionalism and flexibility
- Thanks to RAC: thoughtful feedback
- Big rulemaking driven by need to show progress
- Mandate to improve processing times

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WATER RESOURCES
DEPARTMENT

Thank you!

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