



Staff Report

TO: Groundwater Advisory Committee (GWAC)

FROM: Racquel Rancier, Deputy Director of Strategy and Administration
Katie Ratcliffe, Administrator Water Rights Services Division
Lisa Jaramillo, Transfers and Conservation Section Manager
Laura Hartt, Water Policy Analyst

DATE: January 13, 2026

SUBJECT: Updates to Water Rights, Contested Case, and Forfeiture Rules for Discussion at February 2, 2026, GWAC Meeting

I. Introduction

The Department is currently accepting public comments on proposed updates to 13 Rule Divisions pertaining to water rights transactions, contested cases, and forfeiture rules. This memo provides an overview of the rulemaking process and provides a copy of the draft rules for review by the Groundwater Advisory Committee. The Advisory Committee may provide feedback and advice to the Department and Commission on the draft proposed rules during the public comment period.

II. Integrated Water Resources Strategy Recommended Action

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

III. Background

There are currently over 2,500 applications for all types of water right transactions pending at the Department and not being processed timely. The current standards do not provide timely decisions and are expensive for the Department, applicants, and other parties to the proceedings. While significantly under-invested in, it is unlikely that the Water Right Services Division will receive a significant increase in staffing to improve processing times. While the Department acknowledges that more resources would improve timeliness of application decisions, policy and process improvements can be made to maximize our limited staff resources.

From transfers and water right permits taking years to process, and some protested actions pending for more than 30 years, the Department has heard clear calls to action [from water law experts](#), customer feedback, in the recent passage of bipartisan process improvement legislation, from the legislative budget committee, in a [signing letter from Governor Kotek](#), and from internal staff. This call to action catalyzes a recognized need to streamline and modernize water right and contested case processes to 1) reduce processing times, 2) minimize future backlogs, 3) ensure a

clear and consistent process, and 4) promote timely and informed decisions while providing due process.

The purpose of this rulemaking is to (1) implement legislation, including but not limited to, House Bill 3342 (Or Laws 2025, ch 282) relating to water rights transactions, House Bill 3544 (Or Laws 2025, ch 575) relating to contested case processes, Senate Bill 1154 (Or Laws 2025, ch 605) relating to issuing water rights for public water systems to replace domestic wells in groundwater quality management areas; (2) implement other policy and process improvements relating to water rights transactions; and (3) other changes, including aligning definitions with updated rules and cleaning up impacted rule divisions by fixing spelling, grammar, formatting, rule numbering, statutory and rule references, and other statutory minor corrections. A summary of House Bill 3342 and House Bill 3544 is included in Attachment 1.

IV. Rules Advisory Committee

In September 2025, the Department assembled a Rules Advisory Committee (RAC) representing a wide array of interests in water rights transactions. A copy of the roster is available on the rulemaking page [here](#). From September 17 through November 21, 2025, the Department convened nine RAC hybrid meetings, and one additional limited -focus (Division 2) virtual meeting for RAC members. All meetings were well attended by RAC members, open to the public, recorded, and shared online. All rulemaking materials, including RAC meeting materials, recordings, and summaries, are available [here](#).

During each meeting, RAC members provided input on proposed draft rule language as well as the statements that will accompany the Notice of Proposed Rulemaking: Statement of Need, Statement of Racial Equity Impacts, and Statement of Economic and Fiscal Impacts. Input and revisions made in response to input have been tracked and summarized. Feedback, and rule revision trackers can be accessed from this table [online](#).

During the rulemaking process, the Department coordinated with the Oregon Department of Justice, the Office of Administrative Hearings, the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife, and the Oregon Department of Land Conservation and Development.

V. Phased Approach

Based on feedback from some members of the rules advisory committee about the scope of the rulemaking, the Department has split the rulemaking effort into two phases as outlined below.

Phase 1: Public Comment Period Open January 2 to February 6, 2026

- OAR 690-002: Protests and Contested Cases
- OAR 690-014: Certified Water Right Examiners
- OAR 690-017: Cancellation of Perfected Water Rights
- OAR 690-018: Allocation of Conserved Water
- OAR 690-077: Instream Water Rights
- OAR 690-300: Definitions

- OAR 690-305 (NEW): Map Criteria
- OAR 690-310: Water Right Application Processing
- OAR 690-315: Water Right Permit Extensions
- OAR 690-325: Assignment of a Water Right Permit and Request for Issuance of Replacement Permits
- OAR 690-340: Water Use Authorizations
- OAR 690-380: Water Right Transfers
- OAR 690-382: Groundwater Registration Modifications

Phase 2: Public Comment Period Open Spring 2026

- OAR 690-052: Decommissioning Rules for Non-FERC Projects
- OAR 690-053: Hydroelectric License, Power Claim and Certificate Amendments
- OAR 690-054: Conversion of a Hydroelectric Water Right to an Instream Water Right
- OAR 690-330: Water Right Certificates
- OAR 690-320: Miscellaneous Water Right Provisions (renamed from Water Right Permits)

VI. Public Comment and Public Hearings

The Department published notice in the Secretary of State's January 2, 2026, Oregon Bulletin and provided notice to GovDelivery listservs, including Rulemaking, Water Rights, Certified Water Rights Examiners, Legislative and Budget, and Well Said subscribers. The Department also notified Tribes, legislators, local governments, and other interested parties.. In addition, the Department also provided [notice of a change to a land use program](#) to DLCD as well as cities and counties.

Written comments must be submitted by 5:00 p.m. on February 6. OWRD is hosting public hearings and information sessions in Salem (January 27) and Bend (January 29) with virtual and in-person participation options. See the notice in Attachment 2 for further details.

V. Conclusion – Next Steps

After the public comment period closes in early February, the Department will review and incorporate any feedback as appropriate. During the March 2026 Commission meeting, the Department will present to the Commission the revised draft rules for adoption consideration. This ambitious timeline allows the Department to meet the statutory implementation deadline of April 1, 2026, for implementation of House Bill 3342.

Attachments:

1. Summary of House Bill 3342 and House Bill 3544
2. Notice of Proposed Rulemaking with Proposed Rule Changes

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Katie Ratcliffe
971-338-8105

GWAC
February 2, 2026
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Laura Hartt
971-720-0963

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503-871-1889

Legislative Summary: House Bill 3342 and House Bill 3544

House Bill 3342 Summary – Water Right Process Modernization

Unless otherwise noted, the provisions of this bill apply to all applications submitted on or after April 1, 2026.

- Electronic documentation: Defaults to electronic documents, unless applicant requests paper copies.
- Shift public notice to OWRD weekly notice: For transfers, hydroelectric projects, and some certificates requires OWRD weekly public notice, rather than newspaper notice. Requires newspaper notice for proposed final order on a transfer if more than five water rights are injured. Allows optional newspaper notice for any public notice.
- Credit/debit card processing authority: Authorizes processing fees to be passed along to users for credit/debit payment options, once the Department has the technical capacity to take these payment options (OWRD does not yet have systems setup for taking these payment options).
- Technical fix regarding withdrawal of waters from appropriation: Changes the withdrawal process to occur by rule rather than order. The current withdrawal statute requires an “order” of withdrawal. At the time, an order included rules, but the Administrative Procedures Act has since been updated to distinguish an order from rules. An order must name specific individuals, which is impossible for withdrawal orders that deal with future use, rendering the tool unimplementable for new withdrawals.
- Efficient review where water is unavailable: Requires return of application and refund of the relevant portion of fees, if an application is for a water source that, prior to application submission, was designated as a critical groundwater area, restrictively classified, or withdrawn from appropriation. OWRD will create, publish and continuously update a list of these areas. This does not apply to applications for recovery of groundwater under artificial recharge or aquifer storage and recovery or if requesting an exception to basin program rules. Applies to pending water right applications only if a PFO has not been issued on or after April 1, 2026. Provisions related to review and return of alternate reservoir applications within withdrawn surface water sources are operative September 25, 2025.
- Protecting groundwater via transfers where water is unavailable: Provides permissive authority to deny a proposed change to the point of appropriation for groundwater registration modifications, permit amendments and transfers in areas: designated as a critical groundwater area, restrictively classified, or withdrawn from appropriation This does not apply to proposed points of appropriations located in critical groundwater areas in the same aquifer and administrative portion as the original point of appropriation, in areas where a groundwater bank is established to mitigate for the impacts of groundwater use, or applications related to the recovery of stored groundwater under and artificial recharge or aquifer storage and recovery project.
- Phased application processing and fee payment: For new water right applications, requires affirmative confirmation within 90 days of initial review for OWRD to continue processing an application; a portion of fees shall be paid upfront and the remainder within 90 days of initial review. For transfers, requires affirmative confirmation to move the application forward within 30 days of the initial review and providing any outstanding information; applicants

may request an additional 60 days for good cause. If the applicant chooses not to advance or does not respond within the allotted time, the file is closed without further action.

- **Changes to the extension allowances:** Retains existing process for extensions for municipal, quasi-municipal, group domestic and group domestic expanded permits, with a new maximum one-time extension, for good cause, of 20 years for quasi-municipal and 10 years for group domestic and group domestic expanded. For all other permits, increases the development timeline to 7 years for new permits and eliminates the existing extensions process. For pending extension requests where a proposed final order has not been issued on April 1, 2026, one extension may be granted for a maximum of 2 years if: a portion of water has been used within the original development period and the original before-use fish protection conditions were satisfied.
- **Efficient Final Orders:** Provides that 33 days after a protest period closes on a PFO, if no protest is received and no superseding order is issued, the PFO will become a final order.

House Bill 3544 Summary – Contested Case Modernization

The provisions of this bill apply to all protests submitted, or pending, but not referred to the Office of Administrative Hearings, on or after January 1, 2026. *Applicants, protestants, persons requesting standing, and persons that have requested or been granted party status associated with protest pending on the effective date of HB 3544 will be notified of process changes.*

- **Uniform Processes:** Establishes uniform protest and hearing requirements for many water right transaction types to improve consistency, transparency, and administrative efficiency.
- **Standardized Schedule and Timelines:** Requires establishment of a default schedule for contested case hearing, with no more than 180 days between case referral and completion of the hearing. Exceptions to the default schedule are allowed when justified.
- **Oral Testimony:** Provides that, to the greatest extent practicable, administrative law judges should give preference for testimony to be provided orally rather than in writing. In many cases, this should reduce the time needed to prepare for hearing.
- **Efficient Final Orders:** Provides that 33 days after a protest period closes on a PFO, if no protest was received and no superseding order is issued, the PFO will automatically become the final order.
- **Settlement Opportunities:** Provides clear authority that OWRD can utilize the Office of Administrative Hearings to conduct settlement conferences for OWRD water right programs by allowing a settlement judge to be assigned when beneficial to do so. In addition, it clarifies that there is no need for a hearing if all contested case issues were already resolved by settlement, withdrawal or default.
- **Accessible Hearing Locations:** Establishes a preference for remote hearings, with exceptions allowed.
- **Standing and Intervention:** Changes the current two-step process for requested standing and intervention to a one-step process and combines the existing fees to intervene in support of a PFO. Requires that the request for party status and associated fees must be received within 30 days of the protest deadline. If requests for party status are denied, the portion of the fee related to participation in the contested case will be refunded. Applies to standing statement requests submitted after January 1, 2026.
- **Streamlined Issue Identification:** Requires all reasonably ascertainable issues to be raised with specificity in the protest.

OFFICE OF THE SECRETARY OF STATE
TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE



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
12/27/2025 6:06 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates to Water Rights Transactions, Contested Cases, and Forfeiture Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/06/2026 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: Laura Hartt
971-720-0963
laura.a.hartt@water.oregon.gov

725 Summer St NE, Ste A
Salem, OR 97301

Filed By:
Laura Hartt
Rules Coordinator

HEARING(S)

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

DATE: 01/27/2026

TIME: 7:00 PM - 9:00 PM

OFFICER: Laura Hartt/OWRD Staff

IN-PERSON HEARING DETAILS

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

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person, virtually, or by phone.

Each person attending the hearing in person who wishes to comment will be asked to sign in on a sign-up sheet upon arrival. 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 begin no earlier than 7:00 p.m. and close no later than 9:00 p.m. Based on the number of people who have signed up to provide oral comments, the hearing officer may set reasonable time limits for each commenter.

Prior to the hearing, Department staff will offer an information presentation, during which time members of the public may ask questions. The informational session will be held from 5:30 p.m. to 6:30 p.m. The Department will not be accepting public comments on the proposed rulemaking during the informational presentation. Attendees are encouraged to attend the subsequent public hearing beginning at 7:00 p.m. to provide comments.

The informational and hearing sessions will be recorded and available for viewing within 48 hours of the close of the hearing on the rulemaking website: <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

Auxiliary aids for persons with disabilities are available upon advance request. Please email WRD_DL_rule-

coordinator@water.oregon.gov or call (971) 720-0963 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 February 6, 2026, which is the close of the public comment period. Written comments should be sent to "Laura Hartt" 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 February 6, 2026, will not be reviewed or considered by the agency unless the agency decides to extend the public comment period for everyone.

REMOTE HEARING DETAILS

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

PHONE NUMBER: 719-359-4580

CONFERENCE ID: 94968545223

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person, virtually, or by phone.

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DATE: 01/29/2026

TIME: 10:00 AM - 12:00 PM

OFFICER: Laura Hartt/ OWRD

IN-PERSON HEARING DETAILS

ADDRESS: City of Bend Public Works Campus, 21051 NE Talus Place, Prowell Springs Conf Room - 3rd Floor, Bend, OR 97701

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person, virtually, or by phone.

Each person attending the hearing in person who wishes to comment will be asked to sign in on a sign-up sheet upon arrival. 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 begin no earlier than 10:00 a.m. and close no later than 12:00 p.m. (noon). Based on the number of people who have signed up to provide oral comments, the hearing officer may set reasonable time limits for each commenter.

Prior to the hearing, Department staff will offer an information presentation, during which time members of the public may ask questions. The informational session will be held from 8:30 a.m. to 9:30 a.m. The Department will not be accepting public comments on the proposed rulemaking during the informational presentation. Attendees are encouraged to attend the subsequent public hearing beginning at 10:00 a.m. to provide comments.

The informational and hearing sessions will be recorded and available for viewing within 48 hours of the close of the hearing on the rulemaking website: <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

Auxiliary aids for persons with disabilities are available upon advance request. Please email WRD_DL_rule-coordinator@water.oregon.gov or call (971) 720-0963 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 February 6, 2026, which is the close of the public comment period. Written comments should be sent to "Laura Hartt" 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 February 6, 2026, will not be reviewed or considered by the agency unless the agency decides to extend the public comment period for everyone.

REMOTE HEARING DETAILS

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

PHONE NUMBER: 719-359-4580

CONFERENCE ID: 91305338974

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person, virtually, or by phone.

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 28, 2026, 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 28, 2026, 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 begin no earlier than 10:00 a.m. and close no later than 12:00 p.m. (noon). Based on the number of people who have signed up to provide oral comments, the hearing officer may set reasonable time limits for each commenter.

Prior to the hearing, Department staff will offer an information presentation, during which time members of the public may ask questions. The informational session will be held from 8:30 a.m. to 9:30 a.m. The Department will not be accepting public comments on the proposed rulemaking during the informational presentation. Attendees are encouraged to attend the subsequent public hearing beginning at 10:00 a.m. to provide comments.

The informational and hearing sessions will be recorded and available for viewing within 48 hours of the close of the hearing on the rulemaking website: <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

Automated 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 February 6, 2026, which is the close of the public comment period. Written comments should be sent to "Laura Hartt" 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 February 6, 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)

Purpose and Scope: The purpose of this rulemaking is to (1) implement legislation, including House Bill 3342 (Or Laws 2025, ch 282) relating to water rights transactions, House Bill 3544 (Or Laws 2025, ch 575) relating to contested case processes, Senate Bill 1154 (Or Laws 2025, ch 605) relating to issuing water rights for public water systems to replace domestic wells in groundwater quality management areas, and pre-2025 legislation relating to split season leasing and transfers of stored water rights; (2) implement other policy and process improvements relating to water rights transactions; and (3) other changes, including aligning definitions with updated rules and cleaning up impacted rule divisions by fixing spelling, grammar, formatting, rule numbering, statutory and rule references, and other statutory minor corrections (ORS 183.335(7)).

The Department is proposing rules changes for the following Chapter 690 Divisions: 2 (Protests and Contested Cases), 14 (Certified Water Rights Examiners), 17 (Cancellation of Perfected Water Rights), 18 (Allocation of Conserved Water), 77 (Instream Water Rights), 300 (Definitions), 305 (new - General Map Criteria), 310 (Water Right Application Processing), 315 (Water Right Permit Extensions), 325 (Assignment of a Water Right Permit and Request for Issuance of Replacement Permits), 340 (Water Use Authorization), 380 (Water Right Transfers), and 382 (Groundwater

Registration Modifications).

The separate notice pursuant to OAR 660-030-0075(2)(b) and OAR 690-005-0050(7) is available at <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

Background: Oregon statutes and rules establish the procedures and review criteria to process and evaluate water right applications submitted to the Department for the allocation of water for instream and out-of-stream purposes. These procedures and review criteria have been modified over time, in both statute and rule. In some instances, statutes have been amended or adopted, without subsequent changes to the corresponding rules. Many of the rules contain outdated practices, unnecessary administrative steps, or unclear policies and standards that have reduced transparency, efficiency, and timely decision-making leading to confusion, frustration, and increased disputes among applicants, the public, consultants, and Department staff.

The Department currently has over 2,500 applications in its backlog for all types of water right transactions, some of which may remain in the processing queue for years. For example, water right and permanent transfer application processing may take on average 6 months to 3 years, depending on the type and complexity of the proposed water use. Additionally, the contested case backlog has grown steadily over the years, with more than 200 protests now pending, with some pending for more than 30 years. The current processing standards are not providing timely decisions and are expensive for the Department, applicants, and other parties to the proceedings.

Slow processing times have been driven by inadequate investment in staff and outdated processes. Historically, water right transaction fees have covered only half of the cost of water right processing staff; for the last four biennia, the fees have not been sufficient to keep up with the cost of labor. This budget shortfall culminated in permanent staff reductions in 2021 and greater reliance on general fund dollars in 2025 to maintain existing staff. Streamlining and modernizing the application review process will also allow the Department to maximize limited staff resources.

There have been clear calls to action to improve the water rights transactions processes from water law experts (Amos et al. 2024)), through customer feedback (OWRD 2025a), in recent passage of bipartisan water right process improvement legislation (i.e., House Bills 3342 (2025); House Bill 3544 (2025); Senate Bill 1154 (2025)), by legislators in Department budget hearings (Oregon Joint Committee on Ways and Means Subcommittee on Natural Resources, 2025), in a signing letter from Governor Kotek on the Department's 2025-2027 budget (Kotek 2025), and by the agency itself. Updating the identified rule divisions is necessary for the Department to best serve Oregonians while continuing to steward Oregon's water resources for instream and out to stream uses now and for future generations.

In addition to implementing 2025 legislation, the proposed rule changes meet the identified need by: (1) clarifying rule language where ambiguous language has increased uncertainty, time and cost, (2) removing requirements that no longer provide benefit to water right transaction processes, (3) allowing increased use of electronic communications and filings, (4) enabling OWRD to continue moving transactions through the process without lengthy delays, (5) increasing the efficiency and reducing the cost of contested case processes, (6) updating outdated rule provisions that are inconsistent with current statutes, (7) clarifying ambiguous application submittal requirements, including mapping standards, (8) clarifying how certain transaction processes interact with one another; (9) creating more process consistency between similar types of transactions; and (10) implementing changes required by recent legislation.

2025 Legislation Implementation: In 2025, the Oregon Legislature passed House Bill (HB) 3342 and HB 3544 which made significant changes to the water right application and contested case processes, with the overarching goals to reduce processing times, minimize and reduce future backlogs, and ensure a clear, consistent process that promotes timely and informed decisions, while providing due process. The Legislature also passed Senate Bill (SB) 1154, which

modifies processes for managing ground water quality contamination concerns. These laws necessitate updates across multiple rule divisions.

Provisions being implemented from HB 3342 include: (1) having document transmittals be electronic where possible, (2) shifting public notice for transfers away from newspaper notice and to the Department's weekly public notice, (3) a phased application and fee collection process, depending on the type of transaction, (4) return of applications requesting water from certain types of sources that have been closed from further appropriation, (5) changes to extension allowances for non-municipal permits, and (6) proposed final orders becoming final after 33 days if no protests are filed. The Divisions implementing these provisions include 690-002 (Protests and Contested Cases), -014 (Certified Water Rights Examiners), -018 (Allocation of Conserved Water), -077 (Instream Water Rights), -310 (Water Right Application Processing), -315 (Water Right Permit Extensions), -325 (Assignment of a Water Right Permit and Request for Issuance of Replacement Permits), -340 (Water Use Authorizations), -380 (Water Right Transfers), and -382 (Groundwater Registration Modifications). (For the complete list of rule changes based on implementation of HB 3342, please see individual "Rule Summaries" throughout this Notice.)

Provisions being implemented from HB 3544 include: (1) establishment of a uniform administrative hearing process and standardized schedule to complete the hearing process within 180 days of referral for certain application types, (2) preference for testimony to be provided orally and for hearings to be remote, (3) proposed final orders become final after 33 days if no protests are filed, and (4) removing the two-step process for requesting standing and intervention and replacing it with a combined one-step process for certain application types. The Divisions implementing these provisions include 690-002 (Protests and Contested Cases), -017 (Cancellation of Perfected Water Rights), -018 (Allocation of Conserved Water), -077 (Instream Water Rights), -310 (Water Right Application Processing), -315 (Water Right Permit Extensions), -325 (Assignment of a Water Right Permit and Request for Issuance of Replacement Permits), -380 (Water Right Transfers), and -382 (Groundwater Registration Modifications). (For the complete list of rule changes based on implementation of HB 3544, please see individual "Rule Summaries" throughout this Notice.)

Pre-2025 Legislation Implementation: In 2021, the Legislature passed HB 3103 (amending ORS 540.510 and 540.520), allowing holders of water right certificates that authorize storage of water to change the type of use identified in the certificate through the transfer process without losing priority. However, this legislation left open the question as to whether this authorization could extend to point of diversion or place of use changes through the transfer process for water right certificates that authorize the storage of water without losing priority. In 2023, the State's appellate court clarified that although storage of water in and of itself is not a use, when considered in the context of a secondary certificate, (i.e., those certificates granting the holder the right to divert and apply beneficially stored water from the storage reservoir authorized by the primary storage certificate), it can represent a water use subject to transfer (*Bridge Creek Ranch v. OWRD*, 329 Or App 568 (2023)).

In 2023, the Legislature passed HB 3164 (amending ORS 537.348), allowing for unlimited renewals for leases of water rights for split season use.

The Department proposes updating OAR 690-077 (Instream Water Rights) to implement the 2023 split season leasing statute and updating OAR 690-380 (Water Right Transfers) to implement the 2021 legislation and 2023 court ruling pertaining to the transfer of stored water rights.

Other Policy and Process Improvements: In addition to legislation implementation, the Department has identified additional opportunities for improving water rights related transaction processes. Examples of these additional proposed rule changes include the following (Please see individual "Rule Summaries" throughout this Notice for more details):

OAR 690-002 (Protests and Contested Cases) – Improve efficiency in contested case management by allowing for consolidation or bifurcation by the Department prior to referral and by adding time and cost constraints during the Discovery phase; allowing for electronic filing of certain documents; and requiring parties to provide updated contact information. These changes apply to all contested cases held by the Department, except for water rights adjudications held under ORS Chapter 539.

OAR 690-014 (Certified Water Right Examiners and Preparation of Claims of Beneficial Use) – Connect pump test rules (Division 217) with claims of beneficial use and align with the proposed standardized mapping criteria (OAR 690-305(new)).

OAR 690-017 (Cancellation of Perfected Water Rights) – Describe the Department’s process when forfeiture is raised in a protest on a transfer application; provide that the Director, and not the Commission, shall consider any exceptions to the Administrative Law Judge’s proposed order and issue a final order; and clarify information Department includes in notice and public affidavits.

OAR 690-018 (Allocation of Conserved Water) – Specify measurement and reporting requirements; align with other transfer processes; clarify processing steps for approval of a conservation project, completion of a conservation project and testing phase, and finalization of a conservation project; and align with the proposed standardized mapping criteria (OAR 690-305(new)).

OAR 690-077 (Instream Water Rights)– Remove language inconsistent with statute with respect to consideration of “estimated natural annual flow (EANF)” for transfers, leases, and allocations of conserved water; refine map requirements; align rule language and application processes with respect to definitions for “enlargement” and “injury”; create rules for efficient processing of instream lease renewal applications; repeal forfeiture of instream water rights; align precedence of future uses of multipurpose storage projects process with water right processing steps; allow districts to keep written authorization on file.

OAR 690-305 (General Map Criteria) - OAR 690-305 (General Map Criteria) - Establish a new Division with standard criteria for maps submitted in support of water right transactions. These rules apply to applications submitted under Chapter 690, Divisions 14, 18, 310, 320, 325, 340, 380, and 382.

OAR 690-310 (Water Right Application Processing) –Require notice to landowner if someone other than the landowner applies for a water right on that land; remove application requirements for information available to the Department elsewhere; specify parameters for issuing an administrative hold; align with standardized mapping criteria (OAR 690-305(new)); and improve alignment with the APA.

OAR 690-315 (Water Right Permit Extensions) –Align with existing guidance related to counties, municipalities and districts constructing new storage projects (ORS 537.248); eliminate checkpoint conditions given new HB 3342 limitations on the allowable number and length of extensions of time; clarify Department’s long-standing practice of denying applications when permit holder has used water but failed to demonstrate compliance with fish-related permit conditions that are prerequisites for water use; add information about how the Proposed Final Order on the extension application may initiate cancellation proceedings under ORS 537.260(1), if the Department finds that the permit cannot be extended, and if the requirements for initiating cancellation proceedings under ORS 537.260(1) are met; and improve alignment with the APA.

OAR 690-325 (Assignment for a Water Right Permit Split and Request for Issuance of Replacement Permits) – Clarify

application requirements; align with Divisions 380 and 382; allow for acceptance of digital seals from Certified Water Rights Examiners (CWRE); align with standardized mapping criteria; and improve alignment with the APA.

OAR 690-340 (Water Use Authorization) – For new water right applications requesting to use stored water only, provide greater clarity on how the Department determines that a public comment has raised or identified a public interest issue that merits moving the application out of the expedited process and into the standard review process; align with standardized mapping criteria.

OAR 690-380 (Water Right Transfers) – Clarify process when forfeiture is submitted as part of a transfer process; clarify that place of use transfer must involve a physical change that alters where the water right is located consistent with enlargement provision; align with the proposed standardized mapping criteria (OAR 690-305(new)); clarify that the Department may condition transfers and permit amendments to prevent injury and enlargement resulting from the proposed changes; remove groundwater rights from -2120 as it relates to changes in point of diversion to reflect historical use; add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved; add language to -2330 to clarify that following approval of a substitution, no other changes can be made to the water right unless the applicant terminates the substitution and files a new transfer application; add language to the specific to general industrial use change process in -2340 to provide the Department with information necessary to evaluate the change; clarify processes related to consent to injury; adopt new rules for permit amendment applications; and adopt new rules for renewal of a previously approved temporary transfer under certain circumstances.

OAR 690-382 (Groundwater Registration Modifications) - Align with the proposed standardized mapping criteria (OAR 690-305(new)); add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved; achieve greater processing consistency with Division 380 pertaining to transfers and permit amendments; provide greater clarity around the options for resolving layering issues

Other Proposed Changes: The Department has proposed updates to OAR 690-300 (Definitions), pertaining to definitions, to ensure consistency with the current draft rules. The Department also has proposed several minor changes to correct spelling, grammar, format, rule numbering, statutory and rule references, and other statutory minor corrections (ORS 183.335(7)). Please see individual “Rule Summaries” throughout this Notice for more details.

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 Resources Department for a complete list of documents relied upon and the location(s) of those documents.

Amos, A. et al. 2025, Letter to Governor Kotek Re: An appeal for gubernatorial leadership to modernize Oregon’s water laws, available at <https://olis.oregonlegislature.gov/liz/202311/Downloads/CommitteeMeetingDocument/284052>.

Bridge Creek Ranch v. OWRD, 329 Or App 568 (2023), available online at <https://caselaw.findlaw.com/court/or-court-of-appeals/115636741.html>.

ECONorthwest 2019, Economic Contributions of Oregon’s Commercial Marine Fisheries, Report prepared for Oregon Department of Fish and Wildlife, available at <https://econw.com/project/economic-contributions-of-oregons-commercial-marine-fisheries/>

Kotek, T. 2025, Letter to Secretary Read RE: Senate Bill 5543 and House Bill 2803, available at

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

Oregon Employment Department (OED) 2025, Quarterly Census of Employment and Wages, available upon request from OED, <https://www.qualityinfo.org/>.<https://www.qualityinfo.org/>.

Oregon Joint Committee on Ways and Means Subcommittee on Natural Resources, June 10, 2025, hearing recording available at <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2025061075>.

Or Laws 2025, ch 282, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0282.pdf.

Or Laws 2025, ch 575, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0575.pdf.

Or Laws 2025, ch 605, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0605.pdf.

Or Laws 2023, ch 55, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2023orlaw0055.pdf.

Or Laws 2021, ch 633, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0633.pdf.

Oregon Legislative Fiscal Office 2025a, Impact of Proposed Legislation – Measure HB 3342 – A (reviewed April 10, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/90089>.

Oregon Legislative Fiscal Office 2025b, Impact of Proposed Legislation – Measure HB 3342 – B (reviewed May 14, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/91770>.

Oregon Legislative Fiscal Office 2025c, Impact of Proposed Legislation – Measure HB 3544 – A (reviewed June 3, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/92955>.

Oregon Revised Statutes (ORS) 183, available online at https://www.oregonlegislature.gov/bills_laws/ors/ors183.html.

Oregon Secretary of State, 2025, State Board of Geologist Examiners, available at <https://sos.oregon.gov/blue-book/Pages/state/executive/geologist-examiners.aspx> (accessed December 19, 2025).

OWRD, 2025a, Annual Performance Progress Report: Reporting Year 2025, available at https://www.oregon.gov/owrd/WRDReports/APPR_WRD_2025.pdf

OWRD 2025b, Comments Received Nov 12 – Dec 5, RAC 9 Meeting Materials, available at <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Documents/Comments%20Received%20Nov%2012%20thru%20Dec%2025.pdf>.

OWRD 2025c, Strategic and Diversity, Equity, Inclusion and Justice Plan (2025-2030), available at <https://www.oregon.gov/owrd/aboutus/Documents/OWRD%202025-2030%20Strategic%20and%20DEIJ%20Plan.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.pdf.

Rosenberger, R.S. 2018, Total Net Economic Value from Residents' Outdoor Recreation Participation in Oregon, Final

Report prepared for Oregon State University, available at <https://www.oregon.gov/oprd/PRP/Documents/SCORP-2018-Total-Net-Economic-Value.pdf>.

United States Department of Agriculture (USDA), Summary by Size of Farm: 2022, Table 71 in 2022 Census of Agriculture, Oregon State and County Data (2024), available at https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Oregon/st41_1_071_071.pdf.

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

Water is a shared, vital, and finite resource. The Oregon Water Resources Department strives for meaningful engagement, transparent decision-making, and accessible services. The Department also recognizes the environmental and systemic challenges that impact water accessibility. While water scarcity affects all communities, some racially diverse communities may face disproportionate risks and burdens. The Department further acknowledges Oregon's long-standing exclusionary water policies, particularly the prior appropriations system, which is common among many western states. This system has excluded some communities from securing water rights as they were often tied directly to property ownership. While this system is set in law and it is the Department's responsibility to follow the law, the agency also has a responsibility to analyze and inform on how policies impact racial equity around the state. (See OWRD 2025c).

The proposed rule changes are intended to streamline and modernize processes with respect to water rights transactions. To the extent that economics and racial inequity are correlated, improved efficiency should help lower long-term costs associated with processing water rights transactions, benefitting applicants equitably as well as interested parties participating in the process. In the near term, however, some parties may experience higher costs due to the need to secure professional advice (e.g., certified water right examiners, water law attorneys, technical consultants) in order to interpret and navigate the updated rules. Consequently, there may be some racial inequity with respect to expenses associated with applying for and participating in water transactions. However, during rule development the Department has sought to create clearer, more consistent language in the rules and to increase transparency by incorporating existing Department policies and practices into the rules. This should mitigate some of the near-term costs for applicants and interested parties participating in the process.

Tribal Engagement: Consistent with Government-to-Government coordination and consultation responsibilities, on September 5, 2025, the Department notified (in writing and by email) all nine federally recognized Tribes in Oregon of the water rights transactions process improvements rulemaking effort, inviting participation informally during the RAC process and formally through government-to-government consultation. Representatives of the Confederated Tribes of Grand Ronde and the Confederated Tribes of the Umatilla Indian Reservation accepted the invitation to serve on the Rules Advisory Committee. The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians requested a briefing which was held on September 19, 2025. The Klamath Tribes requested formal consultation, which occurred with the Director on October 21, 2025.

Department staff have provided regular staff-to-staff updates during quarterly Legislative Commission on Indian Services (LCIS) meetings. Staff updates were provided to the LCIS Cultural Resources Cluster on August 27 and October 9, 2025. Staff updates were provided to the LCIS Natural Resources Work Group on October 9, 2025. The Department will continue to engage with the Tribes upon request throughout the public comment period.

RAC Input: The Department extended invitations to Oregon non-profit organizations focused on racial justice and equity in the context of water, as well as broader environmental, economic, and social issues. OWRD also invited all nine federally recognized Tribes to serve on the RAC. The final RAC composition included members from Oregon's Tribal

communities, environmental organizations, local governments, farmers, ranchers, consultants, water rights attorneys, and certified water rights examiners.

The RAC discussed the issue of racial equity in the context of this rulemaking on October 29, 2025, during the seventh RAC meeting, noting the following:

- Members of the RAC were perhaps not the most qualified to evaluate the racial equity impacts of the rulemaking; and
- Everyone in Oregon will benefit from the rulemaking, so the rulemaking impacts everyone equitably.

A Tribal representative of the Confederated Tribes of the Grand Ronde, who also serves on the RAC, stated that no one has suffered greater impacts historically as a result of prior appropriation than Tribes. She noted that lands, trees, water, fish, and other resources have been stolen over time. However, she views issuance of instream water rights as a mechanism for addressing some of the harm caused by overallocation of water. She noted the recent challenges faced by the Klamath Tribes seeking restoration of historic fisheries and streamflows. She also lamented the lack of care in honoring Tribal sovereign rights over time.

Public Input: Further public comments on this rulemaking and its impact on racial equity in the state is encouraged throughout the posted public comment period.

FISCAL AND ECONOMIC IMPACT:

According to Pilz et al. (2023), approximately 48% of Oregon's total economic output and 44% of the state's employment rely on water-dependent businesses. Notably, these estimates are conservative, because they do not include the economic contributions from recreation, commercial fishing, or power generation (Pilz et al. 2023). Pilz et al. (2023) examined the state's water-dependent businesses, revealing the following regarding overall contributions to the state's economy. Economic modeling and available information suggest:

- Industry (which includes manufacturing, health care/hospitals, colleges/universities, hotels/motels, restaurants/food service, car washes, dry-cleaning/laundry, landscaping/horticulture, breweries/wineries, waste remediation) contributes \$221 billion annually (see Figure ES-7 and accompanying narrative).
- Irrigated agriculture contributes \$7.3 billion annually.
- In 2022, salmon fishing and related seafood processing contributed \$23.5 billion (see Table 18, citing ECONorthwest 2019).
- In 2017, freshwater-related outdoor recreation contributed \$5.5 billion (see Table 11, citing Rosenberger 2018).

Economic contributions for the categories use different valuation methods, depending on the data source. While the categories are not directly comparable to each other, they each show that water-dependent businesses in Oregon provide substantial economic value.

The proposed rule changes will protect the substantial investment Oregon has made in these and other water-dependent businesses by improving efficiency and standardizing processes, saving the Department and public time and money while providing greater certainty for those who rely on water rights transactions and related processes. Because the new rules are intended to streamline and modernize a wide array of these processes, the Department cannot state whether entities will experience greater costs or lower costs overall. However, the Department has provided estimates for specific transactions as described below.

In the near term, the Department anticipates that some parties may face additional costs associated with familiarization with the new rules, including the need for some parties to secure professional advice. However, during rule

development the Department has sought to create clearer, more consistent language in the rules and to increase transparency by incorporating existing Department policies and practices into the rules. This should mitigate some of the near-term costs for applicants and interested parties participating in water right transaction processes. Ultimately, the process improvements should result in greater efficiency and more timely responses, which may reduce overall costs. Whether a water right transaction results in an approval or denial, providing more timely decisions will reduce uncertainty for water-dependent businesses. For those water right transactions that result in Department approval, providing more timely responses will allow water-dependent businesses to realize the associated economic benefits sooner. Economic benefits associated with an approved water right transaction often far outweigh the costs of the application process.

The Department appointed a Rulemaking Advisory Committee (RAC) to assist in development of the rules. The Department sought the RAC's input and recommendations on the fiscal impact of the rules. The Department acknowledges that not all members of the RAC agree with its assessment of fiscal and economic impacts. One member of the Committee representing irrigation districts provided the following written comments (OWRD 2025b):

"The 18 different [Divisions] impacted by this rulemaking have potential impacts to numerous industries, including potential negative economic impacts. The current statement is misleading as it proports it will lead to increased efficiency for water dependent businesses. This would be accurate if the rulemaking was properly focused on implementing only the required provisions 2025 Legislation. The RAC has been rushed to provide feedback and even under the most optimistic view it is highly likely there are going to be errors, unclear or conflicting rule language, and unintended consequences for both the Department and all of the water interests who rely on timely and efficient transactions.

Overall, we feel the rushed process for this rulemaking will inevitably lead to unintended impacts and higher fiscal burden to a range of stakeholders. We are particularly concerned about impacts to water users, municipal and agricultural water suppliers, and other entities. It is likely there be increased expenses from hiring consultants or attorneys to determine what some of these proposed rule changes mean. We are also concerned that it will be difficult for WRD to implement some of the proposed changes, leading to further delays in transaction processing rather than increased efficiency and improved timing."

Cost of Inaction: Currently, the Department has an active queue of over 2,500 applications for all types of water rights transactions. OWRD estimates that under current processing standards, water right processing staff would need to increase by around 30% to achieve manageable workloads within 10 years (i.e., between 4-12 months processing time per application, depending on the transaction). Thus, without any policy changes to make the process more efficient and without additional investments in staff, the Department is unlikely to achieve a manageable workload that improves processing times and customer satisfaction.

The labor costs for state employees, including health care premiums, union negotiated raises, retirement contributions, cost of living increases, etc., has steadily increased over the last several decades. The longer it takes to process an application, the higher the discrepancy between the fees paid at the time the application was submitted and the actual cost of the staff time to process that application over the years. This delay creates fee revenue shortfalls and compounds high workloads at the Department. This delay also results in increased costs to applicants and other interested parties who continue to pay for consultants and attorneys that help navigate the water right and contested case processes over what may be a lengthy period of time.

Additionally, a lack of clarity in rules contributes to confusion and sometimes litigation over the Department's analyses and authorities, further prolonging processing times and increasing costs for both the Department and the applicants

and protestants during the contested case process. The Department estimates that for the 2021-2024 fiscal period, the average cost in Department of Justice (DOJ) and Office of Administrative Hearings (OAH) fees alone for OWRD, averaged \$51,600 for a single protest, with the most expensive protest costing over \$500,000. For the last several biennia, the Department has exceeded its legal expenditures budget, resulting in several emergency appropriations from the Legislature, and in some cases, administrative management of costs by holding vacant positions across the agency open for longer. This impacts other operations of the agency that provide services to Oregonians.

As more frequent and intense drought conditions contribute increasingly to water scarcity, impacting both surface and groundwater availability, current policies and processes that are confusing and inefficient pose a challenge to water users as well as those who support leasing and transferring water instream. The timely processing of water right transactions is critical for small businesses, local governments, and the general public. Instream flows also provide immeasurable benefits to Oregon's nine federally recognized Tribes as well as the broader public, and those businesses that rely on instream flows such as recreation and guiding businesses.

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).^{??}

State Agencies: Implementation of Or Laws 2025, Chapter 282, is estimated to have a minimal impact on the Water Resources Department related to application processing and fee administration. The potential revenue associated with retained fees from returned or withdrawn applications is indeterminate, as the new staged payment process is not yet defined and may result in no fee collection for applications in critical or restricted groundwater areas. Implementation of the application review and return procedures outlined in the legislation are expected to be absorbed within existing staffing and resources. (Oregon Legislative Fiscal Office 2025a; Oregon Legislative Fiscal Office 2025b).

The Department currently administers contested case procedures for protested water right transactions and coordinates with the Office of Administrative Hearings (OAH) for hearing support. These responsibilities will continue if the new rules are adopted. However, implementation of Or Laws 2025, Chapter 575, will require the Department to update internal and external guidance materials, decision documents, and workflow tracking tools. Updates to the Water Right Information System (WRIS) also will be necessary to reflect new requirements for processing protest submissions, party status requests, and the transition from proposed to final orders. While there may be minor administrative or IT impacts, these are expected to be manageable within existing resources.

Or Laws 2025, Chapter 575 adds a new fee for requesting party status for a protest on a transfer. The Department reports receiving a low number of applicable requests in the prior biennium and anticipates between one and ten such requests per biennium going forward. Based on this estimate, the Department expects a minimal revenue increase of up to approximately \$10,000 per biennium from fees authorized for protest filings and participation in contested case proceedings. (Oregon Legislative Fiscal Office 2025c). Proposed amendments to Division 382 (Groundwater Registration Modifications) update existing fees, from a flat fee to 70%-100% of the maximum fee set in statute, which is typically raised every four years. The Department does not anticipate a significant increase in revenue resulting from this change.

Proposed changes to Division 2 make the contested case process more efficient by reducing internal staff time needed

for processing and the legal fees paid to the Department of Justice (DOJ) and the OAH. If OWRD resolves or refers more protests because of a more efficient process, those savings may be then used for increased contested case work, reducing the cost per case. Additionally, Oregon Department of Fish and Wildlife (ODFW) may experience increased DOJ expenses if OWRD can refer more instream water right protests to contested case (instream water rights are the most protested transactions).

In addition to OWRD, ODFW, Oregon Department of Environmental Quality (DEQ), OAH, DOJ, and other state agencies may experience additional costs due to additional time to interpret and implement the new rules. However, because the new rules were drafted in cooperation with these agencies and incorporated many of their suggestions for improved efficiency, the new rules should help streamline their involvement in processing of water rights transactions and decrease those costs over time. These agencies may experience increased legal costs associated with disputes over statutory interpretation and rule implementation in the near terms; DOJ legal costs are passed along to respective agencies. However, in the long-term, OWRD anticipates lower economic impacts than would occur in the absence of the rulemaking.

Any state agency that holds a water right or applies for a water right, or has an interest in water appropriation may experience fiscal impacts from this rulemaking including, but not limited to: State Lands, Transportation, Administrative Services, Oregon State Parks, Fish and Wildlife, Forestry, Corrections, Public Safety Standards and Training, Veterans Affairs, Oregon Water Resources Department, Oregon State Hospital, Oregon Youth Authority, and Oregon Military Department. Oregon higher education and universities also hold water rights.

Local Governments: Any local government that holds a water right, applies for a water right, or has an interest in the appropriation of water may experience fiscal impacts from this rulemaking. As with affected state agencies, local governments also may experience short-term additional costs associated with interpretation and application of the new rules. In the long-term, OWRD anticipates lower economic impacts than would occur in the absence of the rulemaking.

The proposed rules remove requirements for the Department to request that local governments post certain Department notices physically, and the requirements for local governments to file check point reports for certain permit extensions. This will remove the administrative burden of the work, especially on small municipalities that may not have many staff available to carry out these requirements. The rulemaking does not impact Water Management and Conservation Plan requirements set by water right permit conditions for municipal water suppliers.

Public: Members of the public, including business owners, who hold a water right, apply for a water right, or have an interest in the appropriation of water may experience fiscal impacts from this rulemaking, though these impacts should be predominately positive. Likewise, members of the public with interests in more timely processing of instream water rights and instream leases also may experience relatively positive fiscal impacts.

Members of the public new to water rights transactions should not be impacted financially any differently than they would have been prior to the rulemaking. Applicants familiar with the existing processes may, in the short term, need to rely on certified water right examiners (CWRE), water law attorneys, and/or technical consultants to assist in completing transactions as they become familiar with the new rules. Members of the public new to water right transactions will not be transitioning from knowledge of existing processes and should not experience this temporary cost.

In the long-term, OWRD anticipates lower economic impacts than would occur in the absence of the rulemaking. As explained above, OWRD estimates that the rules will, in the long term, reduce costs through faster, more efficient application and contested case processes. OWRD also estimates that members of the general public will benefit

economically from more timely processing of instream water right and lease transactions. Overall, rules that facilitate more consistent, predictable, and timely decisions provide benefit to the general public and also those who rely on Oregon's water.

(2)(a) Effects on Small Businesses: Estimate the number and type of small businesses subject to the rule(s).²²

ORS 183.336 requires agencies to use available information to estimate the number and type of small businesses likely to be subject to the proposed rules. A small business is defined as "a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or fewer employees" (ORS 183.310). According to the State of Oregon Employment Department (2025), there are just over 148,000 small businesses in the state (as defined by ORS 183.310) that pay unemployment insurance (UI) taxes. The sector breakdown is as follows: Natural Resources and Mining 4,678; Construction 17,102; Manufacturing 5,763; Trade, Transportation, and Utilities 20,471; Information 5,994; Financial Activities 10,564; Professional and Business Services 32,988; Education and Health Services 20,809; Leisure and Hospitality 12,341; Other Services 14,509; and Unclassified 2,861. Notably, this accounting does not include many businesses within the agricultural sector that are not required to pay UI taxes. OWRD does not have information on the number of small agricultural businesses as defined by ORS 183.310. According to the 2022 Census of Agriculture (USDA 2024), there are just over 35,500 farms in Oregon, two-thirds of which are under 50 acres in size.

OWRD cannot estimate how many small businesses rely on water transactions to conduct business as the Department is unaware of any data sources that provide that information. That said, these rule changes may impact anyone, including any small business, that holds a water right, applies for a water right, or has an interest in how water is used in the state. Common industries that hold water rights include, but are not limited to agriculture, nurseries, industry and manufacturing. Other types of small businesses may hold water rights if their water use does not qualify for one of the exemptions under ORS 537.545 and they do not obtain water from a drinking water provider. Businesses that may not directly hold water rights but provide services to those seeking to participate in the water rights process may also be impacted by these rules, such as CWREs, engineers, hydrologists and hydrogeologists, attorneys, and other professionals and consultants. OWRD cannot estimate how many businesses practice in this area, however, according to the Secretary of State's Office (2025), there are 870 registered geologists in Oregon; Oregon also has approximately 250 CWREs (per request to OSBEELS). Other fields are too broad for these statistics to provide a meaningful representation.

(2)(b) Effects on Small Businesses: Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

OWRD does not anticipate that the cost of reporting, recordkeeping, or administrative services to significantly increase because of the rulemaking.²³ In many instances, the rules are conforming rule to existing statute, standardizing processes to be more similar across transaction types, or restructuring when certain information that is already required should be submitted, such as pump test results. In fact, because the new rules are designed to streamline the processing of water rights transactions, these costs may eventually decrease.

Examples not dictated by statute include removal of some information requirements for new water right applications (Division 310) that OWRD already has access to, removing check point reporting for quasi-municipal and group domestic permit extensions, removing submission of landowner approval documentation for irrigation districts submitting applications for instream lease, and adding a new streamlined process for instream lease renewal. These changes to the process are anticipated to reduce the cost of compliance with these sections of the rules; however, because these changes only remove portions of processes, these reductions are likely too small to quantify on their own.

There are some instances where increased reporting or administrative work for small business could increase. The

clarified conditioning authority to protect from injury and enlargement on transfers may result in some water users needing to comply with additional conditions, including water use measurement and reporting. OWRD does have a water use measurement cost-share fund available to assist landowners with purchasing and installing measurement devices and equipment. OWRD does not estimate that these limited additional costs constitute a significant adverse impact on small businesses.

Some other divisions add information for applications or mapping components to processes that already exist. For example, Division 77 requires additional information about the lessor and adds a few more parameters that must be included in the submitted map. Division 310 requires proof of signatory authority for someone signing on behalf of an entity and Division 325 adds more specificity on the type of information that can be requested on the application.

While some of these proposed rules will add some new reporting requirements or administrative work, the rules do not add brand new processes, and applicants generally would provide this information within the forms and maps already required during application submittal. The Department anticipates that incurred cost of compliance will be minimal, as the additional cost for each item is likely too small to quantify on their own.

(2)(c) Effects on Small Businesses: Estimate the cost of professional services, equipment, supplies, labor and increased administration required to comply with the rule(s).

OWRD estimates that the rules may result in a short-term increase in the cost of professional services, including attorneys, CWREs, and consultants, for some small businesses, due to the need for small businesses to familiarize themselves with the new requirements. OWRD estimates that these costs will decrease in the long term because the new rules are designed to streamline the processing of water right transactions and clarify numerous aspects of water transaction processes.

In some cases, the application requirements are reduced, which should make the process of filling out an application quicker, and therefore less expensive, reducing labor, professional service, and administrative costs. Further, it is anticipated that standardization across different processes will make it easier and more efficient for applicants and associated professionals to know what is expected and to allow for some standardization for professionals in their own workflows (for example, having standardized mapping baseline criteria for most processes). Rule changes allowing for electronic document submission are likely to decrease supply and administrative costs.

Some specific rule changes may result in increased labor, either by the small business or via professional services, as described in more detail below.

Division 305 and mapping standardization across divisions could have varying impacts. A standardized baseline helps maps received by the OWRD look consistent. This can help those interfacing with water rights processes and records to know what they are looking at and spend less time trying to understand what maps mean. It also means that those applying for various transactions know what is expected, which can reduce their costs and increase efficiency. On the other hand, this may require some CWREs that amend their processes to comply with information required, such the requirement for a digital copy to the map to be submitted.

Parties who secure private attorneys, CWREs, or consultants to aid in the contested case process laid out Division 2, may face added financial costs related to new requirements that direct discovery requests exceeding 30 hours of staff time through the public records request process, which is subject to fees established under Oregon Department of Administrative Services Policy #107-001-030. Additionally, new standard hearing schedules could accelerate the timelines for contested case, which may result in legal costs being front loaded, rather than more spread out over an

extended period. Similar impacts may occur when settlement conversations are required. That said, the proposed changes intend to promote fairness and uniformity in the process regardless of income status by setting limits on the discovery methods and process timelines, which may result in more cost-effective hearings for all parties.

The clarifications around criteria that must be met to secure an administrative hold on processing a new water right application may require additional labor or professional services; however, administrative holds are not a requirement but rather an option for applicants, and applicants already are required to show that any requested administrative hold is reasonable and necessary. Limitations on the cumulative length and available reasons for administrative holds may mean that applicants and their consultants will need to accelerate work to comply with new timeline restrictions.

For historic points of diversion changes in Division 380, most of the rule changes apply to existing processes or are the products of new legislation and do not in themselves create new costs or requirements. However, some changes may result in new requirements. For example, for historic POD changes an applicant must now send a notice to affected water right holders via certified mail instead of regular mail or hand delivery. However, OWRD does not anticipate that the cost of equipment supplies, labor or administration will increase because of the rulemaking. Similar positive impacts on process efficiencies are expected to apply to these transactions as well.

Division 382 (Groundwater Registration Modifications) amends the existing fees from a flat fee to 70%-100% of maximum fee set in statute, which is typically raised every four years. This will result in an increase in the Groundwater Registration Modification fees each time maximum fee in statute is raised. Any water users applying to modify their groundwater registration will be subject to this increase in fees.

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

The Rules Advisory Committee included members representing small businesses, and others most likely to be affected by this rulemaking, including individuals that are part of the following sectors or organizations that represent the following sectors: CWREs, consultants, irrigators, farmers, ranchers, nurseries, power providers, cities, special districts, counties, and conservation organizations. Tribal staff also participated in the RAC meetings, and the agency invited formal Government-to Government consultation. Of these entities, all sectors may either be small businesses, have members that are small businesses, or have constituents that are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

690-002-0000, 690-002-0005, 690-002-0010, 690-002-0023, 690-002-0025, 690-002-0030, 690-002-0035, 690-002-0075, 690-002-0081, 690-002-0085, 690-002-0089, 690-002-0095, 690-002-0105, 690-002-0175, 690-002-0190, 690-002-0200, 690-002-0205, 690-002-0210, 690-002-0215, 690-002-0220, 690-002-0225, 690-002-0230, 690-002-0235, 690-014-0005, 690-014-0020, 690-014-0030, 690-014-0050, 690-014-0090, 690-014-0100, 690-014-0170, 690-017-0005, 690-017-0010, 690-017-0200, 690-017-0300, 690-017-0400, 690-017-0500, 690-017-0600, 690-017-0700, 690-017-0800, 690-018-0010, 690-018-0012, 690-018-0040, 690-018-0050, 690-018-0062, 690-018-0065, 690-018-0090, 690-077-0000, 690-077-0010, 690-077-0015, 690-077-0019, 690-077-0020, 690-077-0027, 690-077-0029, 690-077-0031, 690-077-0037, 690-077-0039, 690-077-0043, 690-077-0046, 690-077-0047, 690-077-0051, 690-077-0052, 690-077-0054, 690-077-0065, 690-077-0070, 690-077-0071, 690-077-0075, 690-077-0076, 690-077-0077, 690-077-0079, 690-077-0080, 690-077-0100, 690-077-0105, 690-077-0110, 690-300-0010, 690-305-0000, 690-305-0010, 690-310-0010, 690-310-0020, 690-310-0040, 690-310-0050, 690-310-0070, 690-310-0080, 690-310-0090, 690-310-0100, 690-310-0120, 690-310-0130, 690-310-0140, 690-310-0150, 690-310-0160, 690-310-0170, 690-310-0180, 690-310-0190, 690-310-0200, 690-310-0210, 690-310-0220, 690-

310-0230, 690-310-0270, 690-315-0010, 690-315-0020, 690-315-0030, 690-315-0040, 690-315-0050, 690-315-0060, 690-315-0070, 690-315-0080, 690-315-0090, 690-315-0100, 690-325-0010, 690-325-0020, 690-325-0030, 690-325-0040, 690-325-0050, 690-325-0070, 690-325-0080, 690-325-0090, 690-325-0100, 690-325-0110, 690-340-0030, 690-340-0060, 690-380-0010, 690-380-0090, 690-380-0100, 690-380-2110, 690-380-2120, 690-380-2130, 690-380-2200, 690-380-2240, 690-380-2250, 690-380-2260, 690-380-2300, 690-380-2330, 690-380-2340, 690-380-3000, 690-380-3100, 690-380-3220, 690-380-3400, 690-380-3410, 690-380-4000, 690-380-4005, 690-380-4010, 690-380-4020, 690-380-4030, 690-380-4200, 690-380-5000, 690-380-5030, 690-380-5040, 690-380-5050, 690-380-5060, 690-380-5100, 690-380-6030, 690-380-7000, 690-380-7010, 690-380-7020, 690-380-7030, 690-380-7100, 690-380-7110, 690-380-7200, 690-380-7300, 690-380-8000, 690-380-8002, 690-380-8003, 690-380-8004, 690-380-9000, 690-382-0100, 690-382-0200, 690-382-0300, 690-382-0400, 690-382-0550, 690-382-0600, 690-382-0700, 690-382-0800, 690-382-0900, 690-382-1000, 690-382-1100, 690-382-1200

AMEND: 690-002-0000

RULE SUMMARY: This rule is amended to provide clarity on its interface with the Administrative Procedures Act (ORS 183).

CHANGES TO RULE:

690-002-0000

Scope and Purpose ¶

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in this Division (division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR chapter 690 and statutory provisions govern entitlement to a contested case hearing. Contested case proceedings must be conducted in accordance with applicable provisions of ORS chapter 183 that govern contested cases, except as otherwise provided by Or Laws ch 575 and these division 002 administrative rules, or as otherwise specified in the Department's statutes.

Statutory/Other Authority: ORS 183, 536.027, 536.029

Statutes/Other Implemented: ORS 183, 536.027, 536.029, Or Laws 2025, ch 575

ADOPT: 690-002-0005

RULE SUMMARY: This new rule defines the applicability of these rules to contested case proceedings, including a description of when certain rules will apply to protests filed or cases referred prior to the effective date of the rules and a description of which protests will be governed by rules adopted to implement Or Laws 2025, ch 575. The rule also specifies that the notice required by Section 24 of Or. Laws 2025, ch 575 must be mailed.

CHANGES TO RULE:

690-002-0005

Applicability

(1) OAR 690-002-0000 through 690-002-0023 and 690-002-0080 through 690-002-0190 apply to all contested case hearings for the Water Resources Department, except for contested case hearings held pursuant to ORS chapter 539. ¶

(2) OAR 690-002-0200 through 690-002-0235 apply to: ¶

(a) A contested case hearing under a provision of ORS chapter 537 or 540 that references Or Laws 2025, ch 575, section 2 and 3a. ¶

(b) A contested case hearing on an application related to the use of water under a provision of ORS chapter 537, 540 or 541 in which the contested case proceeding is provided for in rule or order and the rule or order refers to Or Laws 2025, ch 575, section 2 and 3a. ¶

(3) OAR 690-002-0025 through 690-002-0075 apply to contested case hearings not listed in subsection (2) of this rule, except for contested case hearings pursuant to ORS chapter 539. ¶

(4) For cases under subsection 2, except as provided in subsections (5) and (6): ¶

(a) These Division 2 rules apply to contested cases that have not been referred to the Office of Administrative Hearings before April 1, 2026. ¶

(b) The Department shall use the rules in effect at the time of referral for those cases referred prior to April 1, 2026. ¶

(5) For cases under subsection 2, the requirements of Or Laws 2025, ch 575, section 3, governing the filing of protests and requests for party status, apply to protests and requests for party status with deadlines on or after January 1, 2026. ¶

(6) For protests on cases under subsection 2 that were pending on or before January 1, 2026, the Department shall provide to applicants, protestants, persons that submitted a request for standing, persons that have submitted standing statements, and persons that have requested or been granted party status mailed notice of the provisions and requirements of Or Laws 2025, ch 575, section 2 and 3. The notice shall also state that a person that submitted a request for party status before January 1, 2026, need not amend the request. The Department shall provide not less than 90 days after issuance of the notice for: ¶

(a) A person that submitted a request for standing to request party status. ¶

(b) A protestant to amend the protest as necessary to comply with the provisions of Or Laws 2025, ch 575, section 3. The amended protest may not add issues not raised in the original protest. ¶

(7) For cases not under subsection 2, these rules will apply to protests filed after April 1, 2026.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 183, Or Laws 2025, ch 575

AMEND: 690-002-0010

RULE SUMMARY: This rule amendment clarifies existing rule language and provides that "hearing requests," as used in certain Department statutes and rules, are considered "protests" for the purposes of this Division.

CHANGES TO RULE:

690-002-0010

Definitions ¶¶

The following definitions apply to OAR chapter 690, division 002:¶

(1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.¶

(2) "Commission" means the Water Resources Commission.¶

(3) "Department" means the Water Resources Department.¶

(4) "Director" means the Director of the Water Resources Department.¶

(5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and ~~the address, as applicable, the address, electronic mail address, or facsimile number to which the document was mailed sent.~~¶

(6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing. ~~Where provided or required by applicable law, a "protest" may include a~~ For the purposes of this Division, where the Department's statutes and rules provide for the right to request for a contested case hearing, the hearing request is considered to be a "protest." Except as provided in ORS 543.230, a protest must be in writing.¶

(7) "Protestant" means any person filing a protest against an action or proposed action.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.310 - 183.497, ORS 536 - 543, Or Laws 2025, ch 575

AMEND: 690-002-0023

RULE SUMMARY: This amendment modifies the rule to make it clear that the rule is referring to representation as allowed by ORS 183.452 and OAR 137-003-0545.

CHANGES TO RULE:

690-002-0023

Agency Representation by Officer or Employee ¶¶

As authorized by the Attorney General pursuant to ORS 183.452, Department officers and employees may ~~appear and participate on behalf of~~ represent the Department and Commission in the following types of contested case hearings:¶¶

- (1) Civil penalty hearings under ORS 537.792 and OAR chapter 690 division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;¶¶
- (2) Civil penalty hearings under ORS 536.900 and OAR chapter 690 division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;¶¶
- (3) Protested water use applications under ORS 537.170 or 537.622 and OAR chapter 690 divisions 77 or 310;¶¶
- (4) Protested conversions of minimum perennial streamflows to instream water rights under OAR chapter 690 division 77;¶¶
- (5) Requests for reservations of water for future economic development under OAR chapter 690 division 79;¶¶
- (6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;¶¶
- (7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;¶¶
- (8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;¶¶
- (9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under 537.211;¶¶
- (10) Non-FERC hydro projects under OAR 690 division 51 and ORS chapters 543 and 543A;¶¶
- (11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;¶¶
- (12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and¶¶
- (13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 183.452, ORS 536 - 543

AMEND: 690-002-0025

RULE SUMMARY: This rule is amended to increase efficiency for the Department and protestants by allowing protests/requests for hearing to be filed by electronic mail and to implement the Or Laws 2025, ch 282, allowance for electronic filing of documents. The rule is also amended to remove an outdated rule reference and, consistent with the definition of “protest” in 690-002-0010(6), to remove references to “request for hearing” and replace them with “protest.” The rule also makes it clear how payments can occur and the need to submit payments to meet the deadline in the absence of an electronic payment system.

CHANGES TO RULE:

690-002-0025

Time for Filing Protests ~~for Request for Hearing~~ Not Governed by OAR 690-002-0005(2) ¶

(1) Pursuant to the Model Rules of Procedure, a protest is timely filed only if:¶

(a) The protest is filed by the applicable deadline ~~as described in OAR 137-003-0520(8)~~; and¶

(b) The protest includes any statutorily required fees.¶

(2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a ~~request for hearing~~ protest is considered filed only when actually received by the Department.¶

(3) A person may ~~not file a protest or request for hearing by electronic mail~~ file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543, Or Laws 2025, ch 282

AMEND: 690-002-0030

RULE SUMMARY: Rule Summary: This rule is amended to reflect that it will not apply to protests governed by Or Laws 2025, ch 575. This rule is also amended to require protests to include the protestant's email address, if the protestant has an email address, and contact information for the protestant's attorney, if the protestant is represented by an attorney. The detailed statement required for protests covered by this rule is based on the agency's determination that it is required due to the complexity of the contested cases covered by this rule.

CHANGES TO RULE:

690-002-0030

~~Form and Content of Protest for Protests Not Governed by OAR 690-002-0005(2)~~

~~(1) Except as otherwise provided in ORS Chapter 537 and OAR 690 divisions 77 and 310 relating to applications for water rights, for protests specified in OAR 690-002-0005(2), or as otherwise provided in ORS Chapters 543 relating to hydroelectric projects, and 543A and in OAR chapter 690, division 17 relating to cancellation of perfected and developed water rights 51, 52, 53 and 54 relating to hydroelectric projects, a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, and include any statutory filing fee. A protest must, and~~ contain a detailed statement of:¶

~~(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;¶~~

~~(b) The specific relief or action requested;¶~~

~~(c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; and¶~~

~~(d)¶~~

~~(d) The electronic mail address of the protestant, if the protestant has an electronic mail address;¶~~

~~(e) The name, address, telephone number, and electronic mail address of the protestant's attorney, if the protestant is represented by an attorney; and¶~~

~~(f) Citation of legal authority or basis for the claim or relief asserted or requested.¶~~

(2) Proof of service upon the person or persons whose rights or application are protested shall be attached to the original protest, unless the protestant is the sole applicant for or holder of the right.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543, Or Laws 2025, ch 575

REPEAL: 690-002-0035

RULE SUMMARY: This rule is repealed because Or Laws 2025, ch575 modifies the process for requesting standing and party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225, rendering this rule obsolete. For rules not governed by OAR 690-002-0225, the model rules govern requests for party status under OAR 137-003 unless otherwise specified in statute.

CHANGES TO RULE:

~~690-002-0035~~

~~Requests for Standing in Matters Involving Applications Made under ORS Chapter 537~~

~~(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing by complying with OAR 690-310-0160.~~

~~(2) Any person who has filed a request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.~~

~~(3) If no protest is filed, and the department does not change the proposed final order, the director must refund the standing fee.~~

~~Statutory/Other Authority: ORS 183.341, 536.025, 536.027~~

~~Statutes/Other Implemented: ORS 537.153, 537.621~~

AMEND: 690-002-0075

RULE SUMMARY: The rule title is amended to clarify that the rule only applies to hearings not governed by OAR 690-002-0005(2). The rule is amended to remove the provision related to issues identified by administrative law judge for clarity, and to update rules to add requests for party status as some cases no longer have requests for standing.

CHANGES TO RULE:

690-002-0075

Scope of Hearing ~~for Hearings Not Governed by OAR 690-002-0005(2)~~ ¶

The issues to be considered in a contested case hearing are limited to issues timely raised by the parties in any protests, requests for hearing, or requests for standing, ~~and as identified by the administrative law judge~~ or party as allowed by applicable law.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543

ADOPT: 690-002-0081

RULE SUMMARY: The rule title is amended to clarify that the rule only applies to hearings not governed by OAR 690-002-0005(2). The rule is amended to remove the provision related to issues identified by administrative law judge for clarity, and to update rules to add requests for party status as some cases no longer have requests for standing.

CHANGES TO RULE:

690-002-0081

Contact Information

Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status or standing, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings, unless timely updated by the party.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543

ADOPT: 690-002-0085

RULE SUMMARY: This rule is adopted to increase efficiency by establishing a default for electronic service in contested case hearings once they are referred to the Office of Administrative Hearings except where another form of service is required by statute or the Attorney General's model rules for contested case hearings or a party requests to use another permissible form of filing and service. The rule will reduce the need for the Department, the Office of Administrative Hearings, and parties to expend time and resources to document consent to electronic service on a case-by-case basis. In the Department's experience, a large majority of parties have access to and prefer electronic methods of service.

CHANGES TO RULE:

690-002-0085

Method of Filing and Service After Referral

After referral, electronic filing and service is the default method of filing and service for contested case proceedings, except:

(1) If another form of service is required by statute or OAR 137-003-0501 through -0700, or

(2) If a party informs the Department prior to referral, or the Office of Administrative Hearings after referral, that the party will be using another method of filing and service permitted under OAR 137-003-0501 through -0700 and/or requests to be served using another method of service permitted under OAR 137-003-0501 through -0700.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543

ADOPT: 690-002-0089

RULE SUMMARY: This rule is adopted to increase efficiency by either allowing for consolidation into a single proceeding or bifurcation into separate proceedings depending on the nature of the protest(s). The rule allows the Department to consolidate or bifurcate prior to referral, and parties to request after referral.

CHANGES TO RULE:

690-002-0089

Consolidation of Proceedings

One or more proposed Department actions may be consolidated into a single proceeding or bifurcated into separate proceedings at the Department's discretion. If, prior to referral, the Department has decided on consolidation or bifurcation, the Department shall notify the parties and the Office of Administrative Hearings of its decision. A party may file a motion with the administrative law judge to consolidate or bifurcate if the Department has not notified the parties of a decision prior to referral.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 183.341

Statutes/Other Implemented: ORS 183.341, ORS 536 - 543

ADOPT: 690-002-0095

RULE SUMMARY: This rule is adopted to prevent discovery from unduly complicating and interfering with the hearing process in Department contested case hearings while still providing procedures sufficient to ensure the fundamental fairness of such hearings. The limitations in this rule are necessary due to the volume of the Department's caseload and the need for speed in completing Department contested case hearings to resolve disputes related to water use and provide interested parties and the public with final decisions in a timely manner.

CHANGES TO RULE:

690-002-0095

Discovery

(1) Requests for admission are not an available method of discovery in contested cases subject to these rules.¶

(2) An administrative law judge may not order responses to more than 10 interrogatories (each subpart to count as a separate interrogatory) in a contested case subject to these rules without the Department's written consent.¶

(3) Requests for production of documents are an available method of discovery in contested cases subject to these rules; provided, however, that if the Department determines that the combined response time to a party's requests for production of documents made to the Department would exceed 30 hours of staff time, the Department may require the requesting party to make a public records request in lieu of a request for production of documents. If the Department requires a public records request and an exemption from disclosure would apply to the public records request but not to a discovery request, the Department will not apply the exemption. The Department will not charge applicable public records fees for the first 30 hours of staff time.¶

(4) A site visit requires the consent of the Department, the parties, and the administrative law judge.¶

(5) Subpoenas for the production of documents made to any party or the Department, or to any employee or agent of any party or the Department, must be issued no later than the deadline for filing a motion to compel.¶

(6) A public records request made to the Department is not a basis for the extension of a hearing schedule if:¶

(a) It is made more than two weeks after the deadline for filing a motion to compel, if the requestor did not file a motion to compel; or¶

(b) It is made more than two weeks after the administrative law judge's ruling on a motion to compel, if the requestor filed a motion to compel.

Statutory/Other Authority: ORS 536.027, ORS 183.630, OAR 137-003-0566(2)

Statutes/Other Implemented: ORS 536.027, ORS 183.630, OAR 137-003-0566(2)

REPEAL: 690-002-0105

RULE SUMMARY: Or Laws 2025, ch 575, modifies the process for requesting party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225 rendering this rule obsolete.

CHANGES TO RULE:

~~690-002-0105~~

~~Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622~~

~~(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6), and OAR 690-002-0035 may file a request to participate as parties or limited parties in the contested case hearing in which standing was obtained following the procedures in OAR 137-003-0535.~~

~~(2) In contested cases conducted pursuant to ORS 537.170 or 537.622, the Administrative Law Judge may only allow persons who have timely filed a request for standing to intervene in the case pursuant to OAR 137-003-0535.~~

~~Statutory/Other Authority: ORS 183, 341, 536.025, 536.027~~

~~Statutes/Other Implemented: ORS 183.341, 537.170, 537.622~~

AMEND: 690-002-0175

RULE SUMMARY: This rule is amended to clarify that the exceptions must identify the authority for exceptions by requiring citations to the record, rules, policies, or statutes. This rule is also amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and to implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

CHANGES TO RULE:

690-002-0175

Exceptions to Proposed Orders of the Administrative Law Judge ¶¶

- (1) If the recommended action in the proposed order issued by the administrative law judge is adverse to any party or the Department, the party or Department may file exceptions and present argument to the Department. Exceptions must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record ~~or to~~ Commission policies to which, rules, or statutes which the party contends support the requested modifications are sought. ¶¶
- (2) Parties must file their exceptions with the Department ~~at its Salem offices~~, by any method allowed in the notice of appeal rights provided in the proposed order. ¶¶
- (3) A party must file any exceptions within 30 days following the date of service of the proposed order on the parties to the contested case proceeding. ¶¶
- (4) Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order. ¶¶
- (5) If the applicable law provides for the Commission to review any exceptions or issue the final order, the Commission may form a subcommittee to review the exceptions and provide a report prior to the Commission issuing a final order.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 183.470, ORS 536 - 543

AMEND: 690-002-0190

RULE SUMMARY: This rule is amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

CHANGES TO RULE:

690-002-0190

Exceptions to Final Orders of the Director ¶

(1) Any party to a contested case hearing held pursuant to ORS 537.170 or 537.622 may file exceptions to a final order. ¶

(a) Parties must file their exceptions with the Department ~~at its Salem offices, by any method allowed in the notice of appeal right in person, by mail such that they arrive by the deadline, or by electronic mail or other electronic means provided in~~ by the final order Department. ¶

(b) The party must file any exceptions within 20 days following the date of service of the final order on the parties to the contested case proceeding. ¶

(2)(a) If a party files an exception to a final order under subsection 1, the Department must refer the exceptions to the Commission. ¶

(b) The Commission must consider the party's arguments contained in its exceptions filed pursuant to subsection (a), and may allow and consider oral arguments by all parties to the contested case hearing, prior to issuing a final order on exceptions. ¶

(c) The Commission may form a subcommittee to review the exceptions and provide a report to the Commission. ¶

(3) Where exceptions are timely filed to the final order, within 60 days from the close of the exception period, the Commission must either issue a modified final order or deny the exceptions and affirm the final order.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.341, ORS 537.173, ORS 537.626

ADOPT: 690-002-0200

RULE SUMMARY: This rule is adopted to establish notice requirements for referral of protests to the Office of Administrative Hearings. The rule will increase efficiency by requiring provision of the Department's file and encouraging discussions concerning settlement and the issues to be decided at hearing prior to referral.

CHANGES TO RULE:

690-002-0200

Pre-referral Notice

The Department will notify the parties prior to referring a protest to the Office of Administrative Hearings. The Department's notice will include a copy of the agency's file, an offer to engage in settlement discussions, a proposed list of issues to be determined at hearing, and the default hearing schedule provided in OAR 690-002-0205.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536 - 543

ADOPT: 690-002-0205

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishment of a uniform contested case hearing schedule that does not exceed 180 days, and to allow other default schedules to be established where certain case events will not occur.

CHANGES TO RULE:

690-002-0205

Default hearing schedule

(1) Unless extended pursuant to Or. Laws 2025, ch 575, section 2(5) or altered by agreement of the parties, the Department, and the administrative law judge, the deadlines in (a) - (n) apply to contested case proceedings governed by these rules. For any referral that is submitted in compliance with OAR 137-003-0515, deadlines are counted from the date of the Department's referral to the Office of Administrative Hearings. Any of the listed events may occur prior to the applicable deadline.¶

(a) Written objections to proposed issue list provided with notice of referral: 7 days¶

(b) Written responses to objections to proposed issue list: 14 days¶

(c) Discovery requests: 14 days¶

(d) Prehearing conference: 28 days¶

(e) Order on issues list: 28 days¶

(f) Discovery responses: 44 days¶

(g) Motions to compel discovery: 58 days¶

(h) Responses to motions to compel: 65 days¶

(i) Order on motion to compel: 75 days¶

(j) Motions for Summary Determination: 89 days¶

(k) Responses to Motions for Summary Determination: 110 days¶

(l) Ruling on Motions for Summary Determination: 150 days¶

(m) Exhibits and witness lists: 160 days¶

(n) Hearing complete (Evidentiary record closed): 180 days¶

(2) OWRD, in consultation with OAH, may establish other alternate default schedules to govern cases in which parties and OWRD have agreed that certain case events listed in the default schedule in subsection 1 are unnecessary.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implemented: Or Laws 2025, ch 575, section 2(4)

ADOPT: 690-002-0210

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for testimony to be provided orally.

CHANGES TO RULE:

690-002-0210

Form of testimony

An administrative law judge shall, to the greatest extent practicable, require testimony to be provided orally. If written testimony is submitted, it must be subject to oral cross-examination at hearing.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implemented: Or Laws 2025, ch 575, section 2(6)

ADOPT: 690-002-0215

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for conducting a hearing testimony remotely.

CHANGES TO RULE:

690-002-0215

Hearing Location

The administrative law judge shall determine the venue for conducting the hearing, subject to the approval of the Water Resources Department, and shall give preference to conducting a hearing by a remote method.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implemented: Or Laws 2025, ch 575, section 2(7)

ADOPT: 690-002-0220

RULE SUMMARY: The rule is adopted to implement Or Laws 2025, ch 575, section 3a, with respect to establishment of a uniform process for protesting a proposed final order issued by the Department. The rule also makes it clear how payments can occur and the need to submit payments to meet the deadline in the absence of an electronic payment system.

CHANGES TO RULE:

690-002-0220

Protests

(1) Unless a timeline is otherwise specified under ORS chapter 537, 540 or 541, protests must be submitted within 45 days after publication of the notice of the proposed final order in a weekly public notice of the Water Resources Department or, if weekly public notice is not required, within 45 days after issuance of notice of the proposed final order. Protests governed by these rules are considered submitted only when actually received by the Department.¶

(2) Protests actually received after the deadline for submission will not be accepted by the Department. OAR 137-003-0528(1) does not apply to protests governed by these rules.¶

(3) Protests governed by these rules must meet the requirements of Or Laws 2025, ch 575, section 3a. In addition, protests governed by these rules must:¶

(a) Include the electronic mail address of the protestant, if the protestant has an electronic mail address.¶

(b) Include the name, address, telephone number, and electronic mail address of the protestant's attorney, if the protestant is represented by an attorney.¶

(c) Include any required fees.¶

(4) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.

Statutory/Other Authority: Or Laws 2025, ch 575, section 3a

Statutes/Other Implemented: Or Laws 2025, ch 575, section 3a

ADOPT: 690-002-0225

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, Chapter 575, section 3a, with respect to establishing standardized provisions for requesting party status for a contested case after the close of the protest period for a proposed final order. The rule also makes it clear how payments can occur and the need to submit payments to meet the deadline in the absence of an electronic payment system.

CHANGES TO RULE:

690-002-0225

Requests for party status

(1) OAR 137-003-0535 does not apply to requests to participate as parties or limited parties in contested case proceedings governed by this rule.¶

(2) Any person who supports the proposed final order may file a request for party status for the purpose of participating in any contested case proceeding on the proposed final order or for judicial review of a final order resulting from the proposed final order.¶

(3) Party status requests must be filed within 30 days after the deadline for filing a protest.¶

(4) Party status requests are considered filed only when actually received by the Department.¶

(5) The request for party status must be in writing and must include:¶

(a) Names, addresses, and electronic mail addresses (if any) of the requestor and of any organization the requestor represents;¶

(b) Name, address, and electronic mail address of the requestor's attorney, if any;¶

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;¶

(d) If the requestor seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;¶

(e) If the requestor seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the requestor's qualifications to represent such public interest;¶

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.¶

(g) The fees described in ORS 536.060(1)(n) and (o).¶

(6) A person may file a request for party status by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.¶

(7) The Department shall serve a copy of the request on each party by electronic mail, or, if a party does not have an electronic mail address, personally or by mail. Each party shall have seven calendar days from the date of personal or electronic mail service or agency mailing to file a response to the request.¶

(8) The Department shall rule on requests for party status within 60 days of the deadline for submitting party status requests. The Department's ruling on a request for party status shall be by written order and served promptly on the requestor, all parties, and, if the matter has been referred at the time the request is received, the Office of Administrative Hearings. If the request is allowed, the agency shall also provide the requestor with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.¶

(9) In ruling on requests to participate as a party or a limited party, the agency shall consider:¶

(a) Whether the requestor has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;¶

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;¶

(c) When a public interest is alleged, the qualifications of the requestor to represent that interest; and¶

(d) The extent to which the requestor's interest will be represented by existing parties.¶

(10) The Department may treat a request to participate as a party as if it were a request to participate as a limited party.¶

(11) If the Department grants a request, the agency shall specify areas of participation and procedural limitations as it deems appropriate.¶

(12) If the Department does not grant the request, the agency shall refund the fees described in ORS 536.050 (1)(o), pursuant to Or Laws 2025, ch 575, section 3a(6).
Statutory/Other Authority: Or Laws, ch 575, section 3a
Statutes/Other Implemented: Or Laws, ch 575, section 3a

ADOPT: 690-002-0230

RULE SUMMARY: This rule is adopted to establish requirements for notifying the applicant of protests filed.

CHANGES TO RULE:

690-002-0230

Notification of protests received

Within 20 days after the close of the protest period, if the protestant is not the applicant, the Department shall send a copy of all protests timely received to the applicant.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537, ORS 540, ORS 541

ADOPT: 690-002-0235

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, ch 575, section 3, with respect to proposed final orders becoming final if no protest is filed within 33 days and that a hearing is not required if a protestant defaults or withdraws the protest. Specifies that Department may withdraw or reconsider before the 33 days.

CHANGES TO RULE:

690-002-0235

Final orders by default

(1) If no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.¶

(2) If all timely filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to the proposed final order, the Department, if the matter has not been referred to the Office of Administrative Hearings, or the assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.¶

(3) If all protestants to a contested case default as provided in OAR 137-003-0672(3)(b) or OAR 137-003-0672(3)(c), the assigned administrative law judge shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.¶

(4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 183, Or Laws 2025, ch 575, section 3a

Statutes/Other Implemented: ORS 183, Or Laws 2025, ch 575, section 3a

AMEND: 690-014-0005

RULE SUMMARY: The rule is amended to update the date when the new rules pertaining to submission of Claims of Beneficial use go into effect. The amendments also include additional rules that are applicable to the content in this introductory paragraph.

CHANGES TO RULE:

690-014-0005

Introduction ¶

(1) The purpose of these rules is to establish the criteria for certification of Water Right Examiners. They also define the minimum standards and criteria under which Certified Water Right Examiners shall conduct surveys to describe the extent of appropriation for beneficial use of public waters. The rules also describe the information required and procedure for preparing maps to accompany transfer applications. These rules are in addition to OAR 690, ~~and Divisions 020, 051, 300, 310 and 380, 325, 380, and other rules of the Commission.~~ ¶

(2) These rules shall not deprive or limit the Director of the Water Resources Department or the Water Resources Commission from exercising powers or duties bestowed by law. Nor shall they limit or restrict the information the Director or Commission may require from any water user or authorized agent to determine satisfactory proof. ¶

(3) The authority for these rules ~~are~~ is found in ORS Chapters 183, 536, 537, and 540, and in particular ORS 537.797 to 537.799. ¶

(4) These rules shall apply to Claims of Beneficial Use submitted on or after ~~July~~ April 1, 2004. Claims of Beneficial Use submitted before this date shall be subject to the rules in effect at the time of submittal.

Statutory/Other Authority: ORS 536, ~~537~~ ORS 537, ORS 536.027, ORS 536.025

Statutes/Other Implemented: ORS 536, ~~537~~ ORS 537, ORS 537.797 - 537.799

AMEND: 690-014-0020

RULE SUMMARY: The rule amendment adds a definition for "pump test" consistent with OAR 690-217-0010, to support OAR 690-014-0100(1)(k) implementation of OAR chapter 690, division 217 requirements.

CHANGES TO RULE:

690-014-0020

Definitions ¶¶

The definitions found in Oregon Administrative Rules chapter 690, divisions 300 and 380, apply. The following definitions also apply: ¶¶

- (1) "Acre-Foot (AF)" means the equivalent volume of one acre covered with one foot of water (325,851 gallons). ¶¶
- (2) "Certified Water Right Examiner" or "CWRE" means any individual certified by OSBEELS to collect and report data and conduct surveys to describe the extent of appropriation for Claims of Beneficial Use, and also to prepare maps for transfer applications. ¶¶
- (3) "Claim of Beneficial Use" means documents submitted to the Department requesting a certificate of water right be issued for the authorized use or uses made. These documents shall include the report of the site inspection, calculations for the rate of flow, and the map illustrating the location of beneficial use made within the terms of the permit or transfer final order. ¶¶
- (4) "Commission" means the Water Resources Commission. ¶¶
- (5) "Cubic Foot per Second (cfs)" means a rate of water flow, equal to 448.83 gallons of water per minute. ¶¶
- (6) "Department" means the Water Resources Department. ¶¶
- (7) "Director" means the Director of the Department or the Director's authorized deputies or officers. ¶¶
- (8) "Measuring Device" means a structure or apparatus such as a weir, meter, or flume to determine rate of flow or volume of water. ¶¶
- (9) "OAR" means Oregon Administrative Rules. ¶¶
- (10) "ORS" means Oregon Revised Statutes. ¶¶
- (11) "OSBEELS" means Oregon State Board of Examiners for Engineering and Land Surveying. ¶¶
- (12) "Pump Test" has the meaning of the term in OAR 690-217-0010. ¶¶
- (13) "Rate and Duty of Water" means the flow of water expressed in cfs or gallons per minute (instantaneous rate) and the volume of water expressed in AF (duty) as allowed in the permit or transfer final order. ¶¶
- (134) "Spring" means a place where water naturally emerges from the ground. ¶¶
- (145) "Source" means the surface or ground water body for each point of diversion or point of appropriation involved in a permit or transfer final order. ¶¶
- (156) "Survey of Appropriation" means the field inspection and document preparation performed by a CWRE to obtain the data necessary to support the Claim of Beneficial Use. ¶¶
- (167) "Water Rights Act" means the same as defined by ORS 537.010. ¶¶
- (178) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

Statutory/Other Authority: ORS 536, ~~537~~ORS 37, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ORS 37, ORS 537.797 - 537.799

AMEND: 690-014-0030

RULE SUMMARY: This rule is amended to correct “water user” to “water right holder.” The rule also is amended to remove the requirement for the CWRE to prepare a map for a transfer application, because the map is already required by the transfer rules, and not all transfers require a CWRE to prepare the map. The rule is amended to clarify that a CWRE is required for claims of beneficial use for transfers and permits and that other rules may require a CWRE to prepare other types of documents.

CHANGES TO RULE:

690-014-0030

Certified Water Right Examiner Required for Claim of Beneficial Use ¶

~~The water user~~ In addition to other rules contained in OAR chapter 690 requiring specified information to be prepared by a CWRE, the water right holder or person responsible for a permit, transfer application, or transfer final order must have a CWRE prepare: ¶

~~(1) The map for a transfer application.~~ ¶

~~(2) ¶ the Claim of Beneficial Use if the permit or transfer application was filed after July 9, 1987.~~

Statutory/Other Authority: ORS 536, ~~537~~ ORS 537, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ ORS 537, ORS 537.797 - 537.799

AMEND: 690-014-0050

RULE SUMMARY: The rule is amended to (1) allow the Department to accept digital seal and signature as long as the CWRE meets OSBEELS rules regarding digital seal and signature; (2) clarify that the rule applies to any document required of a CWRE; and (3) add maps to the list of documents.

CHANGES TO RULE:

690-014-0050

Certification of Water Right Examiners ¶

~~CWREs shall be certified by OSBEELS. In addition to these rules, OSBEELS rules found in OAR 820 apply.¶~~

(1) CWRE applicants shall be registered in Oregon as a professional engineer, professional land surveyor or registered geologist.¶

(2) To become a CWRE, an applicant shall pass a written examination administered by OSBEELS and approved by the Department to determine the applicant's ability to properly perform the surveying, mapping, hydraulic computations, and information gathering duties required by ORS 537.798.¶

(3) All documents, drawings, maps, or narratives required by these rules shall be prepared by or under the direct supervision of a CWRE. ~~These items shall bear the seal and original signature of the CWRE.~~ to be prepared by a CWRE by rules of the Water Resources Commission shall be prepared

Statutory/Other Authority: ORS 536, ~~537~~ORS 537, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ORS 537, ORS 537.797 - 537.799

AMEND: 690-014-0090

RULE SUMMARY: This rule amendment clarifies that only applicable provisions of rules listed apply, and that Division 305 is now governing maps.

CHANGES TO RULE:

690-014-0090

Maps for Transfer Applications ¶¶

Application maps for transfer shall comply with applicable provisions of ORS ~~€~~chapters 536, 537, and 540, and OAR chapter 690, divisions 020, ~~305~~ and 380.

Statutory/Other Authority: ORS 536, ~~537~~ORS 537, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ORS 537, ORS 537.797 - 537.799

AMEND: 690-014-0100

RULE SUMMARY: Pursuant the OAR chapter 690, division 217, the Department cannot process a claim of beneficial use on a groundwater permit until the pump test requirement has been satisfied, but there is no requirement to submit that information with the claim of beneficial use, which leads to inefficiencies, confusion for applicants about what information is due with a claim of beneficial use, and backlogs when pump tests cannot be secured. The rule amendment requires pump tests or pump test exemption requests to be submitted with claims of beneficial use for groundwater permits. The rule also clarifies an existing unclear provision related to describing the water system from the point of diversion/appropriation to the place of use and within the place of use.

CHANGES TO RULE:

690-014-0100

Minimum Requirements for Claims of Beneficial Use for Permits and Transfer Final Orders ¶

(1) The CWRE shall prepare a report, using a form or format provided by the Department, which describes the status of conditions and limitations in permits and transfer final orders such as: ¶

- (a) Type of use; ¶
- (b) Period of use; ¶
- (c) Place of use; ¶
- (d) Extent of use; ¶
- (e) Location of point of diversion or point of appropriation; ¶
- (f) Source of water; ¶
- (g) Rate; ¶
- (h) Installation of measuring device; ¶
- (i) Water use reporting; ¶
- (j) Water level reporting; ¶
- (k) Pump test documentation as specified in subsection 12 of this rule; ¶
- (l) Fish screening; ¶
- (~~m~~) The date of the inspection; and ¶
- (~~n~~) All other conditions or limitations. ¶

(2) The CWRE shall provide the Department with sufficient information for the Director to determine the extent of beneficial use developed within the conditions or limits of the permit or transfer final order, including any specified development time limits. ¶

(3) Uses partially developed by the water user shall be described. Uses or areas which were not developed shall be noted. Uses determined to exist which are not authorized by the permit or transfer final order being examined shall also be noted in the report but not included as part of the Claim of Beneficial Use. All uses shown on the map must be described in the report. ¶

(4) The diversion works shall be accurately described by the map and report. A general narrative description of the distribution works shall be given. This description must trace the water system from the point(s) of diversion or appropriation to, and include the place of use and provide information on the water system within the place of use. The description shall also include the return to public waters when required by the permit or transfer final order, such as fish propagation, mining and power facilities. The make, capacity, serial number and description of all pumps and measuring devices shall, if available, be described in the report. If the make, capacity, serial number and description of any pumps and measuring devices are not available, the report must specify why. ¶

(5) Other water right permits, certificates, transfer final orders, or other conveyance systems connected to the system being examined shall be described in the report. Any reservoir, diversion dam, headgate, well, canal, flume, pump, and other related structures shall be described. ¶

(6) The crops raised or other beneficial use made of the water shall be identified. ¶

(7) The diversion rate shall be determined for each use and source when more than one use or source is involved. ¶

(8) The maximum rate of use shall be determined by actual measurement when possible. Water measurements may be made by weir, meter, rated flume, reservoir capacity table or other method of measurement acceptable to the Department. The report shall describe the method used in making the measurement, the date made and a description of the location where the measurement was taken. It shall contain sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case. ¶

(9) Computations for the maximum capacity of the system shall be submitted for all claims. These computations

may suffice to determine the maximum rate of application if the system was not operating when the inspection was conducted. ¶

(10) The amount of water shall be limited by the Department to the lesser of: the authorized amount, the capacity of the delivery system, or the amount of actual beneficial use. The Claim of Beneficial Use shall include sufficient information to make the determination. ¶

(11) Claims of Beneficial Use for reservoir permits, for storage of less than 9.2 acre-feet of water or with a dam less than 10 feet in height, that do not require approved as-built plans and specifications be on file with the Department, shall also include the following: ¶

(a) A drawing showing the cross section of the dam at maximum section showing complete details and dimensions. The drawing should be drawn at a standard scale. Normally this measurement is taken from the deepest part of the channel to the top of the embankment. Vertical accuracy is required to 0.25 feet for the purpose of this measurement; ¶

(b) A description of the outlet works; and ¶

(c) A description of the emergency spillway. ¶

(12) For groundwater permits with priority dates on or after December 20, 1988, the Claim of Beneficial Use shall either provide documentation that the pump test or exemption request as required under OAR 690-217 has been submitted for each well or include the required pump test or exemption request for each well with the claim. ¶

(13) The rate of flow shall be determined to three significant figures with reporting necessary only to thousandths. Examples are: 4,560 cfs; 456 cfs; 45.6 cfs; 4.56 cfs; 0.456 cfs; 0.046 cfs; and 0.005 cfs. ¶

(14) When computing the storage capacity of reservoirs, the volume of water shall be determined to three significant figures with reporting, for the purpose of the Claim of Beneficial Use, necessary only to tenths. Examples are: 4,560 af; 456 af; 45.6 af; 4.6 af; and 0.5 af. ¶

(15) The following statement, signed by the CWRE, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge." ¶

(16) The following statement, signed or acknowledged by the permittee or transferee, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate." ¶

(17) A CWRE may make a written request to the Director for a waiver of one or more of the Claim of Beneficial Use standards. Waivers cannot be requested for elements relating to conditions or other limitations of the permit or transfer final order. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Statutory/Other Authority: ORS 536, ~~537~~ORS 537, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ORS 537, ORS 537.797 - 537.799, ORS 537.230, ORS 537.630, ORS 537.772

AMEND: 690-014-0170

RULE SUMMARY: This rule section has been amended to refer to the mapping standards established in OAR chapter 690, division 305 for greater clarity and consistency in mapping requirements across water right transactions. This should lead to greater efficiencies for both applicants and their CWRE's as well as Department staff by having a standardized set of map criteria in one location, which can be adjusted to meet the particular components of specific types of transactions.

CHANGES TO RULE:

690-014-0170

Minimum Requirements for Maps for Permit or Transfer Final Order Claims of Beneficial Use ¶¶

(1) Maps submitted by a CWRE as part of the Claim of Beneficial Use shall ~~be drawn in ink on at least 0.003-inch polyester film and otherwise conform to all the requirements for application maps as noted in OAR 690-310-0050.~~ If for irrigation, the area cross-hatched shall not exceed the total acreage authorized in the permit or transfer final order involved. More than one permit or transfer may be entered on the same map if clearly identified by different cross-hatching. The map scale shall be 1" = 1320', 1" = 400', or the original full-size scale of the county assessor map for the location. The preferred map size is 8 1/2" x 11". The maximum size shall be 30" x 30" ~~unless prior approval is obtained from the Department. Standard symbols shall be used as indicated in Department handouts.~~ meet the standards in OAR chapter 690, division 305. In addition, the map shall meet the following criteria: ¶

(2a) Horizontal accuracy is required only to ten feet for the purpose of locating and quantifying water rights. Maps shall be developed from any standard survey method. Traverse closures are not required. ¶

(3b) Maps shall clearly designate the place of use and point of diversion or appropriation for each source and use. ~~Maps for permits or transfer final orders involving surface water must illustrate the source.~~ ¶

(4c) The map shall indicate by description, in relation to the point of diversion or appropriation, the location of any fish screens, by-pass devices, and measuring devices required by the permit or transfer final order. ¶

(5d) The following statement shall be placed on the map: "This map is not intended to provide legal dimensions or locations of property ownership lines." ¶

(6) ~~Maps depicting municipal place of use need only show the township, range, section, and quarter-quarter sections where use has occurred under the subject permit. The scale for a municipal place of use map should be sufficient to identify the quarter-quarters involved in the place of use.~~ ¶

(7) A CWRE may make a written request to the Director for a waiver of one or more mapping standards. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Statutory/Other Authority: ORS 536, ~~537~~ORS 537, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536, ~~537~~ORS 537, ORS 537.797 - 537.799, ORS 537.630, ORS 537.230

AMEND: 690-017-0005

RULE SUMMARY: This rule is amended to resolve inconsistent language with ORS 540.631 that requires a determination that it appears that a water right has been forfeited to initiate cancellation proceedings, rather than just a request to determine the validity of a right.

CHANGES TO RULE:

690-017-0005

Introduction ¶

These rules define the process the Water Resources Department will follow when cancelling a perfected water right. ~~The action to cancel the perfected water right can be initiated as the result of a request by the record owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non-use.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

AMEND: 690-017-0010

RULE SUMMARY: This rule is amended to align rule to statute by including statutory references for exemptions to forfeiture which are contained in ORS 540.610(3) and (4) and ORS 540.612, as well as to update the definition of "rebuttable presumption" consistent with ORS 540.610(2). The rule change also clarifies that cancellation is based on preponderance of evidence standard per the Administrative Procedures Act (ORS 183).

CHANGES TO RULE:

690-017-0010

Definitions ¶

(1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public. ¶

(2) "Affiant" means the individual completing, swearing to and signing an affidavit. ¶

(3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court. ¶

(4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right. The action must be based on a preponderance of the evidence in accordance with ORS chapter 183. ¶

(5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action. ¶

(6) "District" has the meaning of the term as defined in ORS 540.505. ¶

(7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail. ¶

(8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years, except as provided in ORS 540.610(3) and (4) and ORS 540.612. ¶

(9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts. ¶

(10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water. ¶

(11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree. ¶

(12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years. ¶

(13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration. ¶

(14) "Rebuttable Presumption" means at the presumption which, by statute, of forfeiture established pursuant to ORS 540.610(1), which the appropriator may be overcome by evidence sufficient to explain or disprove the presumption, proving, by a preponderance of the evidence, one or more of the exemptions from forfeiture in ORS 540.610(2). ¶

(15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610-540.670

AMEND: 690-017-0200

RULE SUMMARY: The rule is amended to align with ORS 540.660(1) by providing a broader scope of information, not limited to field inspections, that may be used to support the watermaster's statement that, to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of a water right certificate. The amendment is necessary because the current rule is more restrictive than ORS 540.660(1) concerning what information may support the watermaster's conclusion.

CHANGES TO RULE:

690-017-0200

Watermaster Affidavit of Inability to Appropriately or Beneficially Use Water ¶¶

(1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable, the watermaster shall file an affidavit with the Water Resources Director. ¶

(2) The affidavit shall state: ¶

(a) ~~The date and time the land or diversion mechanism or other evidence was inspected by the watermaster;~~ at to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate; ¶

(b) The names of all record owners of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records; and ¶

(c) ~~The watermaster's findings during the inspection that indicate the water right cannot be exercised~~ A summary of the evidence supporting the watermaster's statement as provided in subsection (2)(a).

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, ORS 540.660

AMEND: 690-017-0300

RULE SUMMARY: This rule is amended for clarity and to include reference to other rules associated with this method of forfeiture.

CHANGES TO RULE:

690-017-0300

Notice of Watermaster Affidavit to Record Owner ¶¶

(1) The Water Resources Department shall notify each record owner of the land described by an affidavit submitted by a watermaster under ORS 540.660 and OAR 690-017-0200 in the following manner: ¶¶

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner; ¶¶

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100; and ¶¶

(c) If the land is within the boundaries of an irrigation district, the Department shall mail a copy of the affidavit to the irrigation district. ¶¶

(2) The record owner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate. ¶¶

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Department shall initiate cancellation proceedings under ORS 540.631 to cancel the water right. The Department shall give notice of the proposed cancellation as provided in OAR 690-017-0400(6).

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, ORS 540.660

AMEND: 690-017-0400

RULE SUMMARY: The rule is amended to align with ORS 540.631. Consistent with ORS 540.631, the amended rule provides that the Department may initiate cancellation based on available evidence to the Department without requiring submittal of an affidavit of Department personnel. The amendment clarifies that, regardless of whether notice is based on an affidavit, the notice still must be provided to irrigation districts and the Bureau of Reclamation consistent with the current rule prior to initiating cancellation. The amendment states information and findings that the Department must include in a notice of proposed cancellation. The amendment also clarifies information that must be provided in affidavits submitted by persons other than Department personnel and specifies the Department shall either initiate cancellation proceedings or close the matter within 180 days. The rule also makes necessary updates to include statutory exemptions from forfeiture enacted since the rules were last updated.

CHANGES TO RULE:

690-017-0400

Cancellation Initiated by Department ¶¶

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears to the satisfaction of the Director that a right has been forfeited as provided in ORS 540.610. The and is not likely to be exempt under ORS 540.610(3) and (4) or would not likely be rebutted under ORS 540.610(2). A decision to initiate cancellation proceedings shall may be based on evidence submitted to the Department, ~~by any person, that alleges five or more years of nonuse so as to create in the form of affidavits from persons other than the Department, as presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e) ovided in section (2) of this rule, or based on evidence available to the Department, as provided in section (4) of this rule.~~ ¶¶

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following: ¶¶

(a) Name, address, email address, if available, and telephone number of affiant; ¶¶

(b) Page number of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate; ¶¶

(c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant; ¶¶

(d) The use for which the water right was issued; ¶¶

(e) The source of water to be used as provided in the certificate; ¶¶

(f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge; ¶¶

(g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given; ¶¶

(h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610; ¶¶

(i) ~~A copy of the county tax plat map illustrating the lands to which the subject water right is appurtenant, and if applicable, a map or aerial imagery with sufficient information to enable the Department to determine the location of the portion of the water right asserted to have been forfeited;~~ ¶¶

(j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary; ¶¶

~~(k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and~~ ¶¶

~~(k) Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.~~ ¶¶

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice ~~of receipt of affidavits submitted under this rule,~~ as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding. ¶¶

(4) ~~Where the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all~~ Department initiates cancellation proceedings based on evidence available to the Department, the Department shall include, in its notice of proposed cancellation, the information described in

~~sections (2) of this rule. In addition, the affidavit (b) - (e) and findings of fact on the matters described in sections (2)(f) - (h). The notice of proposed cancellation shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, maps, aerial imagery, maps, evapotranspiration data, or other relevant data/evidence covering each year of the period of alleged nonuse.~~

~~(5) Within 180 days of receiving the affidavits under section (2) of this rule, the Department shall either:~~

~~(a) Initiate proceedings to cancel a water right under ORS 540.631 within 180 days of receiving the evidence required under sections (1) and (2), or~~

~~(b) Notify the affiants, the record owner of the affected lands, and the occupant of the affected lands, if other than the owner, that the Department is closing the matter because the Department is not satisfied that a right has been forfeited as specified in section 1 of this rule.~~

(6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation. Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

(a) A description of the water right and the land to which the water right is appurtenant;

(b) A statement that the information before the Director creates a rebuttable presumption of forfeiture;

(c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;

(d) Notice that if the record owner intends to rebut the presumption of forfeiture or establish an exemption from forfeiture under ORS 540.610(3)-(4) or ORS 540.612, the protest shall include a statement of the grounds for rebuttal or exemption relied upon, and shall be accompanied by appropriate supporting documentation; and

(e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted or an exemption from forfeiture has not been established, a contested case hearing will be scheduled.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

REPEAL: 690-017-0500

RULE SUMMARY: This rule is repealed because under Or Laws 2025, ch 575 section 23, Or Laws 2025, ch 575 section 3(4) applies to proposed cancellation orders, and proposed cancellation orders will automatically become final if not protested.

CHANGES TO RULE:

~~690-017-0500~~

~~Cancellation Not Protested~~

~~If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water within the 60-day period prescribed in the notice, the Water Resources Department shall enter an order cancelling the water right as provided in ORS 540.641.~~

~~Statutory/Other Authority: ORS 536.025, 536.027~~

~~Statutes/Other Implemented: ORS 540.610 - 540.670~~

AMEND: 690-017-0600

RULE SUMMARY: The rule is amended to (a) modify requirements for filing protests in accordance with Or Laws 2025, ch 575, sections 2 and 3, including a provision that proposed cancellation orders become final automatically if no protest is timely received; (b) clarify existing provisions and update language consistent with other statutory changes made since the rules were last updated; (c) describe the Department's process when adequate rebuttal or exemption evidence is provided, and (d) describe the Department's process when forfeiture is raised in a protest on a transfer application.

CHANGES TO RULE:

690-017-0600

Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture ¶

~~(1) A protest submitted to the Water Resources Department by the record owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include~~ Except as described in sections (2) and (3) of this rule, protests are governed by Or Laws 2025, ch 575, section 2 and 3, and by OAR chapter 690, division 2. If no protest on a proposed final order, the following: ¶

~~(a) A written statement citing the reasons the record owner or occupant believes the water right has not been forfeited by nonuse; and~~ ¶

~~(b) The statutory fee for filing the protest.~~ ¶

~~(2)(a) at is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.~~ ¶

(2)(a) Only a record owner or occupant may protest the proposed cancellation. Where the record owner or occupant intends to rebut the presumption of forfeiture by claiming one or more of the grounds for rebuttal established in ORS 540.610(2) and as further defined in OAR 690-017-0800, or intends to establish an exemption from forfeiture under ORS 540.610(3)-(4) or ORS 540.612, grounds claimed for rebuttal or exemption shall be stated in the protest; ¶

(b) Where applicable, documentary evidence in support of the rebuttal as described in OAR 690-017-0800(3) shall be submitted with the protest. ¶

~~(3)(a) On receipt of a protest claiming rebuttal or exemption and supporting documentary evidence, a determination shall be made whether the presumption of forfeiture has been rebutted;~~ ¶

~~(b) Where rebuttal is found to have been~~ the Department shall review the evidence before referring the protest for hearing; ¶

(b) Upon review of the rebuttal or exemption evidence, and subject to OAR 690-002-0235(2), the Department made, the matter shall be closed and no further action taken to cancel either refer the protest for hearing or notify the protestant(s) that the Department is withdrawing the proposed final order and closing the water right; ¶

~~(c) Where it is determined that th~~ matter. ¶

(4) Sections (1) - (3) of this rule do not apply to a notice of a cancellation proceeding if the notice presumps ~~ts from an assertion of forfeiture has not been rebutted, the Department shall initiate proceedings to cancel the right as provi~~ included in a protest of a transfer application made under OAR chapter 690, division 380. The transfer applicant need not submit a protest of the notice of a cancellation proceeding in this circumstance. The Department shall, subject to OAR 690-002-0235(2), refer the transfer protest(s) for hearing. The hearing on the transfer protest(s) shall included in OAR 690-017-0700 ~~ssues related to the notice of cancellation proceeding.~~ ¶

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, Or Laws 2025, ch 575, section 2, Or Laws 2025, ch 575,

section 3

AMEND: 690-017-0700

RULE SUMMARY: This rule is amended to (a) implement Or. Laws 2025, ch 575, which establishes a uniform contested case process; (b) remove unnecessary language related to proposed order issuance by the administrative law judge; (c) provide that the Director, and not the Commission, shall consider any exceptions to the Administrative Law Judge's proposed order and issue a final order, and (d) to provide that notice of the hearing shall be not less than 30 days.

CHANGES TO RULE:

690-017-0700

Cancellation Hearing ¶¶

~~(1) If the Department receives a protest to the proposed cancellation of a water right within the prescribed 60-day period, a hearing on the protest shall be scheduled. The protestant shall be given not less than 10 days notice of the hearing time and place. ¶¶~~

~~(2) The hearing shall be held by the Department's Hearings Referee, and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases. ¶¶~~

~~(3) In contested case hearings where the initial determination was made that the presumption of~~Except as described in subsection (2) of this rule, hearings on proposed cancellations are governed by Or Laws 2025, ch 575, sections 2 and 3, and OAR chapter 690, division 2. Proposed final orders shall become final by default as provided in OAR 690-002-0235. ¶¶

~~(2) The protestant and any person(s) asserting forfeiture shall not be rebutted, the owner may offer additional evidence in support of rebuttal. ¶¶~~

~~(4) After the hearing the Hearings Referee shall enter a proposed order: ¶¶~~

~~(a) Cancelling the water right; ¶¶~~

~~(b) Cancelling in part or modifying the water right; or ¶¶~~ll be given not less than 30 days' notice of the hearing. ¶¶

~~(c) Declaring that the water right shall not be cancelled or modified. ¶¶~~

~~(5) If no exceptions or objections to the proposed order are filed within the time allowed, the Hearings Referee shall~~The Director shall consider any exceptions to the Administrative Law Judge's proposed order and issue a final order.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, Or Laws 2025, ch 575

AMEND: 690-017-0800

RULE SUMMARY: The rule is amended to correct statutory references that were renumbered and to align the rules with ORS 540.610 rebuttals, which have changed since the rules were adopted.

CHANGES TO RULE:

690-017-0800

Grounds for and Manner of Rebutting a Presumption of Forfeiture ¶¶

(1) Any record owner or occupant rebutting a presumption of forfeiture for nonuse of water under ORS 540.610(2), as provided in these rules, shall provide evidence that rebuts the presumption of forfeiture. ¶¶

(2) A presumption of forfeiture may be rebutted by showing one or more of the following: ¶¶

(a) ~~The water right is for reasonable and usual municipal use of water;~~ ¶¶

(b) ~~A finding of forfeiture would impair the rights of cities and towns to the use of water, whether acquired by appropriation or purchase, or previously recognized by legislative act, or which may be acquired in the future;~~ ¶¶

(c) ~~The owner of the property was unable to use the water due to economic hardship as defined in section (3) of this rule;~~ ¶¶

(d) ~~The period of nonuse occurred during a period of time within which land was withdrawn from use under the Federal Soil Bank Program or the Federal Conservation Reserve Program;~~ ¶¶

(e) ~~The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted or cancellation proceedings were initiated under ORS 540.631, whichever occurs first; and~~ ¶¶

(f) ~~The owner of the property to which the water right is appurtenant is unable to use the water because the use of water under the right is discontinued by an order of the Commission under ORS 537.775 (wasteful or defective wells); grounds for rebuttal in ORS 540.610(2).~~ ¶¶

(3) An economic hardship exists only during the following periods of time: ¶¶

(a) During a bankruptcy action initiated by or for the record owner or principal farm operator; ¶¶

(b) During a foreclosure of real or personal property of the record owner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question; ¶¶

(c) During the redemption periods as provided in ORS ~~23.530 to 23.600; 18.960 to 18.985;~~ ¶¶

(d) Three calendar years following the expiration of redemptions as provided in ORS ~~23.530 to 23.600; 18.960 to 18.985;~~ or, three years from the date of recording of a deed in lieu of foreclosure tendered by the record owner or principal farm operator in payment of debt owed; ~~and~~ ¶¶

(e) The time during which judicial actions limit or prohibit the record owner's or principal farm operator's use of the water in question; ~~and~~ ¶¶

(f) The time during which a natural disaster would limit or prohibit the record owner's or principal farm operator's use of the water in question. ¶¶

(4) Documentation supporting rebuttal based on enrollment in a federal program, bankruptcy, foreclosure or foreclosure redemption, natural disaster, or the 15-year statute of limitations on cancellation as provided for in ORS 540.610(2) may include, but is not limited to, the following items: ¶¶

(a) The enrollment contract or agreement between the record owner, occupant, or principal farm operator and the appropriate federal jurisdiction; ¶¶

(b) Affidavits by knowledgeable parties such as employees administering the federal programs; ¶¶

(c) Court pleadings, filings or other legal documentation of bankruptcy or foreclosure; ¶¶

(d) Documents from financial, mortgage, lending or title institutions; ~~and~~ ¶¶

(e) Sworn statements by a watermaster, soil scientist, or insurance claim adjuster.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

AMEND: 690-018-0010

RULE SUMMARY: Clarifies when these rules apply to applications.

CHANGES TO RULE:

690-018-0010

Purpose and Applicability ¶

(1) These rules describe the voluntary program under which a water right holder may benefit from an allocation of conserved water. Under the program, a portion of any water conserved may be used on additional lands, be put to a different use, or be leased or sold to another user. ¶

(2) This program is intended to promote the conservation of water, maximize beneficial use and enhance streamflows pursuant to the statutory authority in ORS 537.455 to 537.500 and 540.510(2) and (3). ¶

(3) These rules establish the process for review and evaluation of the merits and impacts of applications for allocation of conserved water. After a sufficient number of applications are submitted, these rules shall be reviewed and revised, as necessary, to further promote the allocation of conserved water and to provide criteria for determining requirements for mitigation and the establishment of instream water rights. ¶

(4) The rules in this division apply to applications submitted after ~~November 5, 2004~~ April 1, 2026, except as specified in OAR 690, Division 2. Applications submitted before this date shall be subject to rules in effect at the time of submittal, except as specified in OAR 690, Division 2.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

AMEND: 690-018-0012

RULE SUMMARY: This rule is amended to provide greater clarity and to align terminology with that proposed in OAR 690-018-0065 (Finalization of Conservation Project).

CHANGES TO RULE:

690-018-0012

Allocation Formula and Process ¶¶

(1) Pursuant to ORS 537.470(3), after determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the Commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the Commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state. ¶

(2) A water right affected by an allocation of conserved water under this program shall retain its original priority date. The priority date of the conserved water rights shall be either the same as or one minute after that of the original right. ¶

(3) Many water users have expressed concern about the effects of an allocation of conserved water on the continued use of water under the original water right. These rules allow for a period of up to five years after implementation of a conservation project to confirm that the project is performing as expected. This will allow water right holders to better determine the adequacy of the quantity of water allocated to the original right. However, no out-of-stream uses may be made of the conserved water until after final ~~comple~~impleization of the project and issuance of the new certificates.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

AMEND: 690-018-0040

RULE SUMMARY: This rule is amended to (a) require applicant email address(es) if available; (b) refer to the standards in OAR Chapter 690, Division 305, which provide greater clarity and consistency in mapping requirements across water right transactions; (c) correct reference to another section of these rules; and (d) correct grammatical errors. The rule is also amended to better differentiate between the state's portion and the applicant's portion of conserved water as it relates to management of the water instream.

CHANGES TO RULE:

690-018-0040

Application Requirements ¶

Applicants for allocation of conserved water shall provide to the Department the information described in this rule in substantially the same order as listed. The information shall include: ¶

- (1) The name(s) of the applicant(s), mailing address(es), email address(es) (if available), and telephone number(s); ¶
- (2) The certificate, permit, or transfer numbers or the name of the decree, if appropriate, of each water use subject to transfer that will be modified by the proposed allocation of conserved water; ¶
- (3) The date of priority and source of water for each water right identified in section (2) of this rule; ¶
- (4) The amount of water that may be used under the original rights expressed as the maximum rate and annual volume (duty) of water that may be diverted as stated on the water use subject to transfer; ¶
- (5) A description of the diversion facilities in sufficient detail for the Department to determine the capacity of the system. The description shall include: ¶
 - (a) For a project that has not been completed, a description of the existing diversion facilities, including diversion structures, pumps, conveyance facilities, an estimate of the amount of water that can be diverted at the existing facilities stated as a rate of diversion, and application methods that will be affected by the proposed project; or ¶
 - (b) For a project that has already been completed, a description of the diversion facilities before the conservation measure was implemented, including diversion structures, pumps, conveyance facilities, the amount of water that was diverted at the facilities stated as a rate of diversion before the conservation measure was implemented, and application methods that will be affected by the project; ¶
- (6) A description of the proposed changes to be made in the physical system and operations that will result in the conservation of water; ¶
- (7) The amount of water needed to meet the beneficial use currently authorized after implementation of the conservation measures described as a maximum rate and annual volume (duty) of water; ¶
- (8) The amount of water conserved by implementing the conservation measure calculated as the amount of water identified in section (4) or section (5) whichever is less, minus the amount of water identified in section (7), expressed as a maximum rate and annual volume (duty) of water; ¶
- (9) The proposed percentages and quantities of conserved water to be allocated to the applicants and to the state and the proposed use of any conserved water allocated to the applicant; ¶
- (10) The applicant's choice of priority date for the conserved water, being either the same as or one minute after that of the original right; ¶
- (11) For a project that has not been completed, the date on which the applicant intends to: ¶
 - (a) Begin construction of the conservation project; ¶
 - (b) Complete construction and file notice of project completion pursuant to OAR 690-018-0062(1); and ¶
 - (c) Request that the allocation be finalized pursuant to OAR 690-018-0062(3); ¶
- (12) For a project that has already been completed: ¶
 - (a) Evidence that the measure was implemented within five years prior to the date of filing the application; and ¶
 - (b) The date on which the applicant intends to request that the allocation be finalized pursuant to OAR 690-018-0062(3); ¶
- (13) A description of any expected effects of the proposed allocation of conserved water on other appropriators that identifies what presently happens to the water that the applicant is proposing to conserve; ¶
- (14) A description of any mitigation or other measures planned to avoid harm to other water rights; ¶
- (15) A description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants' s portion of conserved water right would be located; and used for beneficial out-of-stream uses; ¶
- (16) To the extent possible, identification of the stream reach for which the state's portion of conserved water should be managed under an instream water right and any reservations or dedications of the water part of the applicant's portion of conserved water should be reserved instream for future out-of-stream beneficial uses or dedicated to instream use to be managed under an instream use; ¶

~~(17) A map water right; ¶~~

(17) A map that meets the standards in OAR chapter 690, division 305, with sufficient detail to locate and describe the facilities and areas affected by the conservation measures; ¶

(18) Identification of any federal or state public sources of project funds and, if federal or state public funds that are not subject to repayment will be used in the project, information showing the estimated project costs and anticipated sources of funds for the project including; ¶

(a) The total cost for project engineering and construction; ¶

(b) The present value of any incremental changes in the costs of operations and maintenance that are directly attributable to the project that would not be incurred or realized in the absence of the project; ¶

(c) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental changes in the costs of operations and maintenance to be provided from federal or state public funds that are not subject to repayment; and ¶

(d) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental change since costs of operations and maintenance to be provided from other funds; ¶

(19) If construction of the project has begun or been completed and if more than 25 percent of the project costs have been expended before applying for allocation of conserved water, evidence that the applicant has attempted to identify and resolve the concerns of water right holders in the area, governmental entities, or other organizations who have asked to be consulted regarding the allocation of conserved water; ¶

(20) A letter showing irrigation district or water control district approval if the conservation project is within the boundaries of the district; ¶

(21) For applications submitted by irrigation districts or water controls districts, evidence of an adopted policy consistent with the requirements of OAR 690-018-0030.25; ¶

(22) Land use information outlined in the Department's Land Use Planning Procedures Guide; and ¶

(23) Other information the Department or Commission deems necessary and appropriate to aid in the evaluation of the application. ¶

(24) The appropriate fee as required under ORS 536.050. ¶

(25) The Director shall waive the application fee based on the percent of conserved water allocated to the state for instream use, not to exceed 50 percent of the application fee, if the instream allocation is; ¶

(a) To establish an instream water right pursuant to ORS 537.348; ¶

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or ¶

(c) Determined and endorsed in writing by Oregon Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

AMEND: 690-018-0050

RULE SUMMARY: The rule is amended to (a) implement Or Laws 2025, ch 575, pertaining to new contested case, party status, and protest processes, (b) implement Or Laws 2025, ch 282, requirements relating to use of a weekly public notice instead of a newspaper notice, move notice timing to initial review, and use of an electronic notice of receipt of an application, unless mailing is requested by the applicant, (c) clarify the public notice process, (d) align the process to be more consistent with other transfer procedures, (e) cite additional reference to the allocation formula and process, (f) provide for inclusion of conditions, cancelation of the original water right certificate, and preparation of draft certificates, as applicable, at the proposed final order stage to facilitate implementation of automatic final orders and certificate issuance after 33 days as a matter of law, provided no protests are filed, and (g) clarify the process when an applicant wishes to dedicate their portion of conserved water permanently to the state. This rule is also amended to reflect the Director's delegation to the Department for providing notice of an allocation of conserved water application, to make terminology consistent when referencing the Department, and to clarify that the Department's ability to condition an ACW project. The heading for this rule was also amended to more fully explain the contents of this rule. This rule is further amended to remove language in order to recognize that an applicant may not be the holder of the water right certificate involved in the ACW project.

CHANGES TO RULE:

690-018-0050

Processing a Conservation Application and Approval of a Conservation Project

~~(1) When the Department receives an application for allocation of conserved water, the Director shall provide public notice~~
department shall: review the application to determine if the application through:

~~(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the application are located, for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week; and~~
Int has included the information required under OAR 690-018-0040, all fees have been paid, and if the water rights that will be modified by the proposed allocation of conserved water are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-018-0020(11).

~~(2) If the Department determines that one publication each week; and~~

(b) Concurrent with the date of first publication pursuant to subsection (a) of this section, mailing to individuals, organizations and agencies including the Indian tribes and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the application does not include the required information or fees, or that the water rights that will be modified by the proposed allocation of conserved water parties that the Director determines should be notified.

~~(2) As provided in ORS 540.520(5), the cost of the publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and the indirect costs which may not exceed twenty (20) percent of the direct costs.~~

~~(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specification and any fees to the applicant along with a written description of the deficiencies in the application.~~

(3) If the Department determines the application is complete, all fees have been paid, and the water rights that will be modified in by the notice shall provide at least 20 days after the date of last publication pursuant to proposed allocation of conserved water are water uses subsection (1)(a) of this rule for the submittal of comments.

~~(4) To transfer, the Department shall review file the application and consider any comments received under section (3) of this rule undertake an initial review of the application to determine:~~

~~(a) If the proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights;~~

~~(b) If the proposed allocation of conserved water will harm existing water rights;~~

~~(c) If the application is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);~~

~~(d) The quantity of conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water that may be allocated;~~

~~(e) The new rate and duty for the existing water rights held by the applicant and for any out-of-stream use of the~~

conserved water rights; ¶

(f) In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, if conserved water is needed to support instream uses; ¶

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3); and OAR 690-018-0012(1); ¶

(h) The areas within which the conserved water may be used for out-of-stream purposes and the stream reaches to which the conserved water may be dedicated for instream purposes; ¶

(i) The periods to be allowed for the applicants to file a notice of completion of the conservation measures and to request that the allocation be finalized pursuant to OAR 690-018-0062. The time allowed between filing the notice of completion of the conservation measures and requesting that the allocation be finalized shall not exceed five years; and ¶

(j) Any other conditions or limitations to be included in the new water rights, including or tied to the use of the applicant's portion of conserved water, including but not limited to conditions or limitations to prevent or mitigate for harm to existing water rights. ¶

(5) The Department shall provide notice of or to prevent enlargement by the measurement, recording, and reporting to the dewatermination under section (4) of this rule to the applicant and to each person who commentaster the amount of water diverted and used under the applicant's reduced rate and duty water right certificate for the lands involved ein the application for allocation of conserved water in response to the public notice under section (3) of this rule. ¶

(6) If a protest to the proposed allocatand under the applicant's portion of conserved water, as applicable. ¶

(4) Upon completion of the review outlined in section (3) of this rule, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application, and allow the applicant a period of conserved water is received by the Department within 60 days of the mailing of the determination provided pursuant to at least 30 days to examine the initial review and address any issues in the initial review. ¶

(5) Concurrent with the issuance of the initial review outlined in section (4) of this rule, the Department shall give notice of the initial review and accept written public comments for 20 days by: ¶

(a) Publishing notice of the initial review in the Department's weekly public notice; and ¶

(b) Except for those already provided notice of the application under subsection (5a) of this rule, the Director may work with the applicant andsection, providing notice by electronic means to any individuals, organizations, governmental agencies including Indian Tribes, local government planning departments, irrigation districts in the area, anyd protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the applicaarties that the Director determines should be notified, unless a recipient has requested notification and that the notice be sent by regular mail. ¶

(6) After conclusion of the time specified in OAR 690-018-0050(4) for the applicant to examine the initial review and for the public comment period described in OAR 690-018-0050(5), the Department shall consider applicant feedback and written public comments. Adjustments determined necessary by the Department shall be documented and incorporated into the proposed final order under section¶

(7) If of no protests are received or if the protests are resolvedthis rule. ¶

(7) The Department shall issue a proposed final order of the determination made under section (3) of this rule, including any adjustments deemed necessary by the Department pursuant to section (6) of this rule, the Director shall issue an order consistent with the determination and including any agreed-upon conditions. An order approving an application shall provide for. Based upon the Department's determination, if the proposed final order: ¶

(a) Recommends approval of the water conservation project under the application, then the proposed final order shall include conditions that provide for: ¶

(A) The establishment of the dates pursuant to OAR 690-018-0050(3)(i) by which the applicant must: ¶

(i) Complete the conservation measures under the project and file notice of the completion with the Department; and ¶

(ii) Finalize the project and file a request for finalization with the Department; ¶

(B) Upon issuance of an order approving completion of the project the cancellation of the original water right certificate that is to be modified by the allocation of conserved water; and ¶

(C) Upon issuance of an order approving finalization of the project, the issuance of a certificate superseding the original certificate at the reduced rate and duty, and for remaining right certificate for the lands not involved in the application, if applicable, and the allocation of the conserved water, all of which shall be contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062.; ¶

~~(8b) If protests are received raising issues that cannot be resolved pursuant to section (6) of this rule, the Director shall present the application, all protests and a recommendation for approval of the water conservation project under the application as well as completion of the project, then the proposed final order shall include conditions that provide for: ¶~~

~~(A) The establishment of the date, not to exceed five years as set forth in OAR 690-018-0050(3)(i), by which the applicant must finalize the project and file a request for finalization with the Department; ¶~~

~~(B) Cancellation of the original water right certificate that is to be modified by the allocation of conserved water; and ¶~~

~~(C) Upon issuance of an order approving finalization of the project, the issuance of a certificate superseding the original certificate at the reduced rate and duty, a remaining right certificate for the lands not involved in the application, if applicable, and the allocation of the conserved water, all of which shall be contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062; or ¶~~

~~(9c) The Commission shall examine the application, the protests and the Director's recommendation approval of the conserved water project under the application as well as completion and finalization of the project, then the Department shall include conditions that provide for cancellation. If of the Commission finds the allocation of conserved water is likely to injure existing original water right certificate that is to be modified by the allocation of conserved water and shall also issue the following draft certificate(s), as applicable, to supersede the original certificate and allocate the conserved water: ¶~~

~~(A) The applicant's reduced rate and duty water rights for is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and 690, divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the the lands involved in the application; ¶~~

~~(B) The remaining right for the lands not involved in the application; ¶~~

~~(C) The state's instream water right reflecting the state's portion of the conserved water to be put instream consistent with ORS 537.470(3); and ¶~~

~~(D) If the applicant is proposing to permanently dedicate all or a portion of their conserved water to the state, then the amount dedicated to the state may be added to (C) of this subsection consistent with ORS 537.470(3). ¶~~

~~(8) The Department shall send the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415. The proposed final order shall include a statement of the opportunity to protest the Department's determination. The Department shall provide notice of issuance of the proposed final order by providing a copy of the proposed final order to any other person requesting notice and to each person who commented on the application for allocation of conserved water is not likely to injure existing rights and is otherwise consistent with these rules, the Commission may response to the public notice under section (2) of this rule. Notice shall be provided by electronic means unless the recipient has requested that the notice be sent by regular mail. ¶~~

~~(9) Protests, requests for party status, and contested case proceedings are governed by Or Laws 2025, ch 575 and OAR Chapter 690, Division 002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235. In addition to any other authority the Director to issue an order approving the application. Department may have, if a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. ¶~~

~~(10) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes).~~

~~Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480~~

~~Statutes/Other Implemented: ORS 537.455 - 537.500, Or Laws 2025, ch 575, Or Laws 2025, ch 282~~

AMEND: 690-018-0062

RULE SUMMARY: This rule is amended to (a) incorporate conforming changes into references to other sections in OAR chapter 690, division 18, (b) provide greater clarity for terminology used, and (c) provide more specificity related to the deadline for finalization of the conserved water project. Rule language removed from OAR 690-018-0062(3) and (4) has been readopted and amended in OAR 690-018-0065(1) and (2).

CHANGES TO RULE:

690-018-0062

Completion of Conservation Project and Testing Period ¶¶

(1) If the order approving the application for allocation of conserved water allows a time period for completing the conservation measures and finalizing the allocations of conserved water prior to certification, upon notice from the applicant that the project has been completed, the Director shall issue a completion order: ¶¶

(a) Canceling the original water right held by the applicants certificate that are is modified by the allocation of conserved water; ¶¶

(b) Allowing the continued use of water for the purposes and at the locations described in the original water right certificates at the reduced rate and duty prescribed under OAR 690-018-0050(4)(e)7; and ¶¶

(c) Allowing the use and management of the conserved water as a dedication of the water instream. ¶¶

(2) Consistent with the order approving the allocation of conserved water and at the request of the applicants within the period allowed under ~~the order under OAR 690-018-0050(4)(i)7(a)(A)(ii) or -0050(7)(b)(A) for finalization of the project~~, the Director may increase the amount of water to be used pursuant to subsection (1)(b) of this rule and decrease by a like amount the conserved water ~~to be allocated pursuant to 690-018-0050(4)(d) needed to mitigate for harm to existing water rights and quantity of conserved water to be allocated~~ if the Director finds that the changes are necessary because the conservation project has not performed as expected and that the applicants's use of additional water would not be wasteful. A request for additional water submitted under this section shall include sufficient information to demonstrate that: ¶¶

(a) The project is less effective than was expected when the order approving the allocation of conserved water was issued; ¶¶

(b) The lack of performance is not caused by the applicants's failure to maintain the project; and ¶¶

(c) The amount of water remaining for use under the original water rights is insufficient to satisfy the beneficial uses. ¶¶

(3) Prior to the expiration of the time allowed under OAR 690-018-0050(4)(i), the applicant may request that an allocation of conserved water be finalized. The request shall include: ¶¶

(a) If all or part of the applicants' portion of the conserved water is to be used for an out-of-stream use at an identified location, the following information: ¶¶

(A) The name and address of the person using the water; ¶¶

(B) A description of the type of beneficial use of the water; ¶¶

(C) A legal description of the place of use; and ¶¶

(D) A map that meets the standards in OAR 690-310-0050; and ¶¶

(b) If all or part of the applicants' portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right. ¶¶

(4) Upon receipt of a request that an allocation of conserved water be finalized or upon the expiration of the time allowed under OAR 690-018-0050(4)(i), the Director shall issue: ¶¶

(a) A superseding certificate as provided for in the order approving the allocation of conserved water; ¶¶

(b) A certificate for an instream water right for the state's portion of the conserved water if required under OAR 690-018-0050(4)(g); and ¶¶

(c) An order allowing: ¶¶

(A) The use of any portion of the conserved water allocated to the applicants, at the location and for the type of use identified pursuant to subsection (3)(a) of this rule; ¶¶

(B) The use and management as an instream water right of any conserved water that is being leased, dedicated or temporarily reserved instream.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

ADOPT: 690-018-0065

RULE SUMMARY: This rule is adopted to (a) better differentiate between the rules related to completion of the project and finalization of the project, (b) provide more specificity related to the deadline for finalization of the conserved water project, (c) request additional contact information for the applicant, (d) incorporate conforming changes into references to other sections in OAR Chapter 690, Division 18, (e) provide greater clarity for terminology used, (f) refer to the standards in OAR Chapter 690, Division 305 which provide greater clarity and consistency in mapping requirements across water right transactions, and (g) clarify the process when an applicant wishes to permanently dedicate their conserved water to the state.. This rule is further amended to provide greater clarity as it relates to the process.

CHANGES TO RULE:

690-018-0065

Finalization of Conservation Project

(1) Prior to the expiration of the time allowed under OAR 690-018-0050(7)(a)(A)(ii) or -0050(7)(b)(A), the applicant may request that an allocation of conserved water be finalized. The request shall include:¶

(a) If all or part of the applicant's portion of the conserved water is to be used for an out-of-stream beneficial use at an identified location, the following information:¶

(A) The name, mailing address, email address (if available), and telephone number of the person using the water;¶

(B) A description of the type of beneficial use of the water;¶

(C) A legal description of the place of use; and¶

(D) A map that meets the standards in OAR Chapter 690, Division 305; and¶

(b) If all or part of the applicant's portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right.¶

(2) Upon receipt of a request that an allocation of conserved water be finalized or upon the expiration of the time allowed under OAR 690-018-0050(7)(a)(A)(ii) or -0050(7)(b)(A), the Director shall issue:¶

(a) A finalization order allowing, as applicable:¶

(A) The out-of-stream beneficial use of any portion of the conserved water allocated to the applicant, at the location and for the type of use identified pursuant to subsection (1)(a) of this rule; and¶

(B) The use and management as an instream water right of any portion of the conserved water allocated to the applicant that is being leased, dedicated or temporarily reserved instream;¶

(b) Certificate(s) to supersede the original certificate as provided for in the order approving the allocation of conserved water for:¶

(A) The applicant's reduced rate and duty water right for the lands involved in the application; and¶

(B) The remaining right for the lands not involved in the application, if applicable; and¶

(c) A certificate for an instream water right for the state's portion of the conserved water as pursuant to ORS 537.470(3).¶

(d) If the applicant is proposing to permanently dedicate all or a portion of their conserved water to the state, then the amount dedicated to the state may be added to (C) of this subsection consistent with ORS 537.470(3).

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

AMEND: 690-018-0090

RULE SUMMARY: This rule is amended to (a) incorporate conforming changes; (b) update reference to other rules; and (c) include criteria that any change in point of diversion under this rule must divert water from the same source and cannot injure other existing water rights, including instream water rights.

CHANGES TO RULE:

690-018-0090

Change in Use of Conserved Water ¶¶

(1) Any person or agency entitled to the use of conserved water shall notify the Director of any change in the type of use, place of use or point of diversion. The notice must be submitted 60 days before the actual change and must include the information requested in OAR 690-018-0062~~(35(1))~~(a).¶¶

(2) The Director shall approve a change in the type of use, place of use, or point of diversion for conserved water if:¶¶

(a) The proposed new use is within the area described under OAR 690-018-0050~~(43)~~(h);¶¶

(b) The proposed change would not constitute an expansion of the right;¶¶

(c) The proposed point of diversion would divert water from the same authorized source of water and would not constitute injury to another existing water right, including any instream water right granted pursuant to a request under ORS 537.336 or created pursuant to ORS 537.346(1) and held in trust by the Department; and¶¶

(ed) The approval is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).¶¶

(3) A change in the dispensation of the use of a conserved water right may be initiated 60 days after the notice prescribed in section (1) of this rule if the Director takes no action within that period.¶¶

(4) When a right to the use of conserved water is sold or given to an agency or political subdivision of the state or to a person:¶¶

(a) The right shall become appurtenant to the premises upon which use is made;¶¶

(b) A certificate of water right shall be issued upon satisfactory proof of use; and¶¶

(c) Unless dedicated to instream use, the right shall be subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.¶¶

(5) Upon approval of a change in the use or point of diversion proposed under this rule, the Director shall issue a new order to allow the new use of the conserved water.¶¶

(6) Any changes in the type of use, place of use, or point of diversion that are not provided for under this rule shall only be made after compliance with the transfer rules in OAR 690, division 380.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

AMEND: 690-077-0000

RULE SUMMARY: This rule is amended to specify that OWRD issues water rights within Oregon's borders.

CHANGES TO RULE:

690-077-0000

Purpose ¶¶

(1) The purpose of this Division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights. ¶¶

(2) This Division also provides for the conversion of existing minimum streamflows to instream water rights; for the instream transfer or lease of existing water rights for use as instream water rights; and for the enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses. ¶¶

(3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission or by an order approving a time-limited instream transfer or lease, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18). ¶¶

(4) In 2001, the Legislature authorized the split season use leasing of an existing water rights for instream purposes. Under ORS 537.348(3), all or a portion of an existing water right may be used for the existing use and for instream use during the same year, provided that the uses are not concurrent and that the holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the instream water right. ¶¶

(5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights. ¶¶

(6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right. ¶¶

(7) The Department may only issue instream water rights, instream leases, instream transfers, and instream water rights resulting from an allocation of conserved water within the State's borders.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.356 - 537.358, ORS 537.348, ORS 537.470, ORS 537.485

Statutes/Other Implemented: ORS 537.332 - 537.360

AMEND: 690-077-0010

RULE SUMMARY: This rule is amended to (a) modify the definition of "beneficial use" and "contested case" to refer to the definitions in OAR chapter 690, division 300; (b) modify the definition of "multipurpose storage project" to require "two or more" beneficial uses and/or purposes instead of "more than two," consistent with the definition of multipurpose in Merriam Webster and the definition of "multipurpose project" in OAR chapter 690, division 90; (c) remove the definition of "ODFW flow restoration priority watershed" because the only rule the phrase appeared in (OAR 690-077-0015(5) is proposed for removal; (d) remove the definitions of "planned" and "planned uses" because those terms do not appear in OAR chapter 690, division 77 rules nor in the governing statutes; and (e) update the definition of "Protest" to reference the definition of protest in OAR chapter 690, division 2. The rule also is amended to (a) add definitions for "district" and "district water user"; modify the definition of "Estimated Average Natural Flow" to reflect that it is determined by month or half month, which is consistent with existing practice, and to clarify sources of information and responsibility to compute; (c) add a definition of "secondary water right"; and (d) modify the definition of "water purveyor" to identify all types of owners or operators of public water systems which deliver water to customers.

CHANGES TO RULE:

690-077-0010

Definitions ¶¶

As used in this Division: ¶¶

- (1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established. ¶¶
- (2) "Agency" means ODFW, DEQ and Parks. ¶¶
- (3) "Beneficial Use" ~~means~~has the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state. same meaning as the term in OAR 690-300-0010. ¶¶
- (4) "Comment" means a written statement concerning a particular application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest. ¶¶
- (5) "Commission" means the Water Resources Commission. ¶¶
- (6) "Contested Case" ~~means a hearing as defined in ORS 183.310(2) and conducted accord~~has the same meaning to as the procedures described in ORS Chapter 537, 183.413 to 183.470 and OAR chapter 690, division 2. term in OAR 690-300-0010. ¶¶
- (7) "DEQ" means the Department of Environmental Quality. ¶¶
- (8) "Department" means the Water Resources Department. ¶¶
- (9) "Director" means the director of the Water Resources Department. ¶¶
- (10) "~~Estimated Average Natural Flow" means average natural flow estimates derived from~~District" means an irrigation district formed under ORS 545, a drainage district formed under ORS 547, a water improvement district formed under ORS 552, a water control district formed under ORS 553, or a corporation formed under ORS 554. ¶¶
- (11) "District Water User" means, for the purposes of instream leases involving a district, the owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be leased upstream. ¶¶
- (12) "Estimated Average Natural Flow" means average natural flow estimates, by month or half month, computed by the Department using sources including watermaster distribution records, Department measurement records and, or application of appropriate available scientific and hydrologic technology. ¶¶
- (143) "Held in Trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Department affecting instream water rights are limited by public trust obligations. ¶¶
- (124) "Instream" as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs. ¶¶
- (135) "Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency. ¶¶
- (146) "Instream lease" means the conversion of all or a portion of an existing water use subject to transfer to an

instream water right for a specified time-period as authorized by ORS 537.348(2). ¶

(157) "Instream transfer" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1). ¶

(168) "Instream Water Right" as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water. ¶

(179) "Minimum Streamflow" also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, and 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution. ¶

(1820) "Multipurpose Storage Project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two or more beneficial uses and/or purposes. ¶

(219) "ODFW" means the Oregon Department of Fish and Wildlife. ¶

(20) "ODFW flow restoration priority watershed" means a geographic area identified by ODFW where there is a need for flow restoration during a specified season(s) to support fish recovery under the Oregon Plan for Salmon and Watersheds. The ODFW flow restoration priority watersheds are identified in Figures 1 to 18. ¶

(21) "Parks" means the Oregon Parks and Recreation Department. ¶

(22) "Planned" means a determination has been made for a specific course of action either by legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by the public or private sector. ¶

(23) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this rule. Such uses include but are not limited to the policies, provisions, and maps contained in acknowledged city or county comprehensive plans and land use regulations. ¶

(242) "Parks" means the Oregon Parks and Recreation Department. ¶

(23) "Pollution Abatement" means the use of water to dilute, transport or prevent pollution. ¶

(254) "Protest" means a written statement, filed in accordance with OAR chapter 690, division 2, and the applicable provisions of this division or division 380, expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing; has the same meaning of the term in OAR 690-002-0010. ¶

(265) "Public Benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise. ¶

(276) "Public Use," as defined in ORS 537.332, includes but is not limited to: ¶

- (a) Recreation; ¶
- (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; ¶
- (c) Pollution abatement; or ¶
- (d) Navigation. ¶

(287) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions. ¶

(298) "Scenic Attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention. ¶

(29) "Secondary Water Right" means a water right to put water stored under a storage right to an out-of-reservoir beneficial use. ¶

(30) "Split Season Use" means the exercise of an existing water right in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that water is not used for the existing purpose during the period in which the water is to be protected instream. ¶

(31) "Time-Limited Instream Transfer;" means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the existing water right will revert back to its original use: ¶

- (a) Without further action by the Department at the end of the period of time specified in the final order approving the instream transfer; or ¶
- (b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met. ¶

(32) "Unappropriated Water Available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights. ¶

(33) "Water Purveyor" means any entity formed for the purpose of delivering water supply to water right holders including, but not limited to, a public utility, a mutual water company, a county service district, a water cooperative, or a municipality or quasi-municipality that delivers water to customers. ¶

(34) "Water quality limited" has the meaning provided in the OAR 340-041-0002.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.310, ORS 536.332, ORS 537.338, ORS 537.356 - 537.358, ORS 537.348

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 540.505, Or Laws 2025, ch 575

RULE SUMMARY: This rule is amended to remove language that is not consistent with statute and to make clear which rules only apply to state agency instream water right applications. In regard to estimated natural average natural flow (ENAF), ORS 537.343(2) provides the Department authority to make the final determination of the level of instream flow necessary to protect the public use(s) identified in a state-agency instream water right application, which is the basis for the limitation in OAR 690-077-0015(4), (9) and (10). However, the Department has not identified a similar statutory basis to use ENAF to limit the amount of water that can be converted by instream transfers, leases or allocations of conserved water under OAR 690-077-0015(5). The rule amendment clarifies that flow limitations only apply to state agency instream water right applications and also clarifies an existing rule with the Department's interpretation of when a withdrawal applies to state agency instream water right applications. Rule change also points to statutory direction on priority date of converted minimum perennial streamflows.

CHANGES TO RULE:

690-077-0015

General Statements ¶¶

- (1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right. ¶¶
- (2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses. ¶¶
- (3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right. ¶¶
- (4) ~~For state agency instream water right applications only, if~~ natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles. ¶¶
- (5) ~~Unless the Director determines otherwise, for instream water rights established through instream transfers, leases, or allocations of conserved water, it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant for the applied public use, if the criteria in Subsection (5)(a) and (b), or in Subsection (5)(a) and (c) are met: ¶¶~~
 - (a) ~~The flow does not exceed the maximum amount of any instream water right application applied for under OAR 690-077-0020 for the same reach or portion thereof, and for the same public use. ¶¶~~
 - (b) ~~For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. ¶¶~~
 - (c) ~~The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. ¶¶~~
- (6) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported. ¶¶
- (7) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river. ¶¶
- (8) When instream water rights are established through instream transfers, leases, or allocations of conserved water of existing water rights, the order, and, where appropriate, the certificate shall define the appropriate point, reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream or for a point or shorter distance if needed to account for return flow or to prevent injury. ¶¶
- (9) Instream water right applications shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses ~~unless specifically withdrawn from appropriation for such use. ¶¶~~

~~(10)~~ I. Any withdrawal rule or order does not withdraw a natural lake or stream for instream public uses unless

(a) The rule or order specifically states that it is prohibiting instream public uses, or

(b) The withdrawal is for the exclusive use of a municipality.

(9) State agency instream water right applications shall be approved only if the amount, timing and location serve a public use or uses.

(140) The combination of state agency requested instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with Sections (4), ~~(5)~~, and ~~(65)~~ of this rule.

(121) An instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies that it shall be subordinate to future uses or appropriations. The priority date of an instream water right created through conversion of a minimum perennial streamflow is as specified in ORS 547.346(1) and (2).

(132) An instream water right created through the conversion of a minimum perennial streamflow, which consists in whole or part of waters released from storage, is enforceable only as to the waters released to satisfy the instream water right.

(143) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ~~ORS 36.300~~, ORS 536.310, ORS 537.338, ORS 537.356 - 537.358

Statutes/Other Implemented: ORS 536.025, ORS 536.027, ORS 536.220, ~~ORS 36.300~~, ORS 536.310, ORS 537.338, ORS 537.356, - 537.358

AMEND: 690-077-0019

RULE SUMMARY: This rule amendment deletes subsection 2 of this rule because the statutory authority for subsection 2 is repealed by Or Laws 2025, ch 575, section 4.

CHANGES TO RULE:

690-077-0019

State Agency Instream Water Right Applications: Process for Instream Water Right Certificate Requests ¶¶

(1) Except as provided in ORS 537.343, the Department shall process a request received under 537.336 for a certificate for an instream water right in accordance with the provisions for obtaining a permit to appropriate water under 537.140 to 537.250, and the policies under 537.332 to 537.360.¶¶

~~(2) Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in 183.310 to 183.550 conflicts with a provision in 537.120 to 537.360, the provisions in 537.120 to 537.360 shall control. ¶¶~~

~~(3)~~ Pursuant to Section 46, Chapter 416, Oregon Laws 1995, for each application described under OAR 690-077-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in Chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.140 - 537.250, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575

AMEND: 690-077-0020

RULE SUMMARY: This rule is amended to (a) clarify that the Department interprets application submittal “in writing” to be either hard copy or electronic transmittal; (b) implement electronic documentation requirements under Or Laws 2025, ch 282, as well as the phased application processing approach requiring notification to continue processing; (c) require that the map contain elements that would make the map more useful for the public to orient themselves with where the stream reach is located in the state and to provide the Department watermasters clarity on the locations of the upstream and downstream points; and (d) require the application to contain the instream flow requested by month or half month consistent with existing practice.

CHANGES TO RULE:

690-077-0020

State Agency Instream Water Right Applications: Application Requirements ¶

- (1) Only ODFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time. ¶
- (2) To promote coordination, ODFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application. ¶
- (3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications. ¶
- (4) Applications to establish instream water rights shall be submitted in writing by hard copy or electronic transmittal and shall include the following: ¶
 - (a) The name(s) and address(es) of the agency(ies) applying; ¶
 - (b) The public uses to be served by the requested instream water right and the flows necessary to support the public uses; ¶
 - (c) Stream or lake name; ¶
 - (d) If a stream, the reach delineated by river mile and stream to which it is tributary; ¶
 - (e) ~~The appropriate section of a Department basin map with the applicable lake or stream reach~~ A map that includes, at a minimum, the following information: ¶
 - (A) The applicable lake or stream reach by river mile. ¶
 - (B) The upstream and downstream points identified by latitude and longitude, as established by a global positioning system or within a geographic information system; ¶
 - (C) The township(s), range(s), and section(s) that cover the requested reach, along with the quarter quarters for the upstream and downstream points of the requested reach; ¶
 - (D) A north arrow; and ¶
 - (E) An identified; scale. ¶
 - (f) The instream flow requested by month ~~and year~~ half month in cubic feet per second or acre-feet or lake elevation; ¶
 - (g) A description of the technical data and methods used to determine the requested amounts; ¶
 - (h) Evidence of notification of other qualified applicant agencies; ¶
 - (i) If a multi-agency request, the amounts and times requested for each category of public use; ¶
 - (j) Identification of affected local governments (pursuant to OAR 690-077-0010) and copies of ~~letters notifying~~ notification to each affected local government of the intent to file the instream water right application; ¶
 - (k) ~~Written~~ Documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows. ¶
 - (l) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements. ¶
- (5) The applicant is encouraged to propose: ¶
 - (a) A means and location for measuring the instream water right; ¶
 - (b) The strategy and responsibility for monitoring flows for the instream right; and ¶
 - (c) Any provisions needed for managing the water right to protect the public uses. ¶
- (6) Any request for an instream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the

owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request.¶

(7) Within 60 days after the applicant notifies the Department to proceed with the application under as provided in OAR 690-077-0031, the Department shall complete the application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. ~~Within the 60-day period, ¶~~ The Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by ~~registered mail~~ electronic means, unless the applicant has requested mailing or other sending in written form. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department mails the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-077-0052(2) by the date specified in the request, the Department may reject the application. The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this Section.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 537.153, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.336, ORS 537.338, ORS 537.356 - 537.358

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 282

AMEND: 690-077-0027

RULE SUMMARY: This rule is amended to (a) explain what a suitable book is and (b) implement Or Laws 2025, ch 282, section 14, returning applications that cannot be approved because it is within a withdrawn area.

CHANGES TO RULE:

690-077-0027

Application Processing: Completeness Review ¶

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-077-0020(4) and is complete and not defective. If the Department determines that the application is incomplete or defective, the Department shall return the application. ¶

(2) Upon determining that an application contains the information listed under OAR 690-077-0020(4) and is complete and not defective, the Department shall endorse on the application the date upon which the application was received for filing at the Department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose. ¶

~~(3) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by ORS Chapter 538. If the proposed use is prohibited by ORS Chapter 538, For the purposes of this section, a suitable book shall include the Department's electronic water rights information system. ¶~~

(3) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited because the source of water is specifically withdrawn from appropriation for such use under ORS 538 or by rule or order of the Water Resources Commission under ORS 536.410, if the Department shall reject the application and information sufficient to make the determination at the time of application intake. If the proposed use is prohibited, the Department shall return the application with an explanation of the statutory prohibitioreason for the return.

Statutory/Other Authority: ORS 537.150, ORS 538

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 536.410, Or Laws, ch 282

AMEND: 690-077-0029

RULE SUMMARY: This rule is amended to (a) reference the section of the OAR chapter 690, division 77 rules implementing Or Laws 2025, ch 282, section 14 (returning applications that cannot be approved); (b) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2; (c) implement Or Laws 2025, ch 282, section 14 requiring affirmative confirmation within 90 days of initial review for OWRD to continue processing an application; and (d) explicitly state that a single communication can suffice for more than one application in a batch of state instream water right applications if the communication specifies which applications the applicant would like the Department to continue processing.

CHANGES TO RULE:

690-077-0029

Application Processing: Initial Review ¶

(1) If the proposed use is not prohibited by statute as described in OAR 690-077-0027(3), the Department shall undertake an initial review of the application and make a preliminary determination of: ¶
(a) Whether the proposed use is restricted or limited by statute or rule; ¶
(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and ¶
(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use. ¶
(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-077-0027, the Department shall send ~~by regular mail, or with the consent of the recipient~~ the applicant, by electronic means ~~to, unless the applicant has requested mailing or other sending in written form,~~ an initial review report setting forth the Department's preliminary determinations ~~and allow it.~~ The applicant shall have 90 days from the date the Department sends the initial review report within which to notify the Department in writing to stop processing the application or to proceed with the application. If the applicant notifies Given that state-agency instream water right applications may be submitted in batches, a single communication can suffice for more than one application in the batch if the communication specifies which applications the applicant would like the Department to stop/continue processing. If the application, nt notifies the Department shall return the application. If the Department receives no timely response from to stop processing the application or does not notify the Department whether to proceed with processing the application, the Department shall proceed with the review close the application file and take no further action ofn the application.
Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.150, ORS 537.338
Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 282

AMEND: 690-077-0031

RULE SUMMARY: This rule is amended to (a) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2, as well as issuance of an initial review; and (b) remove the request for affected local, state and federal agencies to post a copy of the Department's weekly public notice, given that all members of the public can access the Department's weekly public notice online.

CHANGES TO RULE:

690-077-0031

Application Processing: Public Notice and Comments ¶

~~(1) Within seven days after~~ If the applicant notifies the Department to proceeding with the application under as provided in OAR 690-077-0029(2), the Department shall ~~give public~~ proceed with processing the application. The Department shall give notice of the application initial review in the weekly notice published by the Department public notice of the Department and accept written public comments for 30 days. The weekly notice shall be sent to the following: ¶

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse; ¶

(b) Affected Indian tribes; and ¶

(c) All persons on the Department's weekly mailing list. ¶

(2) The notice shall include a request for comments on the application, the date by which comments must be received by the Department, and information about how an interested person may obtain future notices about the application and a copy of the proposed final order. The notice also shall include the following information about the application: ¶

(a) The name(s) and address(es) of the applicant agency(ies); ¶

(b) County(ies) of water use; ¶

(c) Application file number; ¶

(d) Description of the characteristics and the purpose of the proposed instream water right; ¶

(e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation; ¶

(f) Common name of surface water source(s); and ¶

(g) The stream reach by mile or geographic location. ¶

(3) The notice shall be sent by regular United States electronic means, unless the applicant has requested mailing or with the consent of the recipient, by electronic means. document in written form. ¶

(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before the end 5 p.m. on the last day of the 30-day comment period. ¶

(5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 537.140, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 282

AMEND: 690-077-0037

RULE SUMMARY: This rule is amended to (a) remove provisions referring to application withdrawal after the initial review to simplify the rule, as this process is already established in OAR 690-077-0029; (b) remove a dated reference to a subsection of a rule; (c) remove the provisions related to protests that have been moved to OAR 690-077-0043; and (d) update citations to ORS 537.170 consistent with statutory renumbering.

CHANGES TO RULE:

690-077-0037

Application Processing: Public Interest Review ¶¶

(1) ~~Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-077-0029, b~~ Before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-077-0033. ¶¶

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8Z) and may either: ¶¶

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or ¶¶

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions. ¶¶

(3) If the Department determines that the public interest presumption is established or that the proposed instream use can be modified or conditioned to meet the public interest presumption criteria: ¶¶

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the public interest presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows: ¶¶

(A) The specific public interest under ORS 537.170(8Z) that would be impaired or detrimentally affected; and ¶¶

(B) Specifically how the identified public interest would be impaired or detrimentally affected. ¶¶

(b) In making any determination or finding in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable: ¶¶

(A) Threatened, endangered or sensitive species; ¶¶

(B) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under Section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0002(42); ¶¶

(C) Fish or wildlife; ¶¶

(D) Recreation; ¶¶

(E) Economic development; and ¶¶

(F) Local comprehensive plans, including supporting provisions such as public facilities plans. ¶¶

(c) In making any determination or finding in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments as appropriate. ¶¶

(4) If the Department determines that the presumption is established and not overcome under the provisions of Section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-077-0043, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this Section and Sections (5)-(7)-(6) of this rule. The Department shall find that the public interest presumption is overcome if a preponderance of evidence shows that: ¶¶

(a) One or more of the four public interest presumption criteria listed in OAR 690-077-0033(1)(a)-(d) are not met; ¶¶

(b) The proposed use may impair or be detrimental to the public interest according to standards described in ORS 537.170(8Z), including: ¶¶

(A) The specific public interest under ORS 537.170(8Z) that would be impaired or detrimentally affected; and ¶¶

(B) Specifically how the identified public interest would be impaired or detrimentally affected. ¶¶

(5) If the Department finds that under Section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 denying the application unless the Department makes specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(87) the issuance of an instream water right certificate will not impair or be detrimental to the public interest.¶

(6) If the Department finds that under Section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 approving the application with any appropriate modifications or conditions.¶

~~(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-077-0043, the Director shall schedule a contested case hearing.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360

AMEND: 690-077-0039

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 575, sections 3a and 5a with respect to the replacement of requests for standing with requests for party status; (b) remove redundant language requiring notice of the proposed final order to include an explanation of the requirement to raise all issues in a protest, as notice of that requirement is required by ORS 183.415(3)(a); (c) reflect that, under ORS 183.415(2), the Department must send the proposed final order to the applicant by certified or registered mail; and (d) implement Or Laws 2025, ch 282, by allowing the Department to send copies of the proposed final order electronically to persons other than the applicant.

CHANGES TO RULE:

690-077-0039

Application Processing: Proposed Final Order ¶

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-077-0031 and all findings of the Department, but the proposed final order need not separately address each comment received. ¶

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to: ¶

(a) Confirmation or modification of the preliminary determinations made in the initial review; ¶

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans; ¶

(c) An assessment of water availability and the amount of water necessary for the proposed use; ¶

(d) An assessment of whether the proposed use would result in injury to existing water rights; ¶

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170; ¶

(f) A draft certificate, including any proposed modifications, conditions, or a recommendation to deny the application; ¶

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and ¶

(h) The dates by which protests to the proposed final order and requests for party status must be received by the Department. ¶

(3) The Department shall send copies of the proposed final order to the applicant by ~~regular mail, or with the consent of the recipient, by electronic means~~ istered or certified mail. The Department shall send copies of the proposed final order by ~~regular~~ electronic means, unless the recipient requests mailing, to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050. ¶

(4) Within seven days after issuing the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. ~~In addition to the information required to be published for an application under OAR 690-077-0031, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-077-0043(4).~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575, Or Laws 2025, ch 282, ORS 183.415

AMEND: 690-077-0043

RULE SUMMARY: This rule amendment implements Or Laws 2025, ch 575, sections 3 and 5a, by (a) noting that protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575, and OAR chapter 690, division 2; (b) removing rules concerning requirements for protests and requests for standing that have been replaced with rules in OAR chapter 690, division 2, that are consistent with Or Laws 2025, ch 575; and (c) describing the process that takes place after the protest deadline if a protest is submitted.

CHANGES TO RULE:

690-077-0043

Application Processing: Protests and Standing-Conduct of Contested Case; Final Orders on Default when No Protest Filed ¶

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:¶

(a) The name, address and telephone number of the protestant;¶

(b) A description of the protestant's interest in the Protests of, requests for party status, and contested case proceedings concerning proposed final orders and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;¶

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;¶

(d) A detailed description of how the proposed re governed by Or Laws 2025, ch 575 and OAR chapter 690, division 2. Proposed final orders shall become final order-is in error or deficient and how to correct the alleged error no protest is filed or or by deficiency;¶

(e) Any citation of legal authority supporting the protest, if known; and¶

(f) For persons other than the applicant, the protest fee required under ORS 536.050.¶

(2) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order, whether issued following a contested case hearing or where no contested case hearing is held.¶

(3) The request for standing must be in writing, signed by the requester, and include the following:¶

(a) The requester's name, mailing address and telephone number;¶

(b) If the request is as provided in OAR 690-002-0235. ¶

(2). Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Department shall: ¶

(a) Issue a final order is representing a group, association or other organization, the name, address and telephone number of the represented group;¶

(c) A statement provided under ORS 537.170 (1) or (2), if the applicant that the requester supports the proposed final order as issued;¶

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and¶

(e) The fee established under ORS 536.050.¶

(4) Each person submitting a protest ors not filed a protest and the director finds that there a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing, or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue, precludes judicial review based on that issue.¶

(5) A no significant issues related to the proposed use of water; / ¶

(b) Schedule a contested case hearing if a protest has been submitted; or ¶

(c) Provide any person who has filed a timely request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.¶

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of timely submitted a protest or request for party status with an estimate of the timing of referring the contested case to the not Office of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.¶

(7) Within 10 days after the close of the filing period established under Section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575

REPEAL: 690-077-0046

RULE SUMMARY: This rule is repealed to align with changes in Or Laws 2025, ch 575 and updates to OAR 690-002.

CHANGES TO RULE:

~~690-077-0046~~

~~Application Processing: Determination to Hold a Contested Case Hearing~~

~~(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:~~

~~(a) Issue a final order as provided under ORS 537.170(6); or~~

~~(b) Schedule a contested case hearing.~~

~~(2) The Director:~~

~~(a) May schedule a contested case hearing if:~~

~~(A) A protest has been submitted; and~~

~~(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.~~

~~(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-077-0043 and requests a contested case hearing.~~

~~(3) As soon as possible after making a determination under Section (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing, and describe the procedures each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered the scheduling of the contested case hearing for purposes of the running of the 45-day time period under Section (4) of this rule.~~

~~(4) Within 45 days after the Director schedules a contested case hearing under ORS 537.153(8), the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of 183.413 to 183.470 and OAR chapter 690, division 02. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.~~

~~(5) Notwithstanding the provisions of ORS 183.413 to 183.470 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this rule shall be limited to:~~

~~(a) The applicant;~~

~~(b) Any person who timely filed a protest; and~~

~~(c) Any person who timely filed a request for standing under OAR 690-077-0043 and who requests to participate as a party or limited party in the contested case hearing prior to the start of the proceeding.~~

~~(6) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.413 to 183.470 except:~~

~~(a) As provided in Sections (4) and (5) of this rule; and~~

~~(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.~~

~~(6) After the conclusion of a contested case hearing, any party may file exceptions to the hearing officer's proposed order in the manner described in OAR 690-002-0175.~~

~~Statutory/Other Authority: ORS 536.025, 536.027, 537.153, 537.170, 537.338~~

~~Statutes/Other Implemented: ORS 537.332-537.360~~

AMEND: 690-077-0047

RULE SUMMARY: This rule is amended to implement (a) Or Laws 2025, ch 575, section 6 by aligning the rule with statutory updates to ORS 537.170; and (b) Or Laws 2025, ch 575, section 3 by making changes that reflect that the Director must issue a final order only when a protest is timely filed because under the new law, if no protest is timely filed, the proposed final order becomes a final order by operation of law.

CHANGES TO RULE:

690-077-0047

Application Processing: Final Orders ¶

(1) In developing the final order, the Department shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received. ¶

(2) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order ~~reject~~denying the application or modifying or conditioning the proposed final order to conform to the public interest. ¶

(3) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying or conditioning the proposed final order. ¶

(34) A final order issued under Section (2) or (3) of this rule for an instream water right certificate may include any condition the Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The final order may: ¶

(a) Approve the instream water right application for the quantity of water requested; ¶

(b) Approve the instream water right application for a lesser quantity of water; or ¶

(c) Deny the instream water right application. ¶

(45) If the Director reduces the quantity of water requested, denies the instream water right application, or conditions the instream water right, the Director shall include a statement of findings that sets forth the basis for the reduction, denial or conditions. ¶

(56) Upon issuing a final order, or upon a proposed final order becoming a final order by default as provided in OAR 690-002-0235, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department shall also publish notice of the final order by publication in the weekly notice published by the Department.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.170, ORS 537.343, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 537.153, Or Laws 2025, ch 575

AMEND: 690-077-0051

RULE SUMMARY: This rule is amended to: (a) implement Or Laws 2025, ch 575, section 6(5) by conforming the rule to updates to ORS 537.170 concerning final orders issued without a hearing that modify proposed final orders; and (b) to remove language from the rule that is based on portions of ORS 537.170 that are deleted by Or Laws 2025, ch 575, section 6.

CHANGES TO RULE:

690-077-0051

Application Processing: Contested Case Hearing on Final Order that Modifies Proposed Final Order ¶

If a ~~contested case hearing is not held prior to the issuance of the final order:¶~~

~~(1) Where~~ timely protest of a proposed final order was filed by a person other than the applicant and, as described in ORS 537.153(7)(a), the Director issues a final order without holding a contested case hearing, and the final order modifies ~~or conditions~~ the proposed final order, the applicant may request and the Director shall schedule a contested case hearing, a person granted party status or as provided under OAR 690-077-0046 by submitting the information required for ~~testant may submit a protest as protest under 690-077-0043~~ vided in OAR 690-002-0220 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications ~~or conditions~~ to the proposed final order.¶

~~(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases~~ The Department must refer the protest to the Office of Administrative Hearings for hearing if the protestant is an applicant, unless the applicant withdraws the protest or the protest is resolved through a settlement prior to referral.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.170, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 537.153, Or Laws 2025, ch 575

AMEND: 690-077-0052

RULE SUMMARY: This rule is amended to provide parameters on what qualifies as a reasonable and necessary extension on the application processing timeline requested by the applicant through an administrative hold. This rule also is amended to implement Or Laws 2025, ch 575, section 7, by conforming the rule with updates to ORS 537.175 related to issuance of final order.

CHANGES TO RULE:

690-077-0052

Application Processing: Time Requirements ¶¶

(1) Except as provided in Section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.336 within 180 days after the Department proceeds with the application under OAR 690-077-0029(2). ¶¶

(2) ~~At~~If the request applicant requests an administrative hold on processing of the application, the Department may extend the 180-day period set forth in Section (1) of this rule for a reasonable period of time. The ~~extension~~extension cumulative length of extensions requested through administrative holds shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary. ¶¶

~~(3) If a contested case hearing is held, the Director shall issue a final order. ¶¶~~

~~(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the Department; and ¶¶~~

~~(b) Within 180 days after scheduling the hearing for all other contested case proceeding for the applicant to engage in collaborative conversations with interested parties that provided public comment under OAR 690-077-0031(4), and the extension does not exceed two years. ¶¶~~

~~(43) If the applicant does not request an extension under Section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-077-0029(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Director to issue a final order or schedule a contested case hearing on an application for a water right. ¶¶~~

~~(54) The mandatory timelines set forth in division 77 for the Department to process applications shall not apply to applications filed before October 31, 1996.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.175, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575

AMEND: 690-077-0054

RULE SUMMARY: This rule is amended to (a) remove the rule referencing a publication that would have occurred decades ago and is no longer part of future Department actions; (b) implement Or Laws 2025, ch 575, by adding procedures concerning actions the Department must take when a protest is timely filed, protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed OAR chapter 690, division 2, and that proposed final orders become final if no protest is filed or upon default; (c) remove rules that have been superseded by these requirements; and (d) including language from statute for context.

CHANGES TO RULE:

690-077-0054

Conversion of Minimum Perennial Streamflows to Instream Water Rights ¶

~~(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate~~ Pursuant to ORS 537.346, all minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights. When the Department proposes to convert a minimum perennial streamflow to an in-stream water right under ORS 537.346, the Department ~~mailing lists notice of~~ shall issue a proposed final order reflecting the proposed conversion, and a list. ¶

~~(2) Any person or~~ all existing minimum perennial streamflows established on any waters of this state prior to June 25, 1988 separated as follows: ¶

~~(a) Those flows the Commission intends to convert without change to instream water rights; ¶~~

~~(b) The~~ agency may request a contested case hearing on any of the conversions proposed within 45 days of issuance of a proposed final order. ¶

~~(3) Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR chapter 690, division 2. Proposed flows the Commission intends to condition with OAR 690-077-0015(12) and schedule a hearing before converting to instream water rights. Inal orders shall become final orders if no protest is filed or by default as provided in OAR 690-002-0235. ¶~~

~~(4) Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Department shall: ¶~~

~~(2a) Any person or agency, including the Department, may request a hearing on any of the conv~~ Issue a final order as provided under ORS 537.170 (1) or (2), if the director finds that there are no significant issues related to the proposed conversion; ¶

~~(b) Schedule a contested case hearing if a protest has been submitted; or ¶~~

~~(c) Provide any persions proposed within 60 days of publication who timely submitted a protest or request for party status with an estimate of the timing of referring the Secretary of State's bulletin or the mail~~ contested case to the Office of Administrative Hearings for a hearing of and notice. ¶

~~(3) Requests for hearings that parties may provide settlement proposals. ¶~~

~~(5) A protest shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that: ¶~~

~~(a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary; ¶~~

~~(b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or ¶~~

~~(c) The conversion from a minimum streamflow to an instream water right would not be in the public interest. ¶~~

~~(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created. ¶~~

~~(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission: ¶~~

~~(a) To approve the conversion; or ¶~~

~~(b) To conduct a hearing under ORS 537.170. ¶~~

~~(6) The Commission shall act on the Director's recommendation in accordance with OAR 690-077-0046.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.356 - 537.358

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575, sec. 2, Or Laws 2025, ch 575, sec. 3, Or Laws 2025, ch 575, sec. 5a

AMEND: 690-077-0065

RULE SUMMARY: This rule is amended to (a) clarify language for consistency with the rest of the OAR chapter 690, division 77 rules; (b) better align with the definitions of “enlargement” and “injury” found in OAR 690-380 that also apply to OAR 690-077; (c) remove language that is inconsistent with the authority under ORS 537.348, as the Department’s authority under ORS 537.343(2) to make the final determination, including to limit the level of instream flow necessary to protect the public use(s) does not apply to these types applications; (d) make reference to a new section of rule related to instream lease renewal applications found in OAR 690-077-0105; and (e) remove reference that a special form could be prepared, because the Department already has special district forms.

CHANGES TO RULE:

690-077-0065

Instream Transfers and Leases: General Provisions ¶¶

(1) The Department shall promote and facilitate potential instream transfers and leases under ORS 537.348 that ~~would~~ provide benefits for public uses. ¶

(2) The Department encourages irrigation districts and other water purveyors to ~~develop~~ prepare single lease applications that pool individual existing water rights and ~~ownerships that are to be~~ for leased during the same term. ¶

(3) Department personnel shall review all instream transfer or lease applications pursuant to OAR 690-077-0070 through OAR 690-077-0079, OAR 690-077-0105, and OAR 690-077-0110 to assure that they comply with these rules and, if ~~possible~~ needed, to develop conditions to prevent enlargement of the ~~original~~ existing water right or injury to other existing water right owners. ¶

(4) Completed lease applications submitted pursuant to OAR 690-077-0076 and OAR 690-077-0105, including signatures of lessor(s) and lessee (if applicable), and all necessary attachments or exhibits, must be received by the Department’s Salem office prior to July 1, or for year-a-round uses, must be received prior to October 1. Completed lease applications received after this date shall be returned or, at the request of the applicant, be processed to be effective for the next calendar year. At the discretion of the Director, an application may be received and processed after this date during the current year. ¶

(5) The Department may compile descriptive information to assist all parties in addressing technical issues related to instream transfers and leases, including but not limited to describing injury and enlargement issues, ~~determining whether a proposed instream water right would support a public use~~, setting the location of a proposed instream water right and making agreements for measuring and monitoring the instream water right. The descriptive information shall not restrict new leases, but shall offer options that have been used in earlier leases to ensure compliance with OAR chapter 690, division 77. ¶

(6) The Department may prepare lease application forms that include the requirements listed in OAR 690-077-0076 ~~(3)~~, OAR 690-077-0105, and any additional information the Department deems necessary to comply with the policies of OAR chapter 690, division 77 and to reflect the nature of the ~~water rights subject to being leased instream. For example, a special form could be prepared for an irrigation district to sponsor a single lease application that involved multiple water right owner~~ existing water rights proposed for instream lease.

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 539.360

Statutes/Other Implemented: ORS 536.027, ORS 537.332 - 539.360

AMEND: 690-077-0070

RULE SUMMARY: This rule is amended to (a) include a description of the water rights that can be transferred instream, (b) provide general clarifications, (c) include new language describing the necessary requirements for transferring above-ground storage rights instream through the instream transfer process, (d) to remove language related to the limitation of water protected instream as there is not a statutory basis to do so under ORS 537.348, and (e) add language relating to provisions for early termination of a time-limited instream transfer.

CHANGES TO RULE:

690-077-0070

Application for Instream Transfer ¶¶

(1) As provided in ORS 537.348(1), any person may apply for an instream transfer, including a time-limited instream transfer. ¶¶

~~(2) In addition, a holder of a water use subject to transfer that is for surface water, above-ground storage of surface water, or the use of stored surface water may change all or a portion of the transfer application requirements described in OAR 690-380-3000, an instream transfer application right. ¶¶~~

~~(3) For an instream transfer of an above-ground storage right, the applicant shall consult with the watermaster prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement. ¶¶~~

~~(4) An application for instream transfer shall include the following information: ¶¶~~

~~(a) Public use(s) for which the instream right is desired; The transfer application requirements described in OAR 690-380-3000, except that the application map for instream transfer shall be consistent with the requirements outlined under OAR 690-077-0071; ¶¶~~

~~(b) Description of the time periods of the instream use and quantity of water to be transferred to instream use; ¶¶~~

~~(c) The location of the proposed instream use. If a reach or lake level is requested, identify the upstream and downstream extent of the reach or the appropriate lake level; ¶¶~~

~~(d) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels; ¶¶~~

~~(e) If an instream water right exists on the same reach(es) or lake and ¶¶~~

~~(e) For a time-limited instream transfer, the duration or number of years for which the time-limited instream transfer is being requested and the requested provisions, if any, for on portions thereof early termination. ¶¶~~

~~(5) For instream transfer of, a statement of whether the proposed conversion is intended to add an above-ground storage right, in addition to the application requirements under section (4) of this rule, the application shall: ¶¶~~

~~(a) Be consistent with the results of the watermaster consultation outlined in section (3) of this rule and shall include, but is not limited to, the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right; ¶¶~~

~~(f) For a time-limited instream transfer, the following requirements specified by the watermaster: ¶¶~~

~~(A) A description of the location(s) and type(s) of measuring device(s); ¶¶~~

~~(B) A description of the frequency of the measurements; and ¶¶~~

~~(C) Identification of the parties responsible for performing the respective measurements; ¶¶~~

~~(b) Identify the total volume or rate authorized under the above-ground storage right; ¶¶~~

~~(c) Identify the total volume or rate of the above-ground storage right that is allocated to secondary water right(s) for use of the stored water and the associated permit or certificate number(s) of the secondary water right(s); ¶¶~~

~~(d) Identify the total volume or rate of the above-ground storage right proposed for instream transfer; and ¶¶~~

~~(e) Include affidavits of voluntary cancellation for number of years for which the time-limited instream transfer is being requested secondary water right(s), as applicable, if the combined total volume or rate of subsections (5)(c) and (5)(d) of this rule exceeds the volume or rate identified under subsection (5)(b) of this rule, to ensure the authorized volume or rate of water under the above-ground storage right is not exceeded. ¶¶~~

~~(36) The Department may require additional information needed to complete the evaluation of the proposed conversion; under this rule~~

Statutory/Other Authority: ORS 536, ORS 537

Statutes/Other Implemented: ORS 536, ~~537~~ ORS 537, ORS 540, ORS 540.520

ADOPT: 690-077-0071

RULE SUMMARY: This new rule is adopted to describe required elements, as well as some elements that are not required, for the map that must be submitted with an application for instream lease or instream transfer. This new rule is also adopted to provide more clarity as it relates to mapping for types of uses that must clearly identify number of acres for leased/transferred lands and remaining non-modified lands, and to allow for a statement on the map to describe the proposed instream reach or point.

CHANGES TO RULE:

690-077-0071

Map Requirements for Instream Transfer and Instream Lease Applications

(1) A map must be submitted that includes, at a minimum, the following information: ¶

(a) North directional symbol, map scale and legend: ¶

(b) Township, range, section and quarter-quarter (QQ), including tax lots, donation land claims and government lots, if appropriate: ¶

(c) If an irrigation right, nursery use, or other similar uses, the number of acres to be leased or transferred in each quarter-quarter must be clearly labeled and hachured to differentiate between the acres being leased or transferred and any remaining acreage must be identified; ¶

(d) If the place of use on the water right is broken down by more than one priority date, or source stream, and/or diversion the map must identify each with separate hachuring and clearly label what is being changed; ¶

(e) For instream transfer application maps, identify the point(s) of diversion authorized on the water right. If the water right does not identify the point(s) of diversion, include information in the application to identify where the point of diversion is located; ¶

(f) Provide a statement describing the proposed instream reach or point; and ¶

(g) If more than three water rights are involved, separate maps are needed for each water right. ¶

(2) The map described in section (1) of this rule need not be prepared by a certified water right examiner. ¶

(3) An existing water right map that meets the requirements of this section may be used, if approved by the Department prior to submittal of the application. ¶

(4) If the existing water right proposed for instream lease or transfer is for municipal or quasi-municipal water use, a map is not required.

Statutory/Other Authority: ORS 536, ORS 537

Statutes/Other Implemented: ORS 536, ORS 537, ORS 540, ORS 540.520

AMEND: 690-077-0075

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, as it relates to processing steps associated with the application and to conform to the OAR chapter 690 division 380 rules; (b) describe the necessary requirements for transferring an above-ground storage right instream through the instream transfer process; (c) provide additional detail about conditions to be included in the initial review, depending on whether for a permanent instream transfer or a time-limited instream transfer; (d) provide for the preparation and issuance of draft instream water rights certificates, if for a permanent instream transfer, to implement Or Laws 2025, ch 282 as it relates to issuance of the proposed final order; and (e) provide more detail related to distribution of approval orders and instream water right certificates, as applicable upon approval of instream transfers.

CHANGES TO RULE:

690-077-0075

Processing an Instream Transfer Application ¶

~~(1) A proposed instream transfer application, including a time-limited instream transfer, of a water use subject to transfer to an instream water right application, shall be processed pursuant to the water rights transfer rules in OAR chapter 690, division 380 and the following provisions: 690-380-4000 through OAR 690-380-5000. ¶~~

~~(12) The Department shall provide notice of the proposed instream transfer pursuant to OAR 690-380-40005, and to affected Indian tribes. ¶~~

~~(23) In addition to the assessment described in OAR 690-380-40100, the Department's preliminary determination initial review shall include an assessment of whether: ¶~~

~~(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original existing water right; and ¶~~

~~(b) The proposed reach(es) is (are) appropriate considering: ¶~~

~~(A) Instream water rights shall begin at the recorded point of diversion; ¶~~

~~(B) Locations of return flow. Where return flows occur at a definite point, located a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream; ¶~~

~~(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-077-0015(87); and ¶~~

~~(D) Any known areas of natural loss of streamflow to the river-bed. Where an instream water right passes through an area of known natural loss, several stream reaches may be required to incorporate the reduced flows available, in accordance with paragraph (23)(c)(B) of this rule; and ¶~~

~~(c) The proposed flow(s) is (are) consistent with OAR 690-077-0015(7), (86) and (11), shall provide a public benefit for an instream use, 7) and be appropriate considering: ¶~~

~~(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point located a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and ¶~~

~~(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow; and ¶~~

~~(3C) An For instream transfer shall be approved if the Department determines that the transfer is consistent with OAR 690-380-5000, and Section (2) of this rule. ¶~~

~~(4) The Department shall issue a final order consistent with the preliminary terms of above-ground storage rights, the total volume or rate of the above-ground storage right that is allocated to secondary water right(s), combined with the total volume or rate of the above-ground storage right proposed for instream transfer, shall not exceed the total volume or rate authorized under the above-ground storage right. ¶~~

~~(4) The in a initial review described in OAR 690-380-4010 and S section (23) of this rule if no protests are received under 690-380-4030. ¶~~

~~(5) Upon approval of an instream transfer, the Department shall issue a permanent instream water right certificate. However, upon approval of a time-limited instream transfer, the Department shall issue a final order with a specific shall also specify that if the instream application can be approved, then the approval shall include, but is not limited to, conditions specifying that the Department shall: ¶~~

~~(a) For permanent instream transfers: ¶~~

~~(A) Cancel the existing water right(s), or portion affected by the instream transfer application; ¶~~

~~(B) Issue a permanent instream water right certificate(s); and ¶~~

(C) Issue new remaining right certificate(s), if applicable, for the portion(s) of the existing water right(s) not involved in the instream transfer application; and ¶

(b) For time-limited instream transfers: ¶

(A) Specify the date of expiration or other conditions for termination of the instream water right; and s¶

(B) Suspend the use of the original existing water right during the effective period of the instream water right. A copy of the certificate or final order shall be mailed to the applicant and as appropriate to affected Indian tribes, ODFW, DEQ and Parks. The Director shall also issue a new certificate for any remaining right for the existing use as appropriate¶

(5) In addition to the proposed final order requirements outlined in OAR 690-380-4010, for permanent instream transfer applications, the Department shall issue draft permanent instream water right certificate(s). ¶

(6) As part of the notice of the proposed final order required under OAR 690-380-4020, the Department shall, except for time-limited instream transfer applications, also send copies of the draft permanent instream water right certificate(s) to the applicant(s) by registered or certified mail in accordance with ORS 183.415. ¶

(7) Upon approval of an instream transfer application, the Department shall: ¶

(a) For a permanent instream transfer, mail a copy of the instream water right certificate and the final approval order to the applicant and as appropriate, to affected Indian Tribes, ODFW, DEQ, and Parks; or ¶

(b) For a time-limited instream transfer, mail a copy of the final approval order to the applicant and as appropriate, to affected Indian Tribes, ODFW, DEQ, and Parks.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.356 - 537.358, ORS 537.348

Statutes/Other Implemented: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.356, 537.358 - 537.358, ORS 537.348, ORS 540.520, ORS 540.530, Or Laws 2025, ch 282

AMEND: 690-077-0076

RULE SUMMARY: This rule is amended to (a) modify the description of the water rights that can be leased instream; (b) add new language describing the necessary requirements for transferring storage rights instream through the instream lease process; (c) describe mapping requirements; (d) describe when a lease renewal application can be submitted; (e) clarify language for consistency with OAR chapter 690, division 380; (f) remove the requirement that the application contain conditions to avoid enlargement or injury, as that is the Department's role in reviewing an application; and (g) remove language related to the limitation of water protected instream (via instream water rights established through instream leases), as there is not a statutory basis to do so under ORS 537.348. This rule is also amended to (a) provide more detail as it relates to the lessor and the lessee; (b) allow that if the lessor is a district, written authorization from each district user involved in the lease is on file at the district and available upon request; (c) add reference to statutory fee requirements' and (d) remove language in (4)(j) related to name and address of water purveyors conveying water to the water right to be leased instream, and consolidated into another subsection of this rule (4)(a). This rule is also amended to provide for copies of contracts or agreements for use of a reservoir owned by federal government as it relates to consent.

CHANGES TO RULE:

690-077-0076

Application for an Instream Lease ¶¶

- (1) ~~A holder of any of the following types of water rights may enter into a lease to convert all or a portion of a water right to an instream water right for a specified time period not to exceed five years:¶¶~~
(a) ~~Surface water rights for beneficial use or storage established by a water right certificate or an adjudication under ORS Chapter 539 as evidenced by court decree; or¶¶~~
(b) ~~A water use subject to transfer that is for surface water, above-ground storage of surface water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Director under 537.250, or transfer application for which an order has been issued under 540.530 approving the change and for which proper proof of comple, or the use of stored surface water may enter into a lease to change all or a portion of the change has been filed with the Commission;¶¶~~
(c) ~~Secondary existing water right to an instream water rights for the use of stored water established by permit, certificate or court decree; or¶¶~~
(d) ~~The conserver's portion of conserved water allocated under ORS 537.445 to 537.500 a specified time period not to exceed five years. ¶¶~~
- (2) The parties to the lease application shall include, but are not limited to: ¶¶
(a) The holder(s) of the subject water right(s) as the lessor(s); ¶¶
(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor(s), if applicable; and ¶¶
(c) The lessee, if different than the Department.¶¶
- (3) ~~At a minimum, the lease application shall include:¶¶~~
(a) ~~Names and signatures of the parties;¶¶~~
(b) ~~A description of the water right(s) to be leased. The lessee may include, but is not limited to, individuals; organizations who may assist with the lease application; or organizations who may provide compensation to the lessor(s) for the leasing of the existing water right(s) instream. ¶¶~~
- (3) For an instream leased. If only a portion of a water right will be leased, a clear description, including maps if necessary, of the portion to be leased; of an above-ground storage right, the applicant shall consult with the watermaster prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement. ¶¶
- (c4) Rate, total volume, timing and location of the instream right, including any necessary conditions to avoid enlargement of the original right or potential injury to other water right holders;¶¶
- (d) A description of how the lease will serve a public use or uses;¶¶
- (e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement An application to lease an existing water right(s) for instream uses must be filed with the Department, on a form provided by the Department, and shall include: ¶¶
- (a) Names, signatures, mailing addresses, and email addresses (if available) of the parties. In the case where the

lessor(s) is a district or water purveyor, the lease application shall be submitted by the district or water purveyor and signed by the manager or authorized representative of the district or water purveyor; ¶

(b) If the lessor(s) is a district, the application shall include a statement by the district's manager or authorized representative that each district water user involved in the lease application has provided written authorizations for the lease, such authorization is on file with the district, and is available to the Department and the public upon request; ¶

(c) A description of whether the existing water right(s) proposed for lease, is intended to add to the amount including the point of diversion location. If only a portion of the an existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right, is proposed for lease, a description of the place of use and maps consistent with OAR 690-077-0071 are required. If the lessor(s) is a district, the description shall include the name of each district water user by parcel; ¶

(d) Rate, total volume, timing and location of the proposed instream leases; ¶

(fe) Provision ensuring the original use of the existing water right will be suspended; ¶

(gf) The term of the lease; ¶

(hg) A statement by the lessor(s) verifying that the existing water rights described in Subsection (3)(b) of this rule(s) being leased instream have been used under the terms and conditions of the rights during the last five years, or as an instream water right, or an explanation why the existing water right(s) is not subject to forfeiture under ORS 540.610. As an alternative, an irrigation district or other water purveyor may provide evidence for owners, verifying delivery of water for the lands appurtenant to the rights to be leased; ¶

(ih) If the lessor(s), as identified in Subsection (2)(a) of this rule, is not the deeded landowner of the land to which the existing water right is appurtenant, sufficient documentation to demonstrate that the lessor(s) is authorized to pursue the instream lease. These also include what the district shall hold on file for subsection (4)(b). Such documentation shall include: ¶

(A) A notarized statement from the landowner consenting to the lease and a copy of the recorded deed; ¶

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or ¶

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner. ¶

(j) The name and address of any water purveyor that conveys water to the water right(s) described in Subsection (3)(b) of this rule; ¶

(i) A map consistent with OAR 690-077-0071; and ¶

(j) The appropriate fee as required under ORS 536.050. ¶

(5) For instream lease of an above-ground storage right, in addition to the application requirements under this rule, the application shall: ¶

(a) Be consistent with the results of the watermaster consultation outlined in section (3) of this rule and shall include, but is not limited to, the following requirements specified by the watermaster: ¶

(A) A description of the location(s) and type(s) of measuring device(s); ¶

(B) A description of the frequency of the measurements; and ¶

(C) Identification of the parties responsible for performing the respective measurements; ¶

(b) Identify the total volume or rate authorized under the above-ground storage right; ¶

(c) Identify the total volume or rate of the storage right that is allocated to secondary water right(s) for use of the stored water; ¶

(d) Identify the total volume or rate authorized under the above-ground storage right proposed for instream lease; ¶

(e) If the combined total volume or rate of subsections (8)(c) and (d) of this rule exceeds the volume or rate identified under subsection (8)(b) of this rule, list the secondary water right(s) under which use of the stored water will be suspended for the term of the lease to ensure the authorized volume or rate of water under the above-ground storage right is not exceeded; and ¶

(f) If secondary water right(s) are identified for suspension pursuant to the calculation described in subsection (8)(e) of this rule, provide sufficient documentation to demonstrate that the lessor(s) is authorized to suspend the use of stored water under the secondary water right(s) and pursue the instream lease. Such documentation shall include: ¶

(A) A notarized statement from the landowner or water right holder of record consenting to the lease and a copy of the recorded deed; or copies of contracts or agreements for the use of a reservoir owned by a federal government; or ¶

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or ¶

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner or water right holder of record; and ¶

(g) Include a statement that the quantity of water proposed for instream lease will not be stored under the storage right for the term of the instream lease. ¶

(46) Lease applications shall conform with applicable provisions of OAR 690-077-0015. ¶

(7) If a final order was issued approving an existing instream lease, and the term of that lease has expired or is about to expire, and there are no changes to the instream use or to the water (or portion thereof) involved, an instream lease renewal application meeting the requirements set forth under OAR 690-077-0105 can be submitted.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.332 - 537.360, ~~537.455 - 537.500~~

RULE SUMMARY: This rule is amended to (a) remove language requiring the Department, following receipt of a lease application, to post the applicable weekly public notice in the applicable watermaster office because this information is available on the Department's website and via the email distribution list for the weekly public notice, and can also be shared by the watermaster if a member of the public requests it; (b) clean up language related to injury and enlargement and clarifies some language to be consistent with the rest of the rules; (c) clarify requirements related to leasing a storage right; (d) reorders rule for clarity related to claims of injury (e) remove language related to instream lease renewals, as there is a new section on renewals; and (f) update references to other rules in OAR 690-077 that have been updated with numbering changes.

CHANGES TO RULE:

690-077-0077

Processing an Instream Lease Application ¶

(1) On receipt of an instream lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office. ¶

~~(2) A written~~ ¶

~~(2) An assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use under the existing water useright and avoid injury or enlargement;~~ ¶

~~(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include shall evaluate the instream lease application for injury and enlargement. The department may consider, but are is not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the y, the following factors to determine the existence of injury or enlargement as a result of the lease:~~ ¶

~~(a) Rate and duty, or total volume proposed for instream leased; the role~~ ¶

~~(b) Location of return flows; e~~ ¶

~~(c) Conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and i~~ ¶

~~(d) Priority dates of instream water rights and other existing water rights;~~ ¶

~~(e) If the existing water right proposed for instream lease is an above-ground storage right:~~ ¶

~~(A) The total volume authorized under the above-ground storage right; and~~ ¶

~~(B) The total volume of the above-ground storage right that is allocated to secondary water right(s) for use of the stored water; and~~ ¶

~~(f) Issues potentially arising from water users that share a conveyance system.~~ ¶

~~(4) Any allegations of injury to other existing water rights or enlargement of the original existing water right proposed for instream lease that are received within 21 days of the date of mailing of the publication of the lease application in the Department's weekly public notice shall be review provided by to the parties to the lease before and reviewed by the Department issues prior to issuance of an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.~~ ¶

~~(45) If the Department determines that the proposed lease may cause injury to other existing water rights or enlargement of the original right existing water right proposed for instream lease, considering issues raised under Ssection (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented, the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.~~ ¶

~~(56) If a lease is for more than one year the parties shall review, any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, shall be provided to the parties and reviewed by the Department to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.~~ ¶

~~(67) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not~~

distribute water in a way that would cause the injury or enlargement to continue. If injury or enlargement claims are valid and cannot be prevented, the Department shall issue an order terminating the lease. ¶

(78) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(34)(ed) shall conform to the provisions of OAR 690-077-0015(76) and (87) and OAR 690-077-0075(23). ¶
(89) Except as provided in OAR 690-077-0079, a lease involving an existing water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the ~~original~~existing water right or the instream right, not both, during any one season unless the source is from stored water. ¶

(910) If the existing water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the ~~original~~ existing water right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source. ¶

(101) ~~Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a r~~Existing water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right. ¶
(123) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right. ¶
(134) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system. ¶
(145) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered ~~by~~under OAR chapter 690, division 19. ¶
(156) Except as provided in Sections (45) and (56) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

~~Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a r~~Existing water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right. ¶

(123) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right. ¶

(134) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system. ¶

(145) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered ~~by~~under OAR chapter 690, division 19. ¶

(156) Except as provided in Sections (45) and (56) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

Statutory/Other Authority: ~~ORS 536.027, 537.332 - 539.360~~

Statutes/Other Implemented: ORS 537.332 - 539.360

AMEND: 690-077-0079

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2023, ch 55, to remove the sunset date for split season use instream leases, (b) add language to provide better clarity related to measurement and reporting requirements for split season use instream leasing, and (c) move existing language in this rule to other sections for clarity. This rule is also updated to reference "Department" instead of "watermaster" in order to align with statute.

CHANGES TO RULE:

690-077-0079

Split Season Use Instream Leasing ¶

(1) An application for a split season use instream lease of water shall ~~provide~~ include the information required under OAR 690-077-0076 and follow the lease process described under ~~OAR 690-077-0076 and 690-077-0077.7.~~ ¶

(2) The applicant shall consult with the Department prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement. Measurement devices required by the Department as a result of this consultation shall be in place prior to water use for both the existing purpose and the proposed instream purpose. ¶

(23) In addition to the application requirements described in OAR 690-077-0076, split season use leases applications shall: ¶

(a) Be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose. ¶

~~(b, whichever comes first; ¶~~

(b) Be submitted on a form provided by the Department; ¶

(c) Describe when the water will be used for the existing purpose and when the water will be used for the instream purpose, in accordance with the following: ¶

(A) The existing water use and the instream use shall not be concurrent. However, a portion of an existing water right appurtenant to one piece of land may undergo split season use, while another portion appurtenant to a different piece of land may undergo only one type of use, or a different time period for split season use; and ¶

(B) The type of use under a split season use may be changed only once during a calendar year, except for full-year uses which may have a single instream use period and two existing use periods; ¶

(3d) The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Department, or provide for third party measurement and reporting to the satisfaction of the Department. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon. ¶

(4) The water right lessor or lessee shall contact the watermaster or other Department field staff to determine the necessary measurement and reporting requirements associated with leasing a water right. The complete lease application shall include: ¶

(a) Be consistent with the results of the Department consultation outlined in section (2) of this rule and shall include, but is not limited to, the following requirements specified by the Department: ¶

(A) A description of the location(s) and type(s) of measuring device(s); ¶

(B) A description of the frequency of measurement; and reporting; and ¶

(C) Identification of the parties responsible for performing the respective measurements and reporting; and ¶

(d) Identify the total amount of water proposed to be used, listed by rate and duty or volume for the existing purpose and for the instream purpose, including monthly or partial season rate or duty, or volume limitations, if appropriate. ¶

(54) The Commission shall review the split season use leasing program no later than the year 2014 to determine if any changes should be made in the program. ¶

NOTE: ORS 537.348(3) sunsets on January 2, 2008. Upon issuance of an order approving a split season use instream lease application, consistent with the consultation and the requirements described in sections (2) and (3)(d) of this rule, the applicant (lessor or lessee), or the designated third party to be responsible for performing the measurements, shall measure and report to the Department, the amount of water used for the existing purpose authorized under the water right(s) and for the instream purpose.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, 537.338, 537.356 - 537.359 ORS 537.348

Statutes/Other Implemented: Or Laws 2023, ch 55, ORS 537.332 - 537.360

REPEAL: 690-077-0080

RULE SUMMARY: This rule is proposed for repeal. Although ORS 537.350 contemplates that instream rights can be cancelled, there are conflicts with the rule and statute, and within the statute that makes it unclear how the Department would ever reach a determination that an instream water right has been forfeited.

CHANGES TO RULE:

~~690-077-0080~~

~~Miscellaneous Provisions: Cancellation or Waiving of an Instream Water Right~~

~~(1) There is a rebuttable presumption that an instream water right, or a portion thereof, that has not been put to a public use for five successive years in which water was available is forfeited.¶¶~~

~~(2) Upon making a preliminary finding that the instream water right has been forfeited the Director shall notify DEQ, ODFW, Parks, and those persons and agencies on the Department's weekly mailing list of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks.¶¶~~

~~(3) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper.¶¶~~

~~(4) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(1).¶¶~~

~~(5) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(2).¶¶~~

~~(6) An instream water right established under ORS 537.336 through 537.338 (OAR 690-077-0020) may be canceled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in Section (2) of this rule.¶¶~~

~~(7) An instream water right shall not be subject to forfeiture due to non-use when water was not available.~~

~~Statutory/Other Authority: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 – 537.358~~

~~Statutes/Other Implemented: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356, 537.358~~

AMEND: 690-077-0100

RULE SUMMARY: The current rule is inconsistent with statute and is amended to more closely follow the process described in ORS 537.352 and provide additional clarity. ORS 537.352 provides that the Department, not Commission, will make a determination while conducting a review of the project in accordance with ORS 537.170. Changes align the rule with statute and the water rights application processing steps. Note that the Commission may still take up the matter if exceptions are filed to the Director's order through other rules.

CHANGES TO RULE:

690-077-0100

Miscellaneous Provisions: Precedence of Future Uses ¶¶

- (1) The applicants for a proposed multipurpose storage project may ~~petition the Commission~~ submit a formal written request to the Department to establish precedence over an instream water right created through OAR 690-077-0020. ¶¶
 - (2) An applicant for a right to use water for municipal purposes may ~~petition the Commission~~ submit a formal written request to the Department to establish precedence over an instream water right created through OAR 690-077-0020. ¶¶
 - (3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may ~~petition the Commission~~ submit a formal written request to the Department to establish precedence over an instream water right created through OAR 690-077-0020. ¶¶
 - (4) ~~Within six months of the receipt~~ The Department shall accept public comment of n the petition request. The Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and provide notice of the public comment opportunity in its weekly public notice. ¶¶
 - (5) ~~After considering public comment received, the Department shall incorporate the Department's decision on precedence may occur before the final decision on the permit.~~ ¶¶
 - (5) ~~After the public hearing the Commission shall enter an order into the proposed final order on the application. Based on consideration of the factors in ORS 537.170(7), the Department may decide to:~~ ¶¶
 - (a) Approve the requested precedence; ¶¶
 - (b) Approve the requested precedence with conditionally; or ¶¶
 - (c) Deny the requested precedence. ¶¶
 - (6) The Department shall ~~also publish a statement of~~ incorporate findings that explains the basis for the decision made in Section (5) of this rule into the proposed final order on the application.
- Statutory/Other Authority: ORS 536, ORS 537
- Statutes/Other Implemented: ORS 536, ~~537~~ ORS 537, ORS 537.352

ADOPT: 690-077-0105

RULE SUMMARY: This new rule is adopted to describe the application requirements for the process to renew previously approved instream leases.

CHANGES TO RULE:

690-077-0105

Application for Instream Lease Renewal

(1) A holder of any prior final order approving an instream lease application may submit a renewal application, provided that the prior approved final order and the instream lease renewal application meet the following criteria: ¶

(a) The instream lease renewal application is submitted within 5 years from the date of expiration specified in the last final order approving the instream lease; ¶

(b) The term of the prior approved final order has expired or is about to expire; ¶

(c) The instream lease renewal application does not propose any changes in: ¶

(A) The instream use authorized under the prior approved final order; or ¶

(B) The quantity of water (or portion thereof) authorized under the prior final order for instream lease; ¶

(d) The instream lease renewal application is complete and includes: ¶

(A) The prior existing instream lease number (i.e., IL-XXX or SL-XX); ¶

(B) The requested term of the renewed instream lease, being no less than one calendar year and no more than five calendar years; ¶

(C) The termination provision(s), if any, for an instream lease renewal application requesting a multiple-year term; and ¶

(D) The name(s) of the parties to the lease application pursuant to subsection OAR 690-077-0076(2) and OAR 690-077-0076(4)(a) and (b); and ¶

(e) The appropriate fee pursuant to ORS 536.050 is submitted. ¶

(2) No map is required for an instream lease renewal application.

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 537.348

ADOPT: 690-077-0110

RULE SUMMARY: This new rule is adopted to describe the processing steps for renewal of a previously approved instream lease.

CHANGES TO RULE:

690-077-0110

Processing an Application for Instream Lease Renewal

(1) Upon receipt of an instream lease renewal application, the Department shall give notice of the application by publication in the Department's weekly public notice. Any allegation of injury must be delivered in writing to the Department no later than 21 days after publication of the request in the Department's weekly public notice. ¶

(2) Concurrent with the waiting period described in section (1) of this rule, the Department shall: ¶

(a) Review the renewal application to confirm all requirements outlined in OAR 690-077-0105 are satisfied; and ¶

(b) Consult with the local watermaster to determine whether the watermaster review completed for the prior approved instream lease is sufficient. If the watermaster finds that: ¶

(A) The prior watermaster review is sufficient, then the watermaster shall provide written or electronic mail confirmation that the review is still valid and completion of a new watermaster review will not be required; or ¶

(B) The prior watermaster review is not sufficient, then the watermaster shall complete a new watermaster review for the instream lease renewal application. ¶

(3) The Department shall issue an order approving the instream lease renewal application, provided that: ¶

(a) Leasing the water right instream will not result in, or can be conditioned to prevent, injury to other existing water rights and enlargement of the water right proposed for instream lease renewal; and ¶

(b) All the requirements outlined in section (2) of this rule are satisfied. ¶

(4) The Department may, at any time, revoke or modify an order issued to approve an instream lease renewal if the Department later finds that the use of the water right for instream use under the lease has resulted in, or may result in, injury or enlargement.

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 537.348

AMEND: 690-300-0010

RULE SUMMARY: This rule is amended to (a) update the statutory authority for the definition of "contested case"; (b) standardize the definition of "protest" with the definition in OAR 690-002-0010; (c) remove part of the definition of "proposed certificate" because a field investigation is not required to issue a proposed certificate; (d) remove the definition of "water right subject to a transfer," replacing it with a definition for "water use subject to transfer" to align with the statutory definition; (e) add applicability reference to transfer rules that already reference this division; and (f) delete definition of "planned uses," which is not used elsewhere in the rules. The rule also is amended to clarify the definition of "stockwater use" and delete provisions related to applications submitted before July 17, 1992, because there is only one application pending, and prior rules in effect – not these – would apply to that application.

CHANGES TO RULE:

690-300-0010

Definitions ¶¶

The following definitions apply in OAR chapter 690, divisions 310, 320, 330, 340, 350, 380, 382, and 3805 and to any permits, certificates, limited licenses, or transfers issued under these rules. ¶¶

- (1) "Affected Local Government" means any local government as defined in OAR 690-005-0015 within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit, water right transfer, or certificate. ¶¶
- (2) "Agricultural Water Use" means the use of water related to the production of agricultural products. These uses include, but are not limited to, construction, operation and maintenance of agricultural facilities and livestock sanitation at farms, ranches, dairies and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, animal waste management, barn or farm sanitation, dairy operation, and fire control. Such use shall not include irrigation. ¶¶
- (3) "Aquatic Life Water Use" means the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life. ¶¶
- (4) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source. ¶¶
- (5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state. ¶¶
- (6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance. ¶¶
- (7) "Comment" means a written statement concerning a particular proposed water use. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest. ¶¶
- (8) "Commission" means the Water Resources Commission. ¶¶
- (9) "Contested Case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS Chapter 53, ORS 183.413 - 183.497, Or Laws 2025, ch 575, and OAR chapter 690, division 2. ¶¶
- (10) "Cranberry Use" means all necessary beneficial uses of water for growing, protecting and harvesting cranberries. Examples of these uses include, but are not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control. ¶¶
- (11) "Deficiency of Rate Right" means an additional right allowed from the same source for the same use at the same place of use when an earlier right does not allow a full duty or rate of flow of water. ¶¶
- (12) "Department" means the Water Resources Department. ¶¶
- (13) "Director" means the Director of the Department. ¶¶
- (14) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses. ¶¶
- (15) "Domestic Use Expanded" means the use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or noncommercial garden. ¶¶

- (16) "Drainage Basin", as used in OAR 690-340-0020, 690-340-0030 and 690-340-0050, means hydrologic unit delineated as a cataloging unit by the U.S. Geological Survey Office of Water Data Coordination on the State Hydrologic Unit map. ¶
- (17) "Fire Protection Water Use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires. ¶
- (18) "Fish Bypass Structure", as used in OAR 690-340-0010, means any pipe, flume, open channel or other means of conveyance that transports fish that have entered a water diversion structure back to the body of water from which the fish were diverted. ¶
- (19) "Fish Screen", as used in OAR 690-340-0010, means a screen, bar, rack trap or other barrier at a water diversion to entrap or provide adequate protection for fish populations, including related improvements necessary to ensure its effective operation. ¶
- (20) "Fishway," as used in OAR 690-340-0010, means any structure, facility or device used to facilitate upstream or downstream passage of fish through, over or around any man-made or natural barrier to free movement. ¶
- (21) "Forestland and Rangeland Management," as used in Chapter 595, Oregon Laws 1993, means water used for operations conducted on or pertaining to forestlands and rangelands. Such uses may include, but are not limited to, reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation. ¶
- (22) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in ORS 537.515(5). ¶
- (23) "Group Domestic Water Use" means the use of water for domestic water use by more than one residence or dwelling unit. ¶
- (24) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation. ¶
- (25) "Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt industrial water use under Division 340 does not include irrigation or landscape maintenance. ¶
- (26) "Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement. ¶
- (27) "Mining Water Use" means the use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control. Examples of mining include, but are not limited to, aggregate, hard rock, heap leach and placer mining. ¶
- (28) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses. ¶
- (29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power. ¶
- (30) "Nursery Operations Use" means the use of water for operation of a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities. The use of water within plant nursery operations constitutes a different use from field irrigation, although that may be a part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the defined agricultural irrigation season. ¶
- (31) "Off-Channel" means outside a natural waterway of perceptible extent which, during average water years, seasonally or continuously contains moving water that flows off the property owned by the applicant and has a definite bed and banks which serve to confine the water. "Off-channel" may include the collection of storm water run-off, snow melt or seepage which, during average water years, does not flow through a defined channel and does not flow off the property owned by the applicant. ¶
- (32) "Planned" means a determination has been made for a specific course of action either by a legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by both the public and private sector. ¶
- (33) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this

section. Such uses include, but are not limited to, the uses approved in the policies, provisions, and maps contained in acknowledged city and county comprehensive plans and land use regulations or private sector. ¶

(343) "Pollution Abatement or Pollution Prevention Water Use" means the use of water to dilute, transport or prevent pollution. ¶

(354) "Power Development Water Use" means the use of the flow of water to develop electrical or mechanical power. Examples of these uses include, but are not limited to, the use of water for the operation of a hydraulic ram or water wheel and hydroelectric power production. ¶

(365) "Primary Right" means the right to store water in a reservoir or the water right designated by the commission as the principal water supply for the authorized use, or if no designation has been made, the first in time or initial appropriation. ¶

(376) "Proposed Certificate" means a draft version of a water right certificate describing the elements and extent of the water right developed under the terms of a permit or transfer approval order, as determined by field investigation. ¶

(387) "Protest" means a written statement expressing disagreement with has the same meaning as proposed final order that is filed in the manner and has the content described in ORS 537.145 to 537.24 vided in OAR 690-002-0010. ¶

(398) "Public Corporation" means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government. ¶

(4039) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program. ¶

(440) "Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation. ¶

(421) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge. ¶

(432) "Recreation Water Use" means the use of water for play, relaxation or amusement. Examples of these uses include, but are not limited to boating, fishing, wading, swimming, and scenic values. ¶

(443) "Riparian Area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, or ephemeral, intermittent or perennial stream. ¶

(454) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate. ¶

(465) "Stockwater Use" means the use of water for consumption by domesticated animals and/or wild animals held in captivity as pets or for profit. ¶

(476) "Storage" means the retention or impoundment of surface water or groundwater by artificial means for public or private uses and benefits. ¶

(487) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge. ¶

(498) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses. ¶

(5049) "Storm Water Management Water Use" means the use or storage of water in any structure or drainage way that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement, flood control or property protection. It may also include, but is not limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as storm water quality facilities. ¶

(510) "Stream or Riparian Area Enhancement Water Use" means the use of water to restore or enhance a stream or riparian area. ¶

(521) "Supplemental Water Right or Supplemental Water Use Permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right. ¶

(532) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission. ¶

(543) "Temperature Control" means the use of water to protect a growing crop from damage from extreme

temperatures. ¶

(554) "Transfer" means a change of use or place of use or point of diversion of a water right. ¶

(565) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner of that right but has not yet returned to the channel of a natural stream. In an irrigation district, the wastewater of an individual user is not subject to appropriation until it leaves the boundaries of the district. Wastewater abandoned to the channel of a natural stream becomes a part of that stream and is subject to appropriation. ¶

(576) "Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means: ¶

(a) The requested surface water source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or ¶

(b) If the requested surface water source is already over-appropriated for any portion of the period of use proposed in a new application: ¶

(A) The applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated; ¶

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or ¶

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source. ¶

~~(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period. ¶~~

~~(d)~~ The proposed groundwater source exhibits Reasonably Stable Groundwater Levels, as defined in OAR 690-008-0001; and ¶

~~(e)~~ The total requested rate of groundwater allocation is obtainable by the expected yield of the well(s) proposed in the application given best available information; and ¶

~~(f)~~ The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that: ¶

(A) is already over-appropriated during any period of the year; or ¶

(B) is administratively or statutorily withdrawn; or ¶

(C) is restrictively classified in an applicable basin program rule; or ¶

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights; or ¶

(E) is subject to a rotation agreement among existing surface water right holders to address limited surface water supplies; or ¶

(F) has a minimum perennial streamflow or instream water right that is unmet during any period of the year. ¶

(587) "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use. ¶

~~(598) "Water Right Use subject to a Transfer" means a rightwater use established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under~~ ¶

~~(a) An adjudication under ORS chapter 539 as evidenced by court decree; ¶~~

~~(b) A water right certificate; ¶~~

~~(c) A water use permit for which a request for issuance of a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued. ¶~~

~~(d) A certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or ¶~~

~~(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission. ¶~~

(59) "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. ¶

(610) "Wetland Enhancement Water Use" means the use of water to restore, create, or enhance or maintain wetland resources. ¶

(621) "Wildlife Water Use" means the use of water by or for sustaining wildlife species and their habitat. Statutory/Other Authority: ORS 536.027, ORS 537.505-537.795, ORS 537.992

Statutes/Other Implemented: ORS 536, ORS 537, ORS 539, ORS 540, ORS 541, ORS 183, ORS 198, Or Laws 2025, ch 575

ADOPT: 690-305-0000

RULE SUMMARY: This rule is adopted to specify purpose and applicability of the general map criteria outlined in OAR 690-305-0010.

CHANGES TO RULE:

690-305-0000

Purpose and Applicability

The purpose of this rule is to establish general criteria for maps submitted to the Department on or after April 1, 2026. Unless otherwise specified in rule, these rules apply to applications submitted under OAR chapter 690, divisions 14, 18, 310, 320, 325, 340, 380, and 382. These rules also apply to maps submitted as part of an application for a reservoir under ORS 537.409. Additional specific mapping criteria may apply as specified in application specific rule divisions.

Statutory/Other Authority: ORS 536.027, ORS 537.409

Statutes/Other Implemented: ORS 537.140, ORS 537.144, ORS 537.211(4), ORS 527.225, ORS 537.230, ORS 537.252, ORS 537.400, ORS 537.610, ORS 537.780, ORS 540.520, ORS 540.523, ORS 540.524, ORS 540.531, ORS 540.532, ORS 540.533, ORS 540.584, ORS 537, ORS 540

RULE SUMMARY: This rule is adopted to establish standardized criteria for maps submitted to the Department for water right transactions. This will reduce confusion and increase efficiencies by standardizing in one section.

CHANGES TO RULE:

690-305-0010

General Map Criteria

Each map submitted to the Department shall meet the following general criteria in addition to any specific criteria identified in the rules for the relevant water right transaction: ¶

(1) Drawing ¶

(a) The map shall be drafted on paper or polyester film with ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced or scanned. Maps may be submitted electronically in portable document format (pdf) and must be prepared consistent with, and include the same information as, a paper map. ¶

(b) The preferred paper size is 8.5 inches by 11 inches and should be no larger than 30 inches by 30 inches. A map greater than 30 inches by 30 inches may be submitted if the Department grants, by mail or electronic means, advance approval of the larger size. ¶

(c) Beginning April 1, 2029, regardless of whether the map is submitted electronically, on paper, or on polyester film, for any map that OAR chapter 690 requires be prepared by a Certified Water Right Examiner, a digital file containing the coordinate system and geospatial features of the map as specified by the Department shall be submitted in addition to the map, unless the Department provides a waiver. The digital file shall be submitted as a shapefile or other approved format in a manner required by the Department. ¶

(d) A platted and recorded subdivision map, deed description survey map, or county assessor map may be submitted as the application map if all of the required information included in sections (2) and (3) of this rule is clearly shown. ¶

(e) An aerial image may be provided in addition to the map to aid the Department in understanding the proposal. ¶

(f) The map submitted under subsection (a) shall be the official record of the water right. An aerial image or digital file shall not be the official record of the water right. ¶

(2) Scale ¶

(a) The map shall be drawn to a standard, even-numbered scale and one-inch shall not be equal to or greater than 1320 feet. ¶

(b) The map scale may exceed 1320 feet per inch if the Department grants, by mail or electronic means, advance approval of the requested scale. ¶

(c) Notwithstanding subsection (a) and (b), for maps identifying the location of a municipal use place of use, one-inch can be equal to or greater than 1320 feet; provided that the scale is sufficient to identify the quarter-quarters involved in the place of use. ¶

(3) Features: Features shall be clearly identified and labeled. Unless otherwise indicated in rule, the following features must be included in each map submitted to the Department: ¶

(a) Mapping scale. ¶

(b) North directional symbol. ¶

(c) Legend. ¶

(d) General location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features used to transport water from the point(s) of diversion or appropriation to the place use and to include the delivery features at the place of use. ¶

(e) Other topographical features such as rivers, creeks, streams, lakes, reservoirs, ponds, roads, or railroads that may be helpful to clarify and identify the location of points of diversion, wells, dams, and places of use. ¶

(f) Location and flow direction of the water way if the source is surface water. If multiple water ways exist in the area of the proposed diversion and use, the map must identify the location and flow direction of the additional water ways. ¶

(g) Township, range, section, quarter-quarter, and tax lot(s), donation land claims, or government lots where water will be or has been diverted, conveyed, and used. If the map is for municipal use the map: ¶

(A) Must identify but does not need to label the quarter-quarters. ¶

(B) Does not need to identify or label tax lots, donation land claims, or government lots. ¶

(h) Location of each proposed or developed diversion point, well (point of appropriation), or dam by reference to a recognized public land survey corner. For a reservoir without a dam, the center of the reservoir shall be referenced to a recognized public land survey corner. ¶

(A) The locations shall be shown by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall also include latitude and longitude as established by a global positioning system accurate to within ten feet. ¶

(B) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764^o). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84. ¶

(i) Location of the proposed or developed place of use by township, range, section, and nearest quarter-quarter section. ¶

(A) For irrigation or nursery use, the map shall additionally indicate the place of use in each quarter-quarter of a section by shading or hatchuring and indicate the number of acres in each quarter-quarter section, donation land claim, government lot, or other recognized public land survey lines. ¶

(B) For places of use that are limited to a point, such as a stock watering tank, the location may also be identified by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall include latitude and longitude as established by a global positioning system accurate to within ten feet. ¶

(C) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764^o). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84. ¶

(D) Where more than one point of diversion or well is included, the map must clearly identify the place(s) of use served by each point of diversion or well. ¶

(j) If for a supplemental irrigation application or claim of beneficial use, the location and water right reference number of the underlying primary right, registration or claim. ¶

(k) Any other information the Department requests and considers necessary to evaluate the water right transaction.

Statutory/Other Authority: ORS 536.027, ORS 537.409

Statutes/Other Implemented: ORS 537.140, ORS 537.144, ORS 537.211(4), ORS 537.225, ORS 537.230, ORS 537.252, ORS 537.400, ORS 537.610, ORS 537.615, ORS 537.780, ORS 540.520, ORS 540.523, ORS 540.524, ORS 540.531, ORS 540.532, ORS 540.533, ORS 540.585, ORS 537, ORS 540

REPEAL: 690-310-0010

RULE SUMMARY: Or Laws 2025, ch 575, section 4, repeals similar language that appeared in statute that water laws supersede conflicts with the Oregon Administrative Procedure Act (ORS 183) for new water right applications. This rule is repealed because OAR 690-002 and Or Laws 2025, ch 575, now are the governing authorities.

CHANGES TO RULE:

~~690-310-0010~~

~~Application Processing Rules Control General Administrative Procedures Act Provisions~~

~~Notwithstanding any provision of ORS 183.310 to 183.550, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360 or 537.505 to 537.795. Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS 183.310 to 183.550 conflicts with a provision set forth in ORS 537.120 to 537.360 or 537.505 to 537.795, the provisions in ORS 537.120 to 537.360 or 537.505 to 537.795 shall control.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.140~~

AMEND: 690-310-0020

RULE SUMMARY: This rule is amended to include a requirement for notice to the landowner if someone other than the landowner applies for a water right on the landowner's property. This is a due process improvement.

CHANGES TO RULE:

690-310-0020

Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work ¶

(1) The Department shall not issue a permit without notifying the owner, as identified in the application, of any lands not owned by the applicant to be crossed by a proposed ditch, canal or other work, or any lands not owned by the applicant within the proposed place of use, as set forth in the application. The Department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.¶

(2) If more than 25 persons are identified in the application as required under OAR 690-310-0040(1)(a)(F), the Department may provide the notice required under section (1) of this rule by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the Department.

Statutory/Other Authority: ORS 536.027, Or Const, Art 1, Section 10

Statutes/Other Implemented: ORS 537.130

AMEND: 690-310-0040

RULE SUMMARY: This rule is amended to (a) require the email address, if available, of the applicant(s); (b) require that the application contain the name and mailing address of the owner of any land within the place of use so that the Department can fulfill its obligations under OAR 690-310-0020(1); (c) remove the option to meet the OAR 690-310-0040(1)(a)(L) application completeness requirement by submitting a receipt from a local government official, as this does not provide any information about land use compatibility; (d) require the application to include verification of signatory authority for a person(s) signing on behalf of an entity; (e) remove required information that is otherwise available to the Department; (f) specify that the map must be stamped and signed by, a certified water right examiner; (g) correct the rule reference for map requirements; (h) implement Or. Laws 2025, ch 282, sections 14 and 20, with respect to partial fee collection upon application submission; and (i) implement Or. Laws 2025, ch 605, section 20, to ensure the application contains sufficient information for the Department to determine if the application qualifies as an application described in OAR 690-310-0130(3) related to replacing wells with group water systems in groundwater quality management areas.

CHANGES TO RULE:

690-310-0040

Application Requirements ¶¶

(1)(a) Each application for a permit to appropriate water shall be made to the Department on a form prescribed by the Department and shall set forth: ¶¶

(A) The name, mailing address, and emailing address, if available, of the applicant(s); ¶¶

(B) The source(s) of water from which the water is proposed to be diverted or appropriated, including the name and mailing address of any owner of the land upon which the source of the water supply is located; ¶¶

(C) The amount of water to be appropriated from each source; ¶¶

(D) A map of the proposed water use as set forth in the mapping requirements in OAR 690-310-0050; ¶¶

(E) The nature of the proposed use(s); ¶¶

(F) The name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work, or any lands not owned by the applicant within the proposed place of use, even if the applicant has obtained written authorization or an easement from the owner; ¶¶

(G) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work. This requirement shall not apply to applications for irrigation or domestic use where the applicant would occupy state-owned submersible lands for the construction, maintenance, and operation of any structure or facility necessary for the use of water; ¶¶

(H) Proposed dates for the beginning of construction, completion of construction, and complete application of the water to the proposed beneficial use; ¶¶

(I) The legal description of: ¶¶

(i) The property from which the water is to be diverted; ¶¶

(ii) Any property crossed by the proposed ditch, canal or other work; and ¶¶

(iii) Any property on which the water is to be used as depicted on the map. ¶¶

(J) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters; ¶¶

(K) Information the applicant has that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters; ¶¶

(L) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4) ~~or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning Department;~~ ¶¶

(M) Signature of the applicant(s), and, if the applicant is a public agency, corporation or business, trust, or other organization, the title or authority of the person who signs the application on behalf of the entity; and evidence of signatory authority or a signed statement that such authority exists; ¶¶

(N) An oath that the information contained in the application is true and accurate; ¶¶

(O) The estimated capacity of each pump in gallons per minute, and the horsepower of each pump motor; ¶¶

(P) All other data concerning the proposed project and the applicant's ability and intention to construct the project, as the Department considers necessary; ¶¶

- (Q) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements; ¶
- (R) If the requested water use is supplemental to an existing water use, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant that is primary to the supplemental use. ¶
- (b) If the application is for a permit to appropriate ground water, in addition to the information required under subsection (a) of this section, the application shall contain: ¶
- (A) For any well already constructed, a copy of the well constructor's log, if available. If a well log is not available, or if the well is not already constructed, the proposed total depth, depth of casing and seal, and the anticipated perforation and open intervals; ¶
- ~~(B) The horizontal distance for each proposed point of ground water appropriation to the nearest surface water, if less than one mile, and the difference in land surface elevation between them; ¶~~
- (C) If the ground-water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision; ¶
- (D) The depth to the water table, if known; ¶
- (E) The location of each well with reference to government survey corners or monuments or corners of recorded plats; ¶
- (F) The estimated capacity of each well; ¶
- (G) If the ground water does not require pumping, the rate of flow in gallons in such manner as the Commission may prescribe. ¶
- (c) If the application is to store water and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, the application also shall include or be accompanied by: ¶
- (A) Preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area; ¶
- (B) Proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water; ¶
- (C) A legal description of the property upon which the water is to be stored; ¶
- (D) A map of the proposed place of use prepared, stamped, and signed by a certified water right examiner in accordance with OAR 690-014-310-04050 unless the application is to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height, in which case the map need not be prepared by a certified water right examiner. ¶
- (d) If the application is to appropriate stored surface water, the application also shall include or be accompanied by documentary evidence that: ¶
- (A) The applicant has provided notice of the application to the operator of the reservoir, if other than the applicant. This requirement may be satisfied by providing a copy of written notice to the operator of the reservoir, or a notarized affidavit signed by the applicant stating that notice has been provided to the operator of the reservoir; ¶
- (B) An agreement has been entered into with the owner of the reservoir to provide enough water for the purposes set forth in the application. If the applicant is the reservoir owner, no such agreement is required. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance; and ¶
- (C) An agreement has been entered into with any entity delivering the stored water other than the applicant. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance. ¶
- (e) If for agricultural purposes, in addition to any other information required, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be; ¶
- (f) Except as otherwise provided in OAR 690, division 51, if for power purposes, in addition to any other information required, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied; ¶
- (g) If for municipal or quasi-municipal water supply, in addition to any other information required, the application shall give the already installed and available capacities to provide water service, present population to be served, and, as near as may be, the future requirements of the population served, and if known, the methods that may be used to meet such future requirements; ¶
- (h) If for mining purposes, in addition to any other information required, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water. ¶
- (2) Each application for a permit to appropriate water shall be accompanied by the portion of the examination fee set forth in ORS 536.050: stated on the Department's application form. ¶
- (3) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under

ORS 517.952 to 517.987.9. ¶

(4) If the department determines that the source of a proposed use of water is in or above a scenic waterway, in addition to any other information required, the applicant shall provide the information required under OAR 690-310-0260. ¶

(5) If the application is to appropriate ground water for group domestic use expanded for a public water system in an amount of water equivalent to the amount of water provided by abandoned water wells as provided in OAR 690-310-0130(3) and (4), the applicant shall provide evidence that, prior to being abandoned, the wells had used water as provided in: ¶

(a) ORS 537.545 (1)(d); or ¶

(b) If used by a household, ORS 537.545 (1)(b) and (d).

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 390.835, ORS 537.140, ORS 537.615, ORS 517.952 - 517.989, ORS 536.050, ORS 537.545, Or Laws 2025, ch 282, section 14, Or Laws 2025, ch 605, section 20, Or Laws 2025, ch 282, section 20

AMEND: 690-310-0050

RULE SUMMARY: This rule is amended to refer to the standards in OAR chapter 690, division 305 for greater clarity and consistency in mapping requirements across water right transactions.

CHANGES TO RULE:

690-310-0050

Map to Accompany Application for Water Use Permit ¶¶

(1) Each application shall be accompanied by a map or drawing which shall be considered a part of the application.¶¶

(2) Maps submitted with water use applications shall meet the following criteria:¶¶

(a) The application map, which is made part of the record, shall be of permanent quality and drawn in ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced;¶¶

(b) Maps shall be drawn on good quality paper. If the map is larger than 11 inches by 17 inches, one additional copy must be submitted;¶¶

(c) All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. The map may be of another standard scale if the Department grants, by mail or electronic means, advance approval of the use of the scale. All maps must include the scale to which the map is drawn and a north directional symbol.¶¶

(3) A platted and recorded subdivision map, deed description survey map or county assessor map may be submitted as the application map if all of the required information is clearly shown.¶¶

(4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:¶¶

(a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);¶¶

(b) The location of main canals, ditches, pipelines, or flumes;¶¶

(c) The location of the place where water is to be used identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. The Department also shall accept any locational coordinate information that the applicant may wish to provide, including latitude and longitude as established by a global positioning system. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatchuring and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated. Maps submitted as part of an application for water use permit shall meet the standards in OAR chapter 690, division 305.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.140, ORS 537.615

AMEND: 690-310-0070

RULE SUMMARY: This rule is amended to implement Or. Laws 2025, ch 282, sections 14 and 20. This amendment requires the Department to return applications and refund the relevant portion of fees if an application is for: (a) a surface water source that is withdrawn from appropriation; or (b) a groundwater water source that is designated as a critical groundwater area, restrictively classified, or withdrawn from appropriation. This amendment does not apply to groundwater applications for recovery of groundwater under artificial recharge or aquifer storage and recovery project or if requesting an exception to basin program rules.

CHANGES TO RULE:

690-310-0070

Completeness Review ¶

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-310-0040 and is complete and not defective, including the payment of ~~all required fees~~the portion of the examination fees stated in the application form. If the Department determines that the application is incomplete or defective or that ~~all fees have~~the portion of the examination fees stated in the application form has not been paid, the Department shall return all fees and the application. ¶

(2) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose. For the purposes of this section, a suitable book shall include the Department's electronic water rights information system. ¶

(3) The priority date for use of water not previously reserved under OAR 690, division 79 shall be the date the application was received for filing by the Department. ¶

(4) If an application for the use or storage of surface water is complete and not defective, the Department shall determine whether the proposed use is prohibited ~~by because the source of water is withdrawn from appropriation under ORS Chapter 538, if the proposed use is for surface water, or by any statute, if the proposed use is for~~ or by rule or order of the Water Resources Commission under ORS 536.410, if the Department has information sufficient to make the determination at the time of application intake. If the proposed use is prohibited, the Department shall return the application and return the portion of the fees stated in the application form to the applicant with an explanation of the reason for the return. ¶

(5) If an application to appropriate groundwater is complete and not defective, the Department shall determine whether the proposed use is prohibited because the source of water is designated as a critical ground-water area under ORS 537.730, subject to restrictions on allowed groundwater uses by classification under ORS 536.340, or withdrawn from appropriation under ORS Chapter 538 or by rule or order of the Water Resources Commission under ORS 536.410, if the Department has information sufficient to make the determination at the time of application intake. If the proposed use is prohibited by statute, the Department shall reject ~~return~~ the application and return all fees to the applicant with an explanation of the statutory prohibition ~~the portion of the fees stated in the application form to the applicant with an explanation of the reason for the return.~~ This subsection does not apply to applications related to the recovery of groundwater under an artificial recharge or aquifer storage and recovery project, or under ORS 536.295.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.150, ORS 537.620, ORS 536.340, ORS 536.410, ORS 537.730, ORS 538, Or Laws 2025, ch 282, section 14, Or Laws 2025, ch 282, section 20

AMEND: 690-310-0080

RULE SUMMARY: This rule is amended to (a) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2; (b) implement Or Laws 2025, ch 282, sections 14 and 20, requiring affirmative confirmation and payment of all remaining fees within 90 days of initial review for OWRD to continue processing an application; (c) closure of the file without further notice if the applicant chooses not to advance or does not respond within the allotted time; and (d) implement Or Laws 2025, ch 605, section 35, exempting the water availability analysis for groundwater applications for group domestic use expanded for a public water system in an amount of water equivalent to the amount of water provided by abandoned water wells.

CHANGES TO RULE:

690-310-0080
Initial Review ¶

(1) If the proposed use is not prohibited by statute as described in OAR 690-310-0070(4) or (5), the Department shall undertake an initial review of the application and make a preliminary determination of: ¶

(a) Whether the proposed use is restricted or limited by statute or rule; ¶

(b) ~~Except for applications described in ORS 537.615 (7),~~ the extent to which water is available from the proposed source during the times and in the amounts requested; and ¶

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use. ¶

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-310-0070, the Department shall send ~~by regular mail, or with the consent of the recipient,~~ the applicant an initial review report setting forth the Department's preliminary determinations. ~~The initial review report shall be sent; by electronic means to, unless the applicant an initial review report has requested mailing or other setting forth the Department's preliminary determinations in written form, and notify the applicant of the remaining portion of the examination fee due.~~ The applicant shall have ~~1490~~ days from the date the Department sends the initial review report within which to notify the Department ~~in writing~~ to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, ~~does not notify the Department shall return the application and all except \$225 of any fees paid by the applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review whether to proceed with processing the application, or does not pay the remaining portion of the fee due, the Department shall close the application file and take no further action ofn the application.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.150, ORS 537.620, ORS 537.615, Or Laws 2025, ch 282, section 2, Or Laws 2025, ch 605, section 35, Or Laws 2025, ch 282, section 14, Or Laws 2025, ch 282, setion 20

AMEND: 690-310-0090

RULE SUMMARY: This rule is amended to (a) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2; (b) remove the requirement for affected local, state and federal agencies to post a copy of the Department's weekly public notice, given that all members of the public can access the Department's weekly public notice online; and (c) remove OAR 690-310-0090(5), because it is inconsistent with OAR 690-005-0035(4)(a).

CHANGES TO RULE:

690-310-0090

Public Notice and Comments ¶¶

~~(1) Within seven days after~~ If the applicant notifies the Department to proceeding with the application ~~under as provided in OAR 690-310-0080(2), the Department shall give public and pays any remaining portion of the application examination fees, the Department shall proceed with processing the application. The Department shall give notice of the application initial review in the weekly notice published by the Department public notice of the Department and accept written public comments for 30 days.~~ The notice shall include a request for comments on the application, the date by which comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application. The notice also shall include the following information about the application: ¶¶

(a) Type of water use application; ¶¶

(b) County of water use; ¶¶

(c) Application file number; ¶¶

(d) Applicant name and address; ¶¶

(e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage; ¶¶

(f) Common name of surface water source(s) or basin; ¶¶

(g) Nature of use; and ¶¶

(h) Location of the proposed point of diversion by section quarter/-quarter, township and range. ¶¶

(2) The weekly notice shall be sent to the following: ¶¶

(a) Affected local, state and federal agencies, including the planning ~~D~~departments of affected local governments ~~with a request that a copy of said notice be posted in a conspicuous location;~~ ¶¶

(b) Property owners listed on an application pursuant to OAR 690-310-0040; ¶¶

(c) Affected Indian ~~tribes~~; and ¶¶

(d) All persons on the Department's weekly mailing list. ¶¶

~~(3) The notice shall be sent by regular United State electronic means unless the recipient has requested mail or, with the consenting or other sending of the recipient, by electronic means document in written form. ¶¶~~

(4) Within 30 days after the public notice under section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who requests a copy of the Department's proposed final order shall submit to the Department a written request accompanied by the fee required under ORS 536.050(1). The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period. ¶¶

~~(5) If the land use information required under OAR 690-310-0040(1)(a)(L) is not received by the Department within the 30-day comment period, the Department shall conclude that the requirement for obtaining land use information has been satisfied and may presume the proposed use is compatible with the comprehensive land use plans and land use regulations of affected local governments.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.150, ORS 537.620, ORS 537.338, ORS 537.356 - 537.358, ORS 536.050, Or Laws 2025, ch 282

AMEND: 690-310-0100

RULE SUMMARY: This rule is amended to implement partial payment and electronic documentation under Or Laws 2025, ch 282.

CHANGES TO RULE:

690-310-0100

Completion of Application Review; Additional Information and Proposed Final Order ¶¶

Within 60 days after the applicant notifies the Department to proceed with the application under as provided in OAR 690-310-0080(2) and pays any remaining portion of the application examination fees, the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. ~~Within the 60-day period, t~~The Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by ~~registered mail, or with the consent of the recipient, by electronic means~~electronic means, unless the applicant has requested mailing or other sending in written form. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department sends the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-310-02670 by the date specified in the request, the Department may reject the application and may refund fees in accordance with ORS 536.050(34)(a). The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this subsection.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.153, ORS 537.621, Or Laws 2025, ch 282

AMEND: 690-310-0120

RULE SUMMARY: This rule is amended to (a) remove provisions referring to application withdrawal after the initial review as this process is already established in OAR 690-310-0080; (b) remove the provisions related to protests that have been moved to OAR 690-310-0160; and (c) update citations to ORS 537.170(7) consistent with statutory renumbering.

CHANGES TO RULE:

690-310-0120

Public Interest Review; Surface Water ¶

- (1) ~~Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-310-0080, b~~ Before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-310-0110. ¶
- (2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8Z) and may either: ¶
- (a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or ¶
- (b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions. ¶
- (3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria: ¶
- (a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows: ¶
- (A) The specific public interest under ORS 537.170(8Z) that would be impaired or detrimentally affected; and ¶
- (B) Specifically how the identified public interest would be impaired or detrimentally affected. ¶
- (b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable: ¶
- (A) Water use efficiency and the avoidance of waste; ¶
- (B) Threatened, endangered or sensitive species; ¶
- (C) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0006(42); ¶
- (D) Fish or wildlife; ¶
- (E) Recreation; ¶
- (F) Economic development; and ¶
- (G) Local comprehensive plans, including supporting provisions such as public facilities plans. ¶
- (c) In making the determination in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate. ¶
- (4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)-(76) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that: ¶
- (a) One or more of the four presumption criteria listed in OAR 690-310-0110(1)(a)-(d) are not met; or ¶
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows: ¶
- (A) The specific public interest under ORS 537.170(8Z) that would be impaired or detrimentally affected; and ¶
- (B) Specifically how the identified public interest would be impaired or detrimentally affected. ¶
- (5) If the Department finds that under section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application unless the Department makes

specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(~~8~~7) the issuance of a permit will not impair or be detrimental to the public interest.¶

(6) If the Department finds that under section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.¶

~~(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-310-0160, the Director shall schedule a contested case hearing.¶~~

~~Stat.y Auth.: ORS 536.027~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.153, ORS 537.170

AMEND: 690-310-0130

RULE SUMMARY: This rule is amended to implement the provisions of Or Laws 2025, ch 605, sections 20 and 34, with respect to groundwater permit issuance in a groundwater quality area to consolidate drinking water wells.

CHANGES TO RULE:

690-310-0130

Public Interest Presumption; Groundwater ¶¶

(1) The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if: ¶¶

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12); ¶¶

(b) Water is available; ¶¶

(c) The proposed use will not injure other water rights; and ¶¶

(d) The proposed use complies with the rules of the Commission. ¶¶

(2)(a) The presumption described in subsection (1) of this section is a rebuttable presumption and may be overcome by a preponderance of the evidence that either: ¶¶

(aA) One or more of the criteria for establishing the presumption are not satisfied; or ¶¶

(bB) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, protests or a finding of the Department that shows: ¶¶

(A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and ¶¶

(B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or detrimentally affected. ¶¶

(b) In lieu of the factors described in subsections (1) and (2)(a) of this section, the Department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health if the application is for group domestic use expanded for a public water system located in a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section (3). ¶¶

(3) Notwithstanding any contrary provision of law, and subject to subsection (4) of this section, the Department may approve an application under ORS 537.615 by a public water system to appropriate ground water in a ground water quality management area declared under ORS 468B.180 for group domestic use expanded in an amount of water equivalent to the amount of water provided by abandoned water wells that, prior to being abandoned, had used water as provided in: ¶¶

(a) ORS 537.545 (1)(d); or ¶¶

(b) If used by a household, ORS 537.545 (1)(b) and (d)./ ¶¶

(4) The Department may not approve an application described in subsection (3) of this section unless:/ ¶¶

(a) The amount of equivalent water described in subsection (3) of this section is less than or equal to 5,000 gallons per abandoned well per day; and/ ¶¶

(b) The impact of the proposed public water system well on hydraulically connected surface water bodies is similar to or less than the cumulative impact of the abandoned water wells described in this section./

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.525, ORS 537.621, ORS 536.300, ORS 536.340, ORS 468B.180, ORS 537.545, Or Laws 2025, ch 605, section 20, Or Laws 2025, ch 605, section 34

AMEND: 690-310-0140

RULE SUMMARY: This rule is amended to (a) remove provisions referring to application withdrawal after the initial review to simplify the rule, as this process is already established in OAR 690-310-0080; and (b) remove the provisions related to protests that have been moved to OAR 690-310-0160.

CHANGES TO RULE:

690-310-0140

Public Interest Review; Groundwater ¶¶

(1) ~~Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-310-0080, b~~ Before issuing a proposed final order, the Department shall determine whether the presumption under OAR 690-310-0130 is established for the proposed groundwater use, as described in OAR 690-310-0130. ¶

(2) If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either: ¶

(a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or ¶

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions. ¶

(3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria: ¶

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will not ensure the preservation of the public welfare, safety, and health under ORS 537.525 as demonstrated in comments or a finding of the Department that shows: ¶

(A) The specific aspect of the public welfare, safety, and health under ORS 537.525 that would be impaired or detrimentally affected; and ¶

(B) Specifically how the identified aspect of the public welfare, safety, and health under ORS 537.525 would be impaired or adversely affected. ¶

(b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable: ¶

(A) Water use efficiency and the avoidance of waste; ¶

(B) Threatened, endangered or sensitive species; ¶

(C) Water quality; ¶

(D) Fish or wildlife; ¶

(E) Recreation; ¶

(F) Economic development; ¶

(G) Local comprehensive plans, including supporting provisions such as public facilities plans; ¶

(H) Stability of groundwater levels; and ¶

(I) Thermal characteristics of groundwater source. ¶

(c) In making any determination or finding in subsection (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate. ¶

(4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)-(7) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that: ¶

(a) One or more of the four presumption criteria listed in OAR 690-310-0130(1)(a)-(d) are not met; or ¶

(b) The proposed use would not ensure the preservation of the public welfare, safety and health, including: ¶

(A) The specific aspect of the public welfare, safety and health that would be impaired or detrimentally affected; and ¶

(B) Specifically how the identified aspect of the public welfare, safety and health would be impaired or detrimentally affected. ¶

(5) If the Department finds under section (4) of this rule that the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application unless the Department makes specific findings to demonstrate that the issuance of a permit will ensure the preservation of the public welfare, safety and health under ORS 537.525.¶

(6) If the Department finds under section (4) of this rule that the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.¶

~~(7) If the Director finds that a significant dispute about the proposed water use related to the public welfare, safety and health under ORS 537.525 exists and a protest has been filed under OAR 690-310-0160, the Director shall schedule a contested case hearing.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.525, ORS 537.621

AMEND: 690-310-0150

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 605, section 20 and 33 36, with respect to consolidation of wells to a public water system; (b) implement Or Laws 2025, ch 575, sections 3a, 5a, and 16a, with respect to the replacement of requests for standing with requests for party status; (c) remove redundant language requiring notice of the proposed final order to include an explanation of the requirement to raise all issues in a protest, as notice of that requirement is required by ORS 183.415(3)(a); (d) reflect that, under ORS 183.415(2), the Department must send the proposed final order to the applicant by certified or registered mail; and (e) implement Or Laws 2025, ch 575, section 5a, by deleting the reference to a deadline for the applicant to request a contested case hearing that is different from the protest deadline.

CHANGES TO RULE:

690-310-0150

Proposed Final Order ¶

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-310-0090(4), but the proposed final order need not separately address each comment received. ¶

(2)(a) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to: ¶

(aA) Confirmation or modification of the preliminary determinations made in the initial review; ¶

(bB) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans; ¶

(cC) An assessment of water availability; ¶

(dD) The amount of water necessary for the proposed use; ¶

(eE) An assessment of whether the proposed use would result in injury to existing water rights; ¶

(fF) If the application is for the use of surface water, an assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170; ¶

(gG) If the application is for the use of ground water, an assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525; ¶

(hH) Whether the rebuttable presumption set forth in OAR 690-310-0110 or 690-310-0130 has been established; ¶

(iI) If the public interest presumption is established, the Department's determination as to whether the presumption is overcome. ¶

(jJ) An assessment of the measures, if any, proposed by the applicant to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters; ¶

(kK) A draft permit, including any proposed conditions, or a recommendation to deny the application; and ¶

(lL) The dates by which protests to the proposed final order and requests for standing party status must be received by the Department; and ¶

(mb) ~~The date by which the applicant must request a contested case hearing under OAR 690-310-0170.~~ ¶

~~(3) The Department shall send copies of the proposed final order to the applicant by regular mail, or with the consent of the recipient. Notwithstanding paragraph (a) of this subsection, if the application is to appropriate ground water for group domestic use expanded for a public water system located in a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in OAR 690-310-0130(3) and (4), the proposed order need not cite the findings of fact and conclusions of law described in paragraph (a)(B) to (D) of this subsection, except that the order must include a brief statement that explains the criteria considered relevant to the decision and the compatibility of the proposed use with applicable land use plans. ¶~~

(3) The Department shall send copies of the proposed final order to the applicant; by electronic means registered or certified mail. The Department shall send copies of the proposed final order by regular electronic means, unless the recipient requests mailing, to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050. Within seven days after issuing the proposed final order, the Department also shall publish notice of the proposed final order by publication in the weekly notice published by the Department. ~~In addition to the information required to be published for an application under OAR 690-310-0090, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-310-0160(4).~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.153, ORS 537.621, ORS 537.620, ORS 537.615, ORS 537.525, ORS 183.415, Or Laws 2025, ch 605, section 20, Or Laws, 2025, ch 605, sections 33 - 36, Or Laws 2025, ch 575, section 3a, Or Laws 2025, ch 575, 5a, Or Laws 2025, ch 575, section 16a

AMEND: 690-310-0160

RULE SUMMARY: This rule amendment implements Or Laws 2025, ch 575, sections 3 and 5a, by adding procedures concerning actions the Department must take when a protest is timely filed, noting that protests of and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575, and OAR chapter 690, division 2, and removing rules concerning requirements for protests and requests for standing that have been replaced with rules in OAR chapter 690, division 2 that are consistent with Or Laws 2025, ch 575.

CHANGES TO RULE:

690-310-0160

Protests and Standing to Participate in Further Proceedings Conduct of Contested Case; Final Orders on Default when No Protest Filed

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

- (a) The name, address and telephone number of the protestant;
- (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- (c) A detailed description of how the action proposed in the proposed final order would impair Proposed final orders shall become final if no protest is filed or be detrimental to the protestant's interest;
- (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
- (e) Any citation of legal authority supporting the protest, if known; and
- (f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Any person who supports the proposed final order may request standing for purposes of participating in as provided in OAR 690-002-0235. Protests of, requests for party status, anyd contested case proceeding on the concerning proposed final order or for judicial review of a final order.

(3) The request for standing must be in writing, signed by the requester, and include the following: are governed by Or Laws 2025, ch 575, and OAR chapter 690, division 002.

- (a) The requester's name, mailing address and telephone number;
- (b) If the requester is representing a group, association or other organization, the name, address and telephone number of Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the ~~r~~ represented group;
- (c) A statement that the requester supports the proposed final order as issued; artment shall:
- (d) A detailed statement of how the requester would be harmed if the proposed Issue a final order is ~~as~~ modified; and
- (e) The fee established under ORS 536.050.

(4) Any person who has filed a timely request for standing may later provided under ORS 537.170 (1) or (2), if the applicant has not filed a petition for intervention in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(5) Each person submitting a protest ~~or~~ test and the director finds that there a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.

(6) Requests for standing and no significant issues related to the proposed use of water;

(b) Schedule a contested case hearing if a protest has been submitted; or

(c) Provide any person who timely submitted a protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order r request for party status with an estimate of the timing of referring the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.

(7) Within 10 days after the close of the filing period established under section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing contested case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.153, ORS 537.170, ORS 537.621, ORS 537.622, Or Laws 2025, ch 575

REPEAL: 690-310-0170

RULE SUMMARY: This rule is repealed because (a) the provisions concerning the actions the Department must take after the protest period ends have been revised in accordance with Or Laws 2025, ch 575 sections 5a and 16a, and moved to OAR 690-310-0160; and (b) the provisions concerning notice of referral for a contested case hearing have been revised and moved to OAR 690-002.

CHANGES TO RULE:

~~690-310-0170~~

~~Determination of Director to Refer Application for Contested Case Hearing, Final Order of Director~~

~~(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:~~

~~(a) Issue a final order as provided under OAR 690-310-0190 or 690-310-0200; or~~

~~(b) Schedule a contested case hearing.~~

~~(2) The Director:~~

~~(a) May schedule a contested case hearing if:~~

~~(A) A protest has been submitted; and~~

~~(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.~~

~~(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-310-0160 and requests a contested case hearing.~~

~~(3) As soon as possible after making a determination under subsection (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing and describe the procedure each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered to be the scheduling of the contested case hearing for purposes of the running of the 45-day time period under OAR 690-310-0180.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.153, 537.621~~

REPEAL: 690-310-0180

RULE SUMMARY: This rule is repealed based on Or Laws 2025, ch 575, section 6's deletion of the portions of ORS 537.170 upon which this rule was based; the portion of the rule concerning the conduct of contested case proceedings has been revised in accordance with Or Laws 2025, ch 575, sections 2 and 5a and moved to OAR 690-310-0160.

CHANGES TO RULE:

~~690-310-0180~~

~~Conduct of Contested Case~~

~~(1) Within 45 days after the Director schedules a contested case hearing under OAR 690-310-0170, the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of OAR 690, division 2. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.¶¶~~

~~(2) The parties to any contested case hearing initiated under this section shall be limited to:¶¶~~

~~(a) The applicant;¶¶~~

~~(b) Any person who timely filed a protest; and¶¶~~

~~(c) Any person who timely filed a request for standing under OAR 690-310-0160, pays the fee required under ORS 536.050 for participating in the contested case hearing and requests to intervene in the contested case hearing prior to the start of the proceeding.¶¶~~

~~(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:¶¶~~

~~(a) As provided in sections (1) and (2) of this rule; and¶¶~~

~~(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.170, 537.622~~

AMEND: 690-310-0190

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 575, section 6, to align with statutory updates to ORS 537.170 and (b) implement Or Laws 2025, ch 575, section 3, by making changes that reflect that the Director must issue a final order only when a protest is timely filed because under the new law, if no protest is timely filed, the proposed final order becomes a final order by operation of law.

CHANGES TO RULE:

690-310-0190

Final Order for Proposed Use of Surface Water when Proposed Final Order Protested ¶

~~¶(1) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order ~~reject~~denying the application or modifying the proposed final order to conform to the public interest. ¶~~

~~(2) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. ¶~~

~~(3) A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.170, Or Laws 2025, ch 575, section 3, Or Laws 2025, ch 575, section 6

AMEND: 690-310-0200

RULE SUMMARY: This rule is amended to implement Or Laws 2025, ch 575, section 3, by making changes that reflect that the Director must issue a final order only when a protest is timely filed, because under the new law if no protest is timely filed, the proposed final order becomes a final order by operation of law.

CHANGES TO RULE:

690-310-0200

Final Order for Proposed Use of Ground ~~Water~~ when Proposed Final Order Protested ¶

~~¶(1) If a protest of a proposed final order issued under ORS 537.621 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of ground water does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order ~~reject~~denying the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525. ¶~~

~~(2) If a protest of a proposed final order issued under ORS 537.621 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. ¶~~

~~(3) A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.625, ORS 537.621, Or Laws 2025, ch 575, section 3

AMEND: 690-310-0210

RULE SUMMARY: This rule amendment implements Or Laws 2025, ch 575, sections 6(5) and 18(2). by conforming the rule to changes to ORS 537.170 and 537.625 concerning final orders issued without a hearing that modify proposed final orders; the amendment also removes language from the rule that was based on portions of ORS 537.170 and 537.625 which are now repealed by Or Laws 2025, ch 575, sections 6 and 18.

CHANGES TO RULE:

690-310-0210

Contested Case Hearing on Final Order ~~that Modifies Proposed Final Order ¶~~

If a contested case hearing is not held prior to the issuance of the final order: ¶

~~(1) Where~~ timely protest of a proposed final order was filed by a person other than the applicant and, as described in ORS 537.153(7)(a) or 537.621(8)(a), the Director issues a final order without holding a contested case hearing, and the final order modifies the proposed final order, the applicant may request and the Department shall schedule a contested case hearing as provided under OAR 690-310-0170 by submitting the information required for a person granted party status, or a protestant may submit a protest as protest under ~~vided in~~ OAR 690-310-016002-0220 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order. ¶

~~(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases~~ The Department must refer the protest to the Office of Administrative Hearings for hearing if the protestant is an applicant, unless the applicant withdraws the protest or the protest is resolved through a settlement prior to referral.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.170, ORS 537.625, ORS 537.153, ORS 537.621, Or Laws 2025, ch 575, section 6, Or Laws 2025, ch 575, section 18

AMEND: 690-310-0220

RULE SUMMARY: This rule amendment (a) implements Or Laws 2025, ch 575, section 3 with respect to proposed final orders becoming final if no protest is filed or upon default and (b) updates statutory references.

CHANGES TO RULE:

690-310-0220

Final Determination of ~~Whether Proposed Use of Surface Water Would Impair or Be Detrimental to Public Interest or Whether Proposed Use of Ground Water Would Preserve the~~Public Interest (Surface Water) or Public Welfare, Safety and Health-(Groundwater) ¶

(1) If the presumption of public interest under OAR 690-310-0110 or 690-310-0130 is overcome, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170~~(8)~~ or, if the application is for the use of ground water, whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering the factors set forth in ORS 537.625~~(4)~~. ¶

(2) In ~~developing~~complying with section (1), the Director shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received. ¶

(3) Upon issuing a final order, or upon a proposed final order becoming final by default as provided in OAR 690-002-0235, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department also shall publish notice of the final order by publication in the weekly notice published by the Department.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.170, ORS 537.625, ORS 537.525, Or Laws 2025, ch 575, section 3

REPEAL: 690-310-0230

RULE SUMMARY: This rule is repealed to remove the outdated reference to the Department's hearing referee and because the right to file exceptions and procedures for filing exceptions are addressed in OAR 137-003 and 690-002.

CHANGES TO RULE:

~~690-310-0230~~

~~Exceptions~~

~~Any party may file exceptions to the hearing referee's proposed order in the manner provided in OAR 690-002-0175.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.173, 537.626~~

AMEND: 690-310-0270

RULE SUMMARY: This rule is amended to (a) provide parameters on what qualifies as a reasonable and necessary extension on the application processing timeline requested by the applicant through an administrative hold and (b) implement Or Laws 2025, ch 575 sections, 7 and 19, by removing subsection (3) of the rule that were based on subsections of ORS 537.175 and 537.628 now repealed by Or Laws 2025, ch 575, sections 7 and 19.

CHANGES TO RULE:

690-310-0270

Timelines ¶¶

(1) Except as provided in section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2). ¶¶

(2) ~~At~~If the request applicant requests an administrative hold on processing of the application, the Department may extend the 180-day period set forth in section (1) of this rule for a reasonable period of time. The ~~extension cumulative length of extensions requested through administrative holds~~ shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary: ~~for the applicant to:~~ ¶¶

(3a) ~~If a contested case hearing is held, the Department shall issue a final order:~~ ¶¶

(a) ~~Within 270 days after scheduling the hearing for a contested case proceeding that involves thr~~Bring a well into compliance with current minimum well construction standards, and the extension does not exceed two years; ¶¶

(b) ~~Engage in collaborative conversations with interested parties that provided public comment under OAR 690-310-0090(4), and the extension does not exceed two years;~~ ¶¶

(c) ~~Explore mitigation under OAR 690, division 33 for impacts to sensitive, threatened, or endangered fish species, or mitigation under OAR 690-310-0260 for impacts to a scenic waterway, including submitting a mitigation proposal to the Department, and the extension does not exceed two years;~~ ¶¶

(d) ~~Exhaust the administrative appeal process for a land use approval, and the extension does not exceed or more parties not including~~one year; or ¶¶

(e) ~~Collect Annual High Water Level data sufficient to evaluate Reasonably Stable Groundwater Levels, as the Department; and~~ ¶¶

(b) ~~Within 180 days after scheduling the hearing for all other contested case proceedings, use terms are defined in OAR 690-008, and the extension does not exceed seven years, except that the administrative hold shall expire if the applicant fails to submit the first static water level measurement to the Department within three years of approval of the administrative hold.~~ ¶¶

(43) If the applicant does not request an extension under section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Department to issue a final order or schedule a contested case hearing on an application for a water right. If the application is for an out-of-stream use or for the use of ground water, the writ of mandamus shall compel the Department to issue a water right permit, unless the Department shows by affidavit that to issue a permit may result in harm to an existing water right holder.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.175, ORS 537.627, Or Laws 2025, ch 575, section 7, Or Laws 2025, ch 575, section 19

AMEND: 690-315-0010

RULE SUMMARY: This rule is amended to remove reference to OAR 690-320-0010, which has been repealed because there are no extension of time applications still pending that would be subject to those rules. This rule is amended to align the definition of "protest" with the definition in OAR 690-002-0010. This rule is amended to align the definition of "undeveloped portion" with the definitions in ORS 537.230(1) and ORS 537.630(1) and to make clearer which permits this applies to. This rule is amended to update the definition of "fish species listed as sensitive, threatened, or endangered under state or federal law" to include a more complete citation to the Endangered Species Act. The rule implements Or Laws 2025 ch.282 (does not apply to municipal; operative April 1; applies to new quasi-municipal or group domestic extension applications, as well as other types of extension applications where a PFO has not been issued) and ch.575 (OAR chapter 690, division 2 rules have own applicability) with respect to the different applicability provisions for pending applications; and removes the outdated reference to a 2006 implementation evaluation.

CHANGES TO RULE:

690-315-0010

Purpose and Definitions ¶

(1) OAR 690-315-0010 through 690-315-0100 establish the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:¶

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law; or¶

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.¶

(2) OAR 690-315-0010 through 690-315-0100 do not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.¶

~~(3) These rules shall become effective April 1, 2026. Except as provided in subsections (4) of this Section and (5), these rules shall become effective July 1, 2001, superceding OAR 690-320-0010 and all applications requesting extensions of time to begin construction and perfect water rights permits filed with the Department on or after July 1, 2001 shall be governed by OAR 690-315-0010 through 690-315-0060.¶~~

~~(4) Notwithstanding subsin effect prior to April 1, 2026, apply to:¶~~

~~(a) extension applications for municipal, quasi-municipal, group domestic, and group domestic expanded uses submitted prior to April 1, 2026; and¶~~

~~(b) extension applications for all other uses if a proposed final order was issued on the extension application prior to April 1, 2026.¶~~

~~(4) The rules effective April 1, 2026, governing electiron (3), all extension applications for municipal and quasi-municipal water use permits requic forms of documents apply to applications submitted on or after April 1, 2026. The rule est ing additional time to complete construction and/or apply water to full beneficial use for which the Department has not issued a Proposed Final Order by November 1, 2002, shall be governed by 690-315-0070 through 690-315-0100 effect prior to April 1, 2026, governing electronic submission of documents, apply to applications submitted before April 1, 2026.¶~~

~~(5) The applicability of OAR 690-315-0060, and that portion of OAR 690-315-0100 incorporating OAR 690-315-0060, is governed by OAR chapter 690, division 002, including applicable operative dates for particular applications.¶~~

~~(56) For the purpose of the rules in this Division "Protest" means a written statement expressing disagreement with a proposed final order issued under OAR 690-315-0050, filed in the manner and having the content as describ has the same meaning as provided in OAR 690-315002-00610.¶~~

~~(67) For the purpose of the rules in OAR 690-315-0070 through 690-315-0100:¶~~

~~(a) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power;¶~~

~~(b) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses except: an irrigation district organized under ORS Chapter 545, a drainage district organized under ORS Chapter 547, a water improvement district organized under ORS Chapter 552, or a water control district organized under ORS Chapter 553;¶~~

~~(c) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a~~

corporation, other than a public corporation, created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use;¶

(d) "Fish species listed as sensitive, threatened, or endangered under state or federal law" and "Listed fish species" means fish species listed as threatened or endangered under the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C.), section 1531, as amended, or listed as sensitive, threatened or endangered by the Oregon State Fish and Wildlife Commission under ORS 496.172 to 496.176 and OAR chapter 635, division 100;¶

(e) "Use of the undeveloped portion of the permit" means the diversion of the undeveloped portion of a surface water permit or the impact on a stream from pumping the undeveloped portion of a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9;¶

(f) "Portions of waterways affected by water use under the permit" means those portions of the drainage basin at or below the point of diversion for a surface water permit or the location of impact on a stream from a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9 downstream to the lower-most point within the applicable river basin as identified by the Department pursuant to its authority under ORS 536.700;¶

(g) "~~Undeveloped portion of the permit" means the portion of the permit that is applied to permits for municipal water use issued prior to November 2, 1998, for the first extension issued after June 29, 2005, means the difference between the maximum rate, or duty if applicable, specified in the~~specified in a water right permit and the maximum rate, or duty if applicable, ~~diver~~diverted or appropriated for beneficial use ~~before the extension;~~ and¶

(h) "~~Water Management and Conservation Plan" means a Water Management and Conservation Plan pursuant to OAR chapter 690, division 86.~~¶

~~(7) By November 30, 2006, the Water Resources Commission shall evaluate implementation of rules related to applications for extension of time for municipal water use permits~~as of the later of:¶

(A) June 29, 2005;¶

(B) The time specified in the permit to perfect the water right; or¶

(C) The time specified in the last-approved extension of time to perfect the water right.¶

(h) "Water Management and Conservation Plan" means a Water Management and Conservation Plan pursuant to OAR chapter 690, division 86.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010

AMEND: 690-315-0020

RULE SUMMARY: This rule is amended to implement the provisions of Or Laws 2025, ch 282, sections 26, 27, and 28 with respect to limiting the extension process for other than municipal and quasi-municipal water use permits and to removing it for new permits. The amended rule limits extensions to 10 years for group domestic use applications received after April 1, 2026; the new rule also limits extensions to 2 years for other types of applications (i.e., excluding municipal, group domestic, and quasi-municipal) with no Preliminary Final Order (PFO) issued prior to April 1, 2026. The rule is amended to clarify that permit holders have 90 days to either submit a claim of beneficial use or an extension application before OWRD may begin cancellation proceedings, per ORS 537.260.

CHANGES TO RULE:

690-315-0020

Application for Extension of Time for Other Than Municipal and Quasi-Municipal Water Use Permits ¶¶

(1) Under this rule, water right permit holders for other than municipal or quasi-municipal uses may apply to the Department for one extensions of time to complete construction and/or apply the water to the full beneficial use pursuant to ORS 537.230 or 537.630, for the following:¶¶

(a) For extension of time applications submitted on or after April 1, 2026, for group domestic and group domestic expanded water use permits, a maximum of 10 years from the date of issuance of an extension final order may be granted.¶¶

(b) For other than group domestic and group domestic expanded water use permits, a maximum of two years from the date of issuance of an extension final order may be granted, provided: ¶¶

(A) A proposed final order on the water right permit application was issued before April 1, 2026, and the extension application is submitted on or after April 1, 2026; or¶¶

(B) The extension application was submitted before April 1, 2026, and a proposed final order on the extension application has not been issued before April 1, 2026.¶¶

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a water right permit holder shall submit to the Department a completed extension application. A separate extension application must be completed for each permit. Application forms are available from the Department.¶¶

(3) The completed extension application must include the fee specified in ORS 536.050 and an application form setting forth:¶¶

(a) The name and mailing address of the water right permit holder(s);¶¶

(b) The permit number for which an extension is requested;¶¶

(c) If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water;¶¶

(d) Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:¶¶

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;¶¶

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.¶¶

(e) Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to:¶¶

(A) The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied;¶¶

(B) The maximum rate, or duty if applicable, of diversion, if any, made to date; and¶¶

(C) If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.¶¶

(f) A description of financial expenditures made toward completion of the water development;¶¶

(g) An estimate of the cost to complete the water development;¶¶

(h) A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the

project which have significantly delayed completion of construction or perfection of the right;¶
(i) The date by which the water development will be completed and water put to full beneficial use;¶
(j) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;¶
(k) Justification of why the requested time in subsection (i) is needed to complete the project and/or apply the water to full beneficial use;¶
(l) A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs;¶
(m) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; and¶
(n) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.¶
(4) If the Department does not receive a claim of beneficial use or an extension application within 90 days after the required date of completion specified by the permit or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.260 or 537.410.
Statutory/Other Authority: ORS 536.025, ORS 536.027
Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 282

AMEND: 690-315-0030

RULE SUMMARY: This rule is amended to align with existing internal guidance related to counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 that may apply for extensions of time.

CHANGES TO RULE:

690-315-0030

Application for Extension of Time to Begin Construction on Storage Projects ¶¶

(1) Counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 may apply for extensions of time to begin actual construction, complete construction, or complete perfection pursuant ORS 537.248.¶

(2) To apply for an extension of time under this rule, a water right permit holder shall submit to the Department a completed application for extension of time. A separate application must be completed for each permit. Application forms are available from the Department.¶

(3) The completed extension application to begin construction must include the fee specified in ORS 536.050 and an application form setting forth:¶

(a) The name and mailing address of the water right permit holder(s);¶

(b) The permit number for which an extension is requested;¶

(c) A summary of any unforeseen events which delayed the beginning of construction;¶

(d) The date by which the water development will be completed and water applied to the full beneficial use;¶

(e) A justification of why the requested time is needed to begin construction and fully apply water to beneficial use;¶

(f) Any additional information the applicant determines is relevant to evaluate the application in accordance with applicable statutory requirements and these rules; and¶

(g) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.¶

(4) If the Department does not receive an extension application 90 days after the required date specified by the permit to begin construction or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.410.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010

AMEND: 690-315-0040

RULE SUMMARY: This rule is amended to implement provisions of Or Laws 2025, ch 282, sections 26, 27, and 28, with respect to limiting the extension process for other than municipal, quasi-municipal, ground domestic, and group domestic expanded water use permits for pending extension applications. This rule is amended to make clearer the Department's longstanding practice of denying applications when the permit holder has used water and has failed to demonstrate compliance with fish-related permit conditions that are required to be met before water use began, and to restructure the location of the begin construction requirement within the rules. This rule is amended to make it clear that factors beyond the new (5)(a) and (b) rules are part of the good cause determination, as already found in (2). This rule is amended to add information about how the Proposed Final Order on the extension application may initiate cancellation proceedings under ORS 537.260(1), if the Department finds that the permit cannot be extended, and if the requirements for initiating cancellation proceedings under ORS 537.260(1) are met.

CHANGES TO RULE:

690-315-0040

Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits ¶¶

(1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:¶¶

(a) The applicant has submitted a completed extension application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;¶¶

~~(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;¶¶~~

~~(c) The applicant can complete the project within the time period requested for the extension; and¶¶
(d) and¶¶~~

(b) There is good cause to approve the extension.¶¶

(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:¶¶

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;¶¶

(b) The cost to appropriate and apply the water to a beneficial purpose;¶¶

(c) The good faith of the appropriator;¶¶

(d) The market for water or power to be supplied;¶¶

(e) The present demands for water or power to be supplied;¶¶

(f) The income or use that may be required to provide fair and reasonable returns on investment;¶¶

(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;¶¶

(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;¶¶

(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and¶¶

(j) Any other factors relevant to a determination of good cause.¶¶

(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:¶¶

(a) The amount of construction completed within the time allowed in the permit or previous extension;¶¶

(b) The amount of beneficial use made of the water during the permit or previous extension time limits;¶¶

(c) Water right permit holder conformance with the permit or previous extension conditions; and¶¶

(d) Financial investments made toward developing the beneficial water use.¶¶

(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:¶¶

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;¶¶

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);¶¶

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;¶

(d) Economic investment in the project to date;¶

(e) Other economic interests dependent on completion of the project; and¶

(f) Other factors relevant to the determination of the market and present demand for water and power.¶

(5) ~~If the extension is requested pursuant to ORS 537.230 or 537.630, in evaluating subsection (2), the Department shall find that good cause has not been shown and deny the extension if: ¶~~

~~(a) The applicant ~~must have~~ did not begun actual construction ~~work on the project~~, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the time period required by statute. ~~If the Department finds the applicant did not begin construction by that date,; or¶~~~~

~~(b) The permit holder has used water and has failed to demonstrate compliance with fish-related permit conditions that are required to be met before water use began. These permit conditions include fish screening, fish bypass, fish passage, or any other permit conditions intended to protect fish; or¶~~

~~(c) The Department's evaluation under (2) otherwise finds that good cause has not been shown.¶~~

~~(6) If the Department finds that the permit cannot be extended, and ~~the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410~~ if the requirements for initiating cancellation proceedings under ORS 537.260(1) are met, the Department may initiate proceedings to cancel the permit. The Department's Proposed Final Order on the extension application may initiate cancellation proceedings under ORS 537.260(1) by including a proposed cancellation of the permit pursuant to ORS 537.260(1), which shall constitute the notice required by ORS 537.260(1).¶~~

~~(6) The Department may request additional information necessary to evaluate an application.¶~~

~~[Publications: Publications referenced are available from the agency.]~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 282

AMEND: 690-315-0050

RULE SUMMARY: This rule is amended to implement provisions of Or Laws 2025, ch 282, sections 26, 27 and 28, with respect to time limits on extensions for other than municipal and quasi-municipal water use permits. This rule eliminates the requirement for checkpoint conditions because of the new limitations on the allowable length of an extension of time. Elimination of the checkpoint conditions does not impact the requirements elsewhere in this division for municipal and quasi-municipal water use permit holders to submit a Water Management and Conservation Plan.

CHANGES TO RULE:

690-315-0050

Department Action on Extension Applications ¶¶

If the Department finds an applicant has submitted a completed extension application as required in OAR 690-315-0020 or 690-315-0030, the Department shall process the extension application as established in this rule.¶¶

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the extension application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the extension application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:¶¶

(a) Applicant name and address;¶¶

(b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;¶¶

(c) Common name of water source(s) listed in the permit;¶¶

(d) Permit number;¶¶

(e) Use allowed in the permit;¶¶

(f) Proposed extended date of completion; and¶¶

(g) A statement that copy fees are required to receive a proposed final order.¶¶

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may respond to the issue, if applicable and relevant to the decision, within the proposed final order.¶¶

(3) The Department shall send the proposed final order issued under subsection (2) of this rule to the applicant by ~~regular mail, or with the consent of the recipient, by electronic means~~certified or registered mail. The Department shall send a copy of the proposed final order by regular mail to any person other than the applicant who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.¶¶

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use, within the time allowed by the applicable statute.¶¶

(5) Extension orders may include, but are not limited to, any condition or provision needed to:¶¶

(a) Ensure future diligence; ~~and~~¶¶

(b) Mitigate the effects of the subsequent development on competing demands on the resource; ~~and~~¶¶

(c) ~~Periodically document the continued need for the permit.~~¶¶

(6) ~~For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five-year periods.~~¶¶

(a) ~~At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;~~¶¶

(b) ~~The Department shall provide notice of receipt of progress reports described in subsection (6)(a) of this rule in its weekly notice and shall allow a 30-day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws

AMEND: 690-315-0060

RULE SUMMARY: This rule is amended to implement provisions of Or Laws 2025, ch 575 to standardize protests and contested cases for various water right processes and as outlined in OAR chapter 690, division 002.

CHANGES TO RULE:

690-315-0060

Proposed Final Order Hearing Rights ¶¶

~~(1) The applicant or any other person adversely affected or aggrieved by the proposed final order described in OAR 690-315-0050(2) may submit a written protest to the proposed final order. The written protest must be filed within 45 days from the date of publication of the proposed final order in the Department's weekly notice.¶¶~~

~~(2) A written protest shall include:¶¶~~

~~(a) The name, address and telephone number of the petitioner;¶¶~~

~~(b) A description of the provisions of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;¶¶~~

~~(c) A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;¶¶~~

~~(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;¶¶~~

~~(e) Any citation of legal authority supporting the petitioner, if known;¶¶~~

~~(f) Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and¶¶~~

~~(g) The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.¶¶~~

~~(3) Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:¶¶~~

~~(a) Issue a final order on the extension request; or¶¶~~

~~(b) Schedule a contested case hearing if a protest has been submitted, and;¶¶~~

~~(A) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or¶¶~~

~~(B) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.~~
Or Laws 2025, ch 575, sections 2 and 3 and rules adopted thereunder apply to protests of and contested case proceedings on proposed final orders issued under this division. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 575

AMEND: 690-315-0070

RULE SUMMARY: This rule is amended to implement the provisions of Or Laws 2025, ch 282, sections 26 and 27, with respect to capping the total extension time allowed for quasi-municipal water uses to 20 years. For requirements regarding extension requests for greater than 50 years, the amendment clarifies that this is for municipal water right permit extension requests, as no other type of request could be made for that length of time based on the legislation.

CHANGES TO RULE:

690-315-0070

Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits ¶¶

(1) Under this rule, holders of municipal and quasi-municipal water use permits may apply to the Department for an extension of time to complete construction and/or apply the water to full beneficial use pursuant to ORS 537.230 or 537.630.¶¶

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a holder of a municipal or quasi-municipal water use permit shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.¶¶

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:¶¶

(a) The name and mailing address of the water right permit holder(s);¶¶

(b) The permit number for which an extension is requested;¶¶

(c) For quasi-municipal water use permit holders, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d), if required under the applicable statute;¶¶

(d) For municipal water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d);¶¶

(e) Evidence of actions taken to develop the right within the permitted time period and/or time period of the previous extension;¶¶

(f) Evidence of compliance with conditions contained in the permit and any previous extension(s) or the reason the condition was not satisfied;¶¶

(g) Evidence of the maximum rate, or duty if applicable, diverted for beneficial use, if any, made to date;¶¶

(h) An estimate of the population served and a description of the methodology(ies) used to make the estimate;¶¶

(i) A description of financial expenditures made toward completion of the water development;¶¶

(j) An estimate of the cost to complete the water development;¶¶

(k) A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right;¶¶

(l) An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use.

¶Municipal water right permit extension requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.¶¶

(m) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;¶¶

(n) Justification for the time requested to complete the project and/or apply the water to full beneficial use;¶¶

(o) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules;¶¶

(p) Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements; and¶¶

(q) For municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, the completed application must include a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 282

AMEND: 690-315-0080

RULE SUMMARY: This rule is amended to implement the provisions of Or Laws 2025, ch 282, sections 26 and 27, with respect to capping the total extension time allowed for quasi-municipal water uses to 20 years.

CHANGES TO RULE:

690-315-0080

Criteria for Department Review of Extension Applications for Municipal and Quasi-Municipal Water Use Permits ¶

(1) In order to approve an application for an extension of time for municipal and quasi-municipal water use permits holders to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, the Department shall find:¶

(a) The extension application is complete, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;¶

(b) The applicant began actual construction on the project, as defined in 690-315-0020(3)(d), within the time period, if any, required under the applicable statute;¶

(c) The time requested to complete construction or apply water to full beneficial use is reasonable;¶

(d) ~~For municipal water use permits,~~ the applicant can complete the project within the time period requested for the extension; and, if the request is for more than 50 years that the estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder;¶

(e) There is good cause to approve the extension; and¶

(f) For the first extension issued after June 29, 2005 for municipal water use permits issued before November 2, 1998:¶

(A) There are agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or¶

(B) It is determined that use of the undeveloped portion of the permit will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or¶

(C) If it is determined that use of the undeveloped portion of the permit would not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, the undeveloped portion of the permit is conditioned to maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.¶

(2) The Department's finding for municipal use permits under subsection (1)(f) of this rule shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The Department's finding shall be limited to impacts related to streamflow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that streamflow would be a limiting factor for the subject listed fish species.¶

(a) Except for municipal ground water permit extension applications where the Department has determined there is not the potential for substantial interference with surface water under OAR chapter 690 division 9, the Department shall notify ODFW of each pending municipal water use permit extension application that is subject to subsection (1)(f) of this rule and provide at least 60 days for ODFW to respond prior to issuing a proposed final order under 690-315-0050. The Department may issue a proposed final order prior to 60 days if comments are received from ODFW.¶

(b) Upon notifying ODFW under subsection (2)(a) of this rule, the Department shall also notify the applicant and, within 10 days, give public notice in the weekly notice published by the Department that the municipal permit extension application has been sent to ODFW for review.¶

(c) For ground water permits submitted to ODFW under this rule, the Department shall provide to ODFW and the applicant the Department's estimate of surface water impacts that would result from use of the undeveloped portion of the ground water permit.¶

(d) ODFW shall provide its written advice to the Department on the extension application within 60 days of the Department's notice in subsection (2)(a) of this rule or notify the Department that additional time, not to exceed 120 days unless the applicant consents to more time, will be needed to complete its evaluation.¶

(e) ODFW may recommend to the Department fishery resource protection conditions for inclusion in the proposed final order under OAR 690-315-0050 that would provide protection to maintain the persistence of listed fish species if its written advice to the Department indicates that:¶

(A) Use of the undeveloped portion of the permit would not maintain persistence in the portions of the waterways affected by water use under the permit; and¶

(B) As a result of the use of the undeveloped portion of the permit, streamflow would be a limiting factor for the

listed fish species.¶

(f) Upon receiving ODFW's written advice, the Department shall notify the applicant and any persons that requested notification of any fishery resource protection conditions that may be proposed in the proposed final order under OAR 690-315-0050. The Department's notice shall also provide the applicant an opportunity to request the Department place the permit extension application on administrative hold.¶

(g) The Department may place fishery resource protection conditions on the undeveloped portion of the permit in the extension proposed and final order under 690-315-0050 if the Department finds that, without such conditions, use of the undeveloped portion of the permit will not maintain, in the portions of waterway affected by water use under the permit, the persistence of listed fish species.¶

(3) The Department's determination of good cause shall consider:¶

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;¶

(b) The cost to appropriate and apply the water to a beneficial purpose;¶

(c) The good faith of the appropriator;¶

(d) The market and present demands for water or power to be supplied;¶

(e) The income or use that may be required to provide fair and reasonable returns on investment;¶

(f) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right; and¶

(g) Any events over which the water right permit holder had no control and which delayed development under the permit.¶

(4) In determining reasonable diligence and good faith of the holder of a municipal or quasi-municipal water use permit, the Department shall consider activities associated with the development of the right that may include, but are not limited to: water management planning; conservation planning; development of a water master plan for the Oregon Health Division; planning of a diversion system; demand forecasting; flow or water quality monitoring; source evaluation; entry into intergovernmental agreements for water delivery; property acquisition; engagement in governmental permitting or project financing; procurement of planning, design, or construction services; surveying; and any physical work performed toward completion of the system and development of the right.¶

(5) For municipal and quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to subsection (3)(d) above, in addition to subsections (1)(a)-(e), (3), and (4) of this rule, the Department shall also consider, but is not limited to, the following factors:¶

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;¶

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);¶

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;¶

(d) Economic investment in the project to date;¶

(e) Other economic interests dependent on completion of the project; and¶

(f) Other factors relevant to the determination of the market and present demand for water and power.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 282

AMEND: 690-315-0090

RULE SUMMARY: This rule is amended to implement the provisions of Or Laws 2025, ch 282, sections 26 and 27, with respect to capping the total extension time allowed for quasi-municipal water uses to 20 years. Clarifies language for assessing cumulative quasi-municipal extensions.

CHANGES TO RULE:

690-315-0090

Time of Extensions and Additional Development of Municipal and Quasi-Municipal Water Use Permits-

(1) Extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.¶

~~(2) A holder of a municipal or quasi-~~ however, for quasi-municipal water use permits, the extension shall not exceed 20 years from the date of the issuance of an extension final order. ¶

(2) A holder of a municipal water use permit is not precluded from seeking additional extensions of time as provided in OAR 690-315-0070 through 690-315-0100.¶

(3) Except as provided in subsection (4) and (5), any water right permit extended under OAR 690-315-0070 to 690-315-0100 shall be conditioned to provide that diversion of water beyond the maximum rate, or duty if applicable, diverted for beneficial use before the extension shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan. The required Water Management and Conservation Plan shall be submitted within 3 years of an approved extension application.¶

(4) Quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary.¶

(5) Quasi-municipal water use permit holders that can reasonably demonstrate that fewer than 5 years is necessary to complete construction and apply the water to beneficial use are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary. ~~Additional extensions that, together with the initial~~ The permit holder will be subject to the requirements of subsection (3) of this rule if the extension request, when combined with the length of prior extensions, exceeds a cumulative total of 5 years ~~will be subject to the requirements of subsection (3) above.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010, Or Laws 2025, ch 282

AMEND: 690-315-0100

RULE SUMMARY: This rule change removes subsection references consistent with changes to OAR 690-315-0050.

CHANGES TO RULE:

690-315-0100

Department Action on Extension Applications by Holders of Municipal Water Supply Permits ¶

If the Department finds an applicant has submitted a completed application as required under OAR 690-315-0070, the Department shall process the application as established under OARs 690-315-0050(4) through (5) and 690-315-0060.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.230, ORS 537.248, ORS 537.630, ORS 539.010

AMEND: 690-325-0010

RULE SUMMARY: This rule is amended to align with terminology used in statute (ORS 537.225) and to clarify rule applicability. Rule changes apply to applications submitted on or after April 1, 2026, except as provided in OAR 690-002 (relating to final orders, contested cases, and protests) pursuant to Or Laws 2025, ch 575. Additional minor edits made for rule clarity.

CHANGES TO RULE:

690-325-0010

Purpose ¶

The rules in OAR chapter 690, division 325 establish requirements and procedures ~~that~~ to implement assignments under ORS 537.225 to 537.227. Except for OAR 690-325-0100, these rules shall apply to applications for assignments submitted on or after April 1, 2026. Applications for assignments submitted before this date shall be subject to the rules in effect at the time of submittal. The applicability of OAR 690-325-0100 is subject to and governed by OAR chapter 690, division 2. These rules shall be used by the Department to evaluate an application by a landowner of record_ holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use,- to assign all or part of the water right permit and to issue a replacement water right permit to reflect an assignment from the current water right permit holder to one or more additional water right permit holders. These rules do not replace OAR chapter 690-320-0060, which governs assignments under ORS 537.220 and 537.635.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225 - 537.227, Or Laws 2025, ch 575

AMEND: 690-325-0020

RULE SUMMARY: This rule is amended to (a) align with terminology used in statute (ORS 537.225), including that a permit is a water right permit; (b) clarify the citation of the statute and function of the rule, (c) add language to provide a better description of the expired completion date, and (d) remove language stating that the application cannot be approved if the water right permit completion date is expired, as ORS 537.225 states that a person may apply for assignment if the permit has a subsequent completion date.

CHANGES TO RULE:

690-325-0020

Applicability ¶¶

(1) ~~¶ Pursuant to ORS 537.225, the Department can only accept an application for an assignment for a water right permit split and request for issuance of replacement water right permits to reflect the assignment where it:~~¶

~~(a) The original water right is for permit is issued for the purpose of irrigation, nursery, temperature control, stock watering or agricultural water use; and~~¶

~~(b) The time specified in the water right permit or, if applicable, the last approved extension of time to perfect the water right is not expired.~~¶

(2) The Department may not accept an application for assignment and request for issuance of replacement water right permits under the rules in OAR chapter 690, division 325 for municipal water right permits, quasi-municipal water right permits, or water right permits held by a unit of local government, including but not limited to water right permits held by a port, water authority, or a district.¶

~~(3) Any water right permit for the use(s) of irrigation, nursery, temperature control, stock watering, or agricultural purposes, with a completion date that has expired may not be assigned pursuant to ORS 537.225 or by the rules in OAR Chapter 690, division 325.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225

AMEND: 690-325-0030

RULE SUMMARY: This rule is amended to align with terminology used in statute (ORS 537.225), clarifying that permit is referring to a water right permit.

CHANGES TO RULE:

690-325-0030

Definitions ¶¶

The definitions in this rule, along with the definitions in OAR 690-300-0010 (Definitions) and OAR 690-380-0100 (Water Right Transfers), apply to the rules in OAR chapter 690, division 325. Where a term is defined in more than one rule, the definition in this rule applies.¶¶

(1) "Enlargement" means an expansion of a water right permit and includes, but is not limited to:¶¶

(a) Using a greater rate or duty of water per acre than currently allowed under a water right permit; or¶¶

(b) Increasing the acreage irrigated under a water right permit;¶¶

(2) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.¶¶

(3) "Injury" or "Injury to an existing water right" means a water right transaction that would result in another, existing water right not receiving previously available water to which it is legally entitled.¶¶

(4) "Unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225

AMEND: 690-325-0040

RULE SUMMARY: This rule is amended to (a) align with terminology used in statute (ORS 537.225), (b) clarify that, in addition to the name of each applicant, the Department is seeking the name(s) of the holder(s) of the water right permit, (c) clarify that the affidavit must be signed by the applicant, (d) provide more specificity for required information, and (e) include any applicable acre-feet allowance for the identified landowner's portion of the water right permit.

CHANGES TO RULE:

690-325-0040

Application Requirements ¶¶

- (1) Each application shall be prepared in ink or typewritten on forms provided by the Department.¶¶
- (2) The application shall contain the following information concerning the subject water right permit and assignment:¶¶
- (a) The name, mailing address, e-mail address (if it exists available), and telephone number of each applicant. Each applicant's name shall have an assigned alphabet letter or number that corresponds with the application map as required under OAR 690-325-0050(2)(e).¶¶
- (b) Name(s) appearing on the of the original water right permit holder(s).¶¶
- (c) Water Right Permit number.¶¶
- (d) Water Right Permit use. Must be one or more of the following uses approved for assignment under OAR 690-325-0010: irrigation, nursery, temperature control, stock watering or agricultural water use.¶¶
- (e) A map meeting the criteria set forth in OAR 690-325-0050.¶¶
- (f) A copy of the recorded deed showing the applicant is an owner of the land to which the water right permit is appurtenant.¶¶
- (g) An affidavit signed by the applicant certifying that the water right permit has not been conveyed or withheld, and remains appurtenant to the applicant's land, and also certifying that the applicant has read the water right permit.¶¶
- (h) A statement by the applicant that the most recent water use under the applicant's portion of the water right permit, if any, has been exercised within relevant terms and conditions of the water right permit.¶¶
- (i) Agreements to the assignment and to the request of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or an assignment of interest and request for the issuance of replacement water right permits by one or more of the owners of land to which the water right permit is appurtenant and information identifying other landowners not participating in the assignment and request for issuance of replacement water right permit. Such information for each landowner shall include:¶¶
- (A) Landowner(s)'s name;¶¶
- (B) A Mailing address;¶¶
- (C) Description of the properties by public land survey and tax lot number;¶¶
- (D) Number of acres and permit rat, water right permit rate, and any applicable acre-feet allowance held by each the landowner.¶¶
- (j) A listing of the names and mailing addresses of any district within which the water right permit is located.¶¶
- (k) The Department may require the applicant to provide any additional information the d Department deems appropriate in determining whether or not to approve the application.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225

AMEND: 690-325-0050

RULE SUMMARY: This rule is amended to (a) refer to the standards in OAR Chapter 690, Division 305, which improves clarity and consistency in mapping requirements across water right transactions, (b) align with terminology used in statute (ORS 537.225), and (c) refer to OAR 690-014-0050 which outlines certain requirements for certified water right examiners.

CHANGES TO RULE:

690-325-0050

Map Requirements ¶¶

(1) A map shall be included with the application required under OAR 690-325-0040. The map shall meet the standards in OAR chapter 690, division 305 as well as the following criteria:¶¶

(a) The map shall be prepared by a certified water right examiner as defined in OAR 690-014-0020.¶¶

(b) The map shall be based upon the original water right application map or permit amendment map.¶¶

(c) The map shall not include:¶¶

(A) Any unauthorized change to the location of the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.¶¶

(B) Any unauthorized change to the location of the point(s) of diversion/appropriation as exhibited on the original water right application map or approved permit amendment application map.¶¶

(d) The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.¶¶

(e) The preferred map size is 8-1/2" x 11" (letter). If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.¶¶

(f) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.¶¶

(g) The map scale shall be:¶¶

(A) 1" = 400';¶¶

(B) 1" = 1,320';¶¶

(C) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or¶¶

(D) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.¶¶

(h) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.¶¶

(i) The map shall be plotted to the accuracy consistent with the map scale.¶¶

(j) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:¶¶

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42-1/4 32' 15.5"); or¶¶

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.¶¶

(2) The map shall include the following information:¶¶

(a) A north arrow, the scale, and a clear legend.¶¶

(b) The certified water rights examiner's stamp and signature. An electronically generated stamp or seal is acceptable, provided the signature is original digital stamp or seal and signature are acceptable, provided the requirements under OAR 690-014-0050 are satisfied.¶¶

(c) The place of use of each applicant's portion of the water right permit shall be clearly defined by outline and shaded or hachured and shall show the number of acres for each portion in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right permit has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.¶¶

(d) The place of use of any part of the water right permit not being assigned shall be clearly defined by outline and shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the portion of the water right permit not being assigned has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.¶¶

- (ed) Each applicant's portion of the water right permit shall be referenced, by either alphabet letter or number, to each assignee's listed in the application form under OAR 690-325-0040(2).¶
- (fe) The rate and any applicable acre-feet allowance of water use under the water right permit for each applicant's portion of the water right permit shall be clearly labeled on the map.¶
- (gf) The location of each authorized point of diversion or appropriation.¶
- (hg) The location of tax lot lines for all properties upon which the water right permit is located.¶
- (i) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines.¶
- ~~(j) Notwithstanding the requirements of subsection (1)(i), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features.¶~~
- ~~(k) Notwithstanding the requirements of subsection (1)(i), the general location of physical features sufficient to assist in defining the location of the place of use of the water right permit. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate.~~
- Statutory/Other Authority: ORS 536.027
- Statutes/Other Implemented: ORS 537.225

AMEND: 690-325-0070

RULE SUMMARY: This rule is amended to (a) update “Draft Proposed Final Order” to “Initial Review” for consistency in terminology across water right transactions, (b) be consistent with the definition of “injury” in OAR 690-325-0030(3), (c) modify the Department’s procedure following evaluation of the application to include preparation of draft replacement permits as part of the initial review to approve process, (d) clarify what part of the process is associated with the fees referenced in OAR 690-325-0060, (e) implement Or. Laws 2025, ch 282 with respect to electronic documentation, (f) reference the approval criteria in OAR 690-325-0070(2)(a), and (g) update “technical review” to “evaluation” to avoid possible confusion between technical review and initial review.

CHANGES TO RULE:

690-325-0070

~~Technic~~Initial Review and Issuance of Draft Documents ¶¶

(1) The Department's ~~technical review~~evaluation of the application shall include:¶¶

(a) Verification of the mailing address of each owner of the authorized place of use identified on the map contained in the application.;¶¶

(b) Verification that the deed(s) supplied with the application matches the properties proposed for the assignments.;¶¶

(c) Verification that the most recent water use under the water right permit, if any, has been exercised within relevant terms and conditions of the water right permit.; ~~and~~¶¶

(d) Assessment of whether the application ~~for~~will result in enlargement of the original water right permit and in injury to other, existing water right holders.¶¶

(2) Once the ~~technical review~~evaluation described in OAR 690-325-0070(1) has been completed, the Department shall either:¶¶

(a) Prepare a ~~draft proposed final order~~n initial review to approve the application. The ~~draft proposed final order~~initial review shall include finding(s) that the Department has found that the proposed replacement water right permits will not result in the enlargement of the original water right permit nor injury to other, existing water right holders, and that the water right permit has been exercised by the applicant in compliance with ~~in~~ the terms and conditions of the water right permit, ~~or~~¶¶

~~(b) Prepare a draft proposed final order. If an initial review to approve the application is prepared under this subsection, the Department shall also prepare drafts of the replacement water right permits; or~~¶¶

(b) Prepare an initial review to deny the application. The draft proposed final order initial review shall include finding(s) that the Department has found that the proposed replacement water right permits will result in the enlargement of the original water right permit and/or injury to other, existing water right holders and/or that the water right permit has not been exercised by the applicant in compliance with ~~in~~ its the terms and conditions.¶¶

~~(c) Prepare drafts of the replacement water right permits if a draft proposed final order to approve the application under OAR 690-325-0070(2)(a) is prepared of the water right permit.~~¶¶

(3) Within 30 days after the appropriate fees specified in OAR 690-325-0060 have been received, the Department shall ~~mail, or with consent of~~send by electronic means, or if requested by the applicant, ~~send by electronic means~~by regular mail, copies of the application, map, existing water right permit, ~~draft proposed final order, and, if the requirement under~~initial review, and, if the criteria in OAR 690-325-0070(2)(a) ~~is satisfied~~are met, draft replacement water right permits, to each owner of land upon which the water right permit is appurtenant.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225, Or Laws 2025, ch 282

AMEND: 690-325-0080

RULE SUMMARY: This rule is amended for clarity and to provide a better description of completion date.

CHANGES TO RULE:

690-325-0080

Public Notice and Request for Comments ¶

(1) Within ten days of proceeding with the application under OAR 690-325-0070(3), the Department shall give notice of the application in the weekly public notice published by the Department. The notice shall include a request for comments on the application, the date by which the comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order when issued, and information about how an interested person may review the application or obtain a copy of the application.¶

(2) The public notice shall include the following information about the application:¶

(a) County of water use;:¶

(b) ~~P~~Water right permit number;:¶

(c) Authorized use and associated rate and/or duty;:¶

(d) ~~Permit Completion Date~~.The time specified in the water right permit, or the last approved extension of time, to perfect the water right;:¶

(e) Applicant name(s);:¶

(f) Number of acres, rate (or applicable acre-feet allowances), allowed under the existing water right permit;:¶

(g) Source(s); of water; and¶

(h) Location of the point(s) of diversion/appropriation by quarter-quarter, section, township and range.¶

(3) Within 30 days after the public notice under OAR 690-325-0080(1), any record landowner, applicant, assignee, affected water right permit holder, or other person interested in the application may submit written comments or request copies of the documents described in OAR 690-325-0070(3). All comments and requests for copies must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225

AMEND: 690-325-0090

RULE SUMMARY: This rule is amended to (a) provide more clarity to the process, (b) implement Or. Laws 2025, ch 282 with respect to electronic documentation and clarifying weekly public notice, and (c) ensure mailing of notice of the opportunity for hearing is consistent with ORS 183.415.

CHANGES TO RULE:

690-325-0090

Proposed Final Order; Public Notice ¶¶

(1) Within 30 days after the comment period closes under OAR 690-325-0080(3), the Department shall issue a proposed final order either approving or denying the application, taking into account comments received in response to the public notice under 690-325-0080. If the proposed final order is to approve the application, the Department shall also issue draft replacement permits.¶

(2) The Department shall send copies of the proposed final order and, if applicable, draft replacement permits, to each owner of land described in OAR 690-325-0070(3) by mail, or, with the consent of the applicant, send by electronic means, and to each person who submitted comments under 690-325-0080(3) registered or certified mail. The Department shall also send copies of the proposed final order and, if applicable, draft replacement permits to each person who submitted comments under 690-325-0080(3) by electronic means, or if requested by that person, by regular mail.¶

(3) Within seven days of issuance of the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly public notice published by the Department. The public notice shall give the date that protests must be received by the Department, ~~no later than~~ being 45 days after the date the weekly public notice is published.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225, Or Laws 2025, ch 282, ORS 183

AMEND: 690-325-0100

RULE SUMMARY: This rule is amended to implement Or Laws 2025, ch 575 sections 2 and 3 and to conform the rule to ORS 537.225 and 537.227, as amended by Or Laws 2025, ch 575 sections 8 and 9.

CHANGES TO RULE:

690-325-0100

Protests ¶¶

(1) ~~A record landowner, an applicant, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right permit assignment under ORS 537.225. The protest must be in writing and received by the Department within the time provided under OAR 690-325-0090(3). The protest must be accompanied by the protest fee required under ORS 536.050 and include:¶¶~~

~~(a) The name, address, and telephone number of the person filing the protest; and¶¶~~

~~(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.¶¶~~

~~(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues Protests of and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR chapter 690, division 002, except that the issues raised in the protest must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.¶¶~~

~~(3) If a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The Department may:¶¶~~

~~(a) Reissue a Proposed final orders and draft replacement permits shall become final if no protest is filed or by default as proposed final order;¶¶~~

~~(b) Issue a final order; or¶¶~~

~~(c) Refer OAR 690-002-0235. In addition to any other authority the mWater for a contested case hearing.¶¶~~

~~(4) If the Department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the DepartmenResources Department may have, if a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can opportunity for response is not subject to review at the contested case hearingbe resolved informally.¶¶~~

~~(5) 2) Notwithstanding ORS 183.310, Or Laws 2025, ch 575 sections 2 and 3, and OAR 690-002, the parties to a contested case hearing held under this section are limited to:¶¶~~

~~(a) The applicant for the water right permit assignment; and¶¶~~

~~(b) Persons that timely filed a protest against the proposed final order under {OAR 690-325-0090(3) and OAR 690-002.~~

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.227, ORS 537.225, Or Laws 2025, ch 575

AMEND: 690-325-0110

RULE SUMMARY: This rule is amended to (a) clarify rule language, (b) implement Or Laws 2025, ch 575, section 3, by noting that, if no protests are timely filed, the proposed final order and draft replacement water right permits shall become final by operation of law, (c) clarify that approval of the application is not contingent upon the permit completion date being non-expired, and (d) make a grammatical edit.

CHANGES TO RULE:

690-325-0110

~~Final Order~~Criteria for Approval and Replacement Water Right Permits ¶¶

~~(1) Within 30 days of the end of the protest period described in OAR 690-325-0090(3) and if no protests wAn application for an assignment for a water received, an application for assignmentsight permit split and issuance of replacement water right permits shall be approved by final order regardless of the Department. The final order approving the assignment shall contain:¶¶~~

~~(a) Findings that twhether the time specified in the permit or, if applicable, the last approved extension of time to perfect the water right is expired, provided that the Department determines: ¶¶~~

~~(a) The assignments and issuance of replacement water right permits do not enlarge the water right permit as defined in OAR 690-325-0030(1); ¶¶~~

~~(b) Findings that tThe assignments and issuance of replacement water right permits do not injure other, existing water rights as defined in OAR 690-325-0030(3); ¶¶~~

~~(c) Findings that a; and ¶¶~~

~~(c) All other requirements for assignments and issuance of replacement water right permits are met, including, but not limited to the completion date of the water right permit. ¶¶~~

(2) The replacement water right permits shall: ¶¶

(a) Include the same conditions as the replaced water right permit, including, but not limited to priority date, source of water, and type of use; ¶¶

(b) Identify the land to which the replacement water right permit is appurtenant and the owner(s) of that land; ¶¶

(c) Apportion the rate and, if applicable, the duty, or, if applicable, the acre-foot allowance in proportion to the amount of land to which the replacement water right permits are appurtenant. ¶¶

(3) The replacement water right permits shall not: ¶¶

(a) Authorize any change to the authorized point(s) of diversion or appropriation, including the addition of a point of diversion or appropriation, and; nor ¶¶

(b) Authorize any change to the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.225, Or Laws 2025, ch 575, section 3

AMEND: 690-340-0030

RULE SUMMARY: This rule is amended to refer to the standards in OAR chapter 690, division 305, which provide clarity and consistency in mapping requirements across water right transactions, thereby reducing confusion and inefficiencies. Rule section 7 is inconsistent with statute and has been replaced with language from statute.

CHANGES TO RULE:

690-340-0030

Limited License ¶

This rule applies to limited license applications submitted to the Department on or after April 1, 2026.

Applications submitted before this date shall be subject to rule in effect at the time of submittal.¶

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:¶

(a) The fee for examination and recording:¶

(A) \$1150 for a limited license filing requesting the use of water for Aquifer Storage and Recovery testing purposes.¶

(B) \$575 for renewal of a limited license for Aquifer Storage and Recovery testing purposes.¶

(C) \$575 for modification of a limited license for Aquifer Storage and Recovery testing purposes.¶

(D) \$1150 for a limited license filing requesting the use of water for Artificial Groundwater Recharge purposes.¶

(E) For limited license applications, \$280 for the first point of diversion plus \$30 for each additional point of diversion; and¶

(a) A completed water availability statement from the local watermaster on forms provided by the department; and¶

(b) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:¶

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;¶

(B) The general course of the source for the proposed use, if applicable;¶

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field map meeting the standards in OAR chapter 690, division 305.¶

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing issuance of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.¶

(3) Each limited license shall be limited to an area within a single drainage basin.¶

(4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.¶

(5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.¶

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.¶

(7) A limited license does not receive a priority date and is not protected under ORS 540.045. The use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate and shall be subordinate to all other authorized uses that rely upon the same source.

Statutory/Other Authority: ORS 536.027, 595, 654

Statutes/Other Implemented: ORS 537.143, ORS 537.144

AMEND: 690-340-0060

RULE SUMMARY: This rule is amended to (a) correct circular or conflicting references related to OAR 690-310-0040 and -0050; (b) refer to the standards in OAR chapter 690, division 305, which provide clarity and consistency in mapping requirements across water right transactions; (c) provide greater clarity on how the Department will determine that a comment has raised or identified a public interest issue that merits the standard process to provide greater clarity following recent litigation; and (d) implement electronic sending of documents as per Or Laws 2025, ch 282.

CHANGES TO RULE:

690-340-0060

Expedited Review Process for Applications to Use Stored Water Exclusively ¶

This rule applies to applications submitted to the Department on or after April 1, 2026. Applications submitted before this date shall be subject to rule in effect at the time of submittal.¶

(1) In lieu of the application process described in OAR ~~690-310-0040, 690-310-0050, and 690-310-0070~~ through 690-310-0275, a person may apply for a permit to use stored surface water exclusively, to be evaluated through an expedited process. This process may not be used to apply for a permit to use water stored through an aquifer storage and recovery or artificial ground water recharge project under OAR chapter 690, division 350.¶

(2) In addition to the information, materials, and fees required by OAR 690-310-0040 and a map that meets the standards in OAR chapter 690, division 305, a person applying under section (1) of this rule shall submit:¶

(a) A copy of the permit, certificate, or decree as evidence that the proposed use of the stored water is one of the authorized uses under the permit, certificate or decree that allows the storage of water; or¶

(b) If the storage is authorized under a permit or certificate, the permit or certificate number sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the permit or certificate that allows the storage of water; or¶

(c) If the storage is authorized under a decree, the name of the decree, the volume number, and the page number(s) of the decree sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the decree that allows the storage of water.¶

(3) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under section (2) of this rule and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return all fees and the application.¶

(4) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. The priority date for use of water not previously reserved under OAR chapter 690, division 79 shall be the date the application was received for filing by the Department.¶

(5) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by any statute. If the proposed use is prohibited by statute, the Department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.¶

(6) As soon as practicable after determining that an application is complete and not defective, that all fees have been paid, and the use is not prohibited by statute as prescribed in section (5) of this rule, the Department shall give public notice of the application in the weekly notice published by the Department.¶

(7) Within 30 days after the public notice prescribed in section (6) of this rule, any person may submit written comments to the Department. The 30-day comment period shall commence on the day the Department gives notice. All comments must be ~~sent by facsimile, postmarked, or hand-delivered to the Department on or before the last day of the 30-day comment period, and shall identify:~~¶

(a) Received by the Department on or before the last day of the 30-day comment period. For the Department to determine that a comment has raised or identified a public interest issue, the comment must:¶

(a) Be relevant to the use of stored water proposed in the application, or to conditions that the Department has the authority to impose under ORS 537.147. The comment must allege facts in support of and specifically explain the relevance. Comments relevant only to the storage of water authorized by a previous water right transaction will not be determined to have raised a public interest issue relevant to the application;¶

(b) Identify the specific public interest under ORS 537.170(8) that the commenter alleges would be affected by the proposed use; of stored water; and¶

(b) Specifically how ~~Allege facts relevant to the proposed use of stored water that, if true, would affect the identified public interest would be affected.~~¶

(8) Following the end of the 30-day comment period, the Department may issue a final order and permit approving the application.¶

(9) If the Department determines public interest issues are raised or identified pursuant to section (7) of this rule, the Department shall process the application as an application under ORS 537.150; and issue a proposed final order pursuant OAR 690-310-0150.¶

(10) At a minimum, a permit issued under subsection (8) of this rule shall be conditioned to require:¶

(a) Fish screens and by-pass devices and fish passage consistent with Oregon Department of Fish and Wildlife (ODFW) standards, unless the permittee submits written evidence that ODFW has determined that the devices are not necessary;¶

(b) A measuring device at each point of diversion authorized under the permit.¶

(11) Within 10 days of issuing a permit under subsection (8) of this rule, the Department shall:¶

(a) Provide notice of the issuance in the weekly notice published by the Department, and¶

(b) Send a copy of the permit to persons who have submitted comments pursuant to section (7) of this rule. The copy shall be sent by electronic means unless a person has requested mailing

Statutory/Other Authority: ORS 536.027, ~~Ch. 595, 654~~

Statutes/Other Implemented: ORS 537.017 - 537.032, Or Laws 2025, ch 282

AMEND: 690-380-0010

RULE SUMMARY: This rule is amended to add reference to OAR 690-380-7000 through 690-380-7300, which are newly adopted rules pertaining to processes regarding applications for water right permit amendment.

CHANGES TO RULE:

690-380-0010

Purpose ¶

(1) The rules in OAR chapter 690, division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the character of use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.¶

(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:¶

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR chapter 690, division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;¶

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in 537.132 provided the water use complies with the requirements under 540.510(3)(a)(A) to (C) and 540.510(3)(b);¶

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, division 385, however, a petition for the change must be submitted to the Department by the district;¶

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;¶

(e) A change in point of diversion in response to government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;¶

(f) A change in point of diversion or appropriation or a change in place of use under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9) and OAR 690-380-7000 through OAR 690-380-7300;¶

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;¶

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;¶

(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and¶

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-0090

RULE SUMMARY: This rule is updated to reflect the new applicability of the updated rules.

CHANGES TO RULE:

690-380-0090

Applicability ¶¶

The rules in ~~OAR 690, this division 380~~ shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July ~~submitted after April 1, 2003~~²⁶, except as follows:¶¶

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or 690-015-0060 as adopted by the Commission in June 1996.¶¶

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.¶¶

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:¶¶

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or¶¶

(b) Issue a final order pursuant to OAR 690, division 15 as adopted by the Commission in June 1996.¶¶

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:¶¶

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or¶¶

(b) Initiate cancellation proceedings under OAR 690, division 17.¶¶

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.¶¶

(6) The Department shall not apply OAR 690-380-4010(5) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership information was included with the applications specified in OAR chapter 690, division 2. Applications submitted before this date shall be subject to rules in effect at the time of submittal, except as specified in OAR chapter 690, division 2.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-0100

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 575, by removing the "standing" definition, (b) add reference to "permit amendment" to align with the inclusion of newly adopted rules under OAR 690-380-7000 through 690-380-7300 pertaining to processes regarding water right permit amendment applications, (c) remove redundant definitions of "protest" and "water use subject to transfer" which are defined in OAR 690-300-0010, and (d) make other changes for rule language consistency.

CHANGES TO RULE:

690-380-0100

Definitions ¶¶

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 380. Where a term is defined in more than one rule, the definition in this rule applies.¶¶

- (1) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.¶¶
- (2) "Enlargement" means an expansion of a water right and includes, but is not limited to:¶¶
 - (a) Using a greater rate or duty of water per acre than currently allowed under a right;¶¶
 - (b) Increasing the acreage irrigated under a right;¶¶
 - (c) Failing to keep the original place of use from receiving water from the same source; or¶¶
 - (d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.¶¶
- (3) "Injury" or "Injury to an existing water right" means a proposed transfer or permit amendment would result in another, existing water right not receiving previously available water to which it is legally entitled.¶¶
- (4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.¶¶
- (5) "ODFW" means the Oregon Department of Fish and Wildlife.¶¶
- (6) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.¶¶
- (7) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.¶¶
- (8) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.¶¶
- (9) "~~Protest~~" means ~~a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.~~¶¶
- (10) "~~Report of ownership information~~" means ~~a document prepared by a title company that includes ownership and a legal description of the lands to which the water right is appurtenant.~~¶¶
- (11) "~~Standing statement~~" means ~~a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.~~¶¶
- (12) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the water right is appurtenant.¶¶
- (10) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.¶¶
- (13) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.¶¶
- (14) "~~Water use subject to transfer~~" means ~~a water use established by:~~¶¶
 - (a) ~~An adjudication under ORS Chapter 539 as evidenced by court decree;~~¶¶
 - (b) ~~A water right certificate;~~¶¶
 - (c) ~~A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been~~

received and approved by the Commission under 537.250; or¶

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

AMEND: 690-380-2110

RULE SUMMARY: This rule is amended to (a) include reference to OAR chapter 690, division 18 rules regarding allocation of conserved water, (b) include references to proposed rules pertaining to water right permit amendments, (c) remove reference to a deleted definition and add simplified language for clarity, (d) make other changes for rule language consistency, and (e) clarify practice of conditioning water rights to prevent injury or enlargement. This rule is also amended to provide more clarity around the meaning of “same aquifer.”

CHANGES TO RULE:

690-380-2110

Change in Point of Diversion or Point of Appropriation ¶¶

(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, ~~or and OAR 690-380-7000 to OAR 690-380-7300~~, certificate of registration modification under OAR chapter 690, division 382, ~~or allocation of conserved water under OAR chapter 690, division 18.~~¶

(2) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer.¶

~~(3, as defined in OAR 690-200-0050(9).)~~¶

~~(3) The Department may condition the transfer to prevent injury or enlargement resulting from the change.~~¶

(4) As provided in ORS 450.695(2), a water authority may change the points of diversion or appropriation or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:¶

(a) A request by a water authority to change the location of a point of diversion or appropriation from that authorized by a water right certificate shall be made pursuant to ORS ~~chapter 540 and~~ OAR chapter 690, division 380 transfer rules;¶

(b) A request by a water authority to change the location of a point of diversion or appropriation authorized by a water use permit, ~~as defined in OAR 690-380-0100(14)~~(c), for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250, shall be subject to the same statutory and administrative review criteria prescribed by ORS ~~chapter 540 and~~ OAR chapter 690, division 380 transfer rules for water uses subject to transfer; and¶

(c) A request by a water authority for changes in the location of the point of diversion or appropriation for water right permits other than those covered under subsection (3)(b) of this rule, shall be made pursuant to ORS 537.211 and OAR 690-380-7000 to OAR 690-380-7300.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 450.695, ORS 540.510 - 540.532, ORS 537.250

AMEND: 690-380-2120

RULE SUMMARY: This rule is amended to (a) add language to provide more clarity as it relates to the “claim of injury” standard; (b) provide more certainty in proof of service to affected water right holders by requiring applicant to serve notice by certified mail with return receipt requested; (c) add language to provide more clarity around criteria for approval of applications under this rule; (d) conform changes to correct numbering; (e) link to the mapping requirements in OAR 690-380-3100; (f) add language to clarify that instream water rights requested pursuant to ORS 537.336, created pursuant to ORS 537.346, ORS 537.348, or ORS 537.470, or converted pursuant to ORS 543A.305 are included in the listing of affected water rights and the approach for notice to these specific water rights; (g) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation; (h) add language to specify that timely comments are considered as part of the Department’s determination of whether injury or enlargement will occur; and (i) clarify practice of conditioning water rights to prevent injury or enlargement so that an application can be approved. This rule is also amended to reflect that OWRD believes this rule only applies to historic surface water POD changes, to clarify applicability of this rule as it relates to changing the location of an on-channel dam associated with a reservoir storage right.

CHANGES TO RULE:

690-380-2120

Change in Point of Diversion to Reflect Historical Use ¶¶

(1) As provided in ORS 540.532, any individual who holds a water right certificate or decreed right may request a change in point of diversion ~~or appropriation~~ to reflect the historical use of water at a point of diversion ~~or appropriation~~ other than that described in the water right certificate or decree. The individual shall use the Department's water right transfer application form, ~~clearly marked~~ titled "Historic Change in ~~POD~~ Point of Diversion," and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000. The provisions under OAR 690-380-2120 shall not be used to change the location of an on-channel dam for a water right certificate that authorizes the storage of water. ¶¶

(2) An individual requesting a change in the point of diversion ~~or appropriation~~ under section (1) of this rule shall provide to the Department the following additional information: ¶¶

(a) Evidence that the actual, current point of diversion ~~or appropriation~~ for the water right in question has been in use for more than 10 years; ¶¶

(b) A map meeting the requirements of OAR 690-380-3100, except that it need not be prepared by a certified water rights examiner. The map shall be of sufficient detail and clarity to identify the true point of diversion or appropriation including but not limited to: ¶¶

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and ¶¶

(B) The locations of the point of diversion or appropriation as specified in the water right certificate or decree and the actual, current point of diversion or appropriation; ¶¶

(c) Evidence that there has been no claim of injury, including to any instream water right granted pursuant to a request under ORS 537.336, pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department, prior to the request for the change in point of diversion ~~or appropriation~~. The evidence shall include a statement from the local watermaster, based upon the watermaster's knowledge and Department records, that no validated complaint of injury has been made due to the use of water at the actual, current point of diversion ~~or appropriation~~. ¶¶

(3) On receipt of an application for a change in point of diversion ~~or appropriation~~ under section (1) of this rule, the Department shall: ¶¶

(a) Provide the applicant a list of the affected water rights with, except as specified in section (3)(a)(E) of this rule, the name and address of the current holder(s) of each affected water right identified. The list shall include, but is not limited to: ¶¶

(A) Any water right with an intervening point of diversion ~~or appropriation~~; ¶¶

(B) Any water right for use of stored water being delivered from an upstream reservoir to a downstream user; ¶¶

(C) Any water right upstream from a significant inflow of water if the request moves the proposed point of diversion upstream, above the inflow, from the authorized point of diversion; ¶¶

(D) Any water right downstream from a significant inflow of water if the request moves the proposed point of diversion downstream, below the inflow, from the authorized point of diversion; ¶¶

~~(b) Provide the applicant a copy of a notice to be mailed or hand-delivered. The list need not include any instream water right granted pursuant to a request under ORS 537.336, created pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department, as the application to the Department shall be considered notification to the holder of these rights, and no further notice to the Department shall be required.~~ ¶

~~(b) Provide the applicant with a copy of a notice that they must send by certified mail with return receipt service requested to ~~the~~ all affected water right holders, except the Department pursuant to (3)(a)(E), that:~~ ¶

~~(A) Describes the locations of the authorized and actual points of diversion or appropriation;~~ ¶

~~(B) States that the recipient on the notice may provide comments to the Department on whether the requested change in point of diversion or appropriation will cause injury or enlargement, and that any timely comments received will be considered pursuant to the Department's evaluation and determination made under section (5) of this rule; and~~ ¶

~~(C) Establishes a comment period of at least 30 days after the notice is mailed or hand-delivered date of delivery of the notice by certified mail to each of the affected water right holders;~~ ¶

~~(c) Consult with ODFW in the manner provided under OAR 690-380-5060; and~~ ¶

~~(d) Provide notice of the application in the weekly notice published by the Department.~~ ¶

~~(4) Upon receipt from the Department of the list of affected water rights with the name and address of the current holder(s) of each affected water right identified and a copy of the notice, the individual shall determine the name and address of the current holder of each affected water right identified by requesting the change shall send the notice by certified mail with return receipt service requested to all such holders. If an instream water right granted pursuant to a request under ORS 537.336, created pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department would be affected, the application to the Department and shall mail or hand-deliver be considered notification to the holder of these rights, and no further notice to all such holdersthe Department shall be required. The individual shall provide to the Department written, within 14 days of the certified date of delivery of the notice, provide to the Department the signed and dated certified mail return receipts as proof of service upon the affected water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the writtensigned and dated certified mail return receipts as proof of service and/or before the comment date specified in the notice, whichever is later.~~ ¶

~~(5) If, after considering any timely comments received, the Department finds the individual requesting a change in point of diversion or appropriation to reflect historical use satisfies the requirements under section (2) to (4) of this rule and that the change does not cause injury or enlargement, or can be conditioned to prevent injury or enlargement, the request shall be approved. The order approving the change in point of diversion or appropriation s:~~ ¶

~~(a) Shall establish a deadline for compliance with any conditions needed to prevent injury or enlargement and, where required, to provide fish screening-;~~ ¶

~~(b) May, condition the transfer to prevent injury or enlargement resulting from the change.; and~~ ¶

~~(c) Shall cancel the certificate, if a certificate had previously been issued, the order shall c.~~ ¶

~~(6) Concurrent with issuance of the certificate. Approval order described in section (5) of this rule, the dDirector shall issue a new certificate confirming the change in point of diversion or appropriation and preserving all other conditions of the water right.~~ ¶

~~(6) After the deadline for compliance with conditions of an approval established pursuant to section (5) of this rule, the use of water from the point of diversion or appropriation shall be subject to continued compliance with the conditions.~~ ¶

~~(7) As used in this rule, "individual" means a natural person and does not include a government body, organization, business enterprise, or other such entity.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537

Statutes/Other Implemented: ORS 540.532, ORS 537.336, ORS 537.341, ORS 537.346

AMEND: 690-380-2130

RULE SUMMARY: This rule is amended to (a) add language to provide more clarity and reflect standard agency practices, (b) add language that provides a more detailed description of the available processes and criteria to revert an approved groundwater appropriation back to the last authorized surface water point of diversion prior to the transfer, and (c) correct a statutory reference. This rule is also amended to clearly refer to statutory requirements.

CHANGES TO RULE:

690-380-2130

Change from a Surface Water Point of Diversion to a Groundwater Appropriation ¶

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.¶

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if:¶

(a) The criteria in ORS 540.520, ORS 540.530, and OAR 690-380-5000 are met;¶

(b) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface source; and¶

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and¶

(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or¶

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.¶

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes Basin ground water study area if:¶

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;¶

(b) The criteria in ORS 540.520, ORS 540.530, and OAR 690-380-5000 are met;¶

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and¶

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.¶

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:¶

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;¶

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.¶

(5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.¶

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.¶

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.¶

~~(8) The Department shall for the portion of the water right transferred.¶~~

(8) Pursuant to ORS 540.531(6)(a), the Department shall, for a water use subject to transfer, approve a transfer

application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.¶¶

~~(9) The Department shall~~ If the approved change is not made, the transfer holder or receiving landowner, as appropriate, shall notify the Department of failure to complete the change and request to return to the last authorized surface water point of diversion prior to the transfer pursuant to OAR 690-380-6010.¶¶

~~(9) Pursuant to ORS 540.531(6)(b), the Department shall, for a water use subject to transfer, approve a transfer application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury. If the approved change is not made, the transfer holder or receiving landowner, as appropriate, shall notify the Department of failure to complete the change and request to return to the last authorized surface water point of diversion prior to the transfer pursuant to OAR 690-380-6010.¶¶~~

(10) For transfers allowed under this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6), except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.¶¶

(11) As used in this rule:¶¶

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.¶¶

(b) "Similarly" means that the use of groundwater at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.¶¶

(c) "Deschutes basin ground water study area" means the Deschutes River Basin drainage area indicated in OAR 690, division 505, Exhibit 1.¶¶

(12) The Department shall provide notice and review of transfer applications under section (3) of this rule pursuant to OAR 690-380-4000 through 690-380-4200.¶¶

(13) Opportunities to protest a transfer under section (3) of this rule shall be pursuant to OAR 690-380-4030.¶¶

(14) The Department shall issue final orders on transfer applications under section (3) of this rule pursuant to OAR 690-380-5000.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.520, ORS 540.530, ORS 540.531

AMEND: 690-380-2200

RULE SUMMARY: This rule is amended to (a) include references to OAR chapter 690, division 18 rules regarding allocation of conserved water and OAR chapter 690, division 77 rules regarding instream leases and transfers, which also are subject to OAR chapter 690, division 380 rules, and (b) provide greater transparency around, and ensure alignment with, existing Department policy that a place of use transfer must involve a physical change that alters where the water right is located and that it must be consistent with requirements related to the prevention of enlargement.

CHANGES TO RULE:

690-380-2200

Changes in Place of Use ¶¶

(1) No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer, permit amendment under ORS 537.211, certificate of registration modification under OAR Chapter 690, Division 382, or pursuant to OAR 690-380-2260 instream lease or instream transfer under OAR Chapter 690, Division 77, allocation of conserved water under OAR Chapter 690, Division 18, or pursuant to OAR 690-380-2260.¶¶

(2) For water rights with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380-0010(2)(c), the lands from which the water right is removed do not continue to receive water from the same source.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-2240

RULE SUMMARY: This rule is amended to (a) add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved, (b) implement Or Laws 2025, ch 282, with respect to providing notification in electronic form, and (c) for consistency with Division 382 pertaining to groundwater registration modifications.

CHANGES TO RULE:

690-380-2240

Layered Water Rights and Certificates of Registration ¶

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a water use subject to transfer, ~~a permit, or a certificate of registration~~ mit that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.¶

(2) ~~W~~Pursuant to ORS 540.510(1), when reviewing an application for a transfer or permit amendment, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed. The Department's notification shall identify the layering issue(s) that must be resolved and the options for resolution outlined in section (3) of this rule, and shall be sent to the applicant through either:¶

(a) Issuance of an initial review, if required; or¶

(b) Sending a letter by electronic means, or if requested by regular mail, for those transfers that do not require issuance of an initial review.¶

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:¶

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration, or otherwise as allowed under section (5) of this rule;¶

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or¶

(c) Withdraw the application.¶

(4) If the Department determines that an application filed pursuant to (3)(a) of this rule to transfer or amend a layered water use subject to transfer or permit should be deni, amend a layered permit, or modify a layered certificate of registration identified under section (2) of this rule should be denied or not recognized, the Department shall notify the applicant of the Department's intent to issue final orders denying or not recognizing the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:¶

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or¶

(b) Withdraws the applications.¶

(5) A supplemental irrigation water right may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the supplemental right is to be moved.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

AMEND: 690-380-2250

RULE SUMMARY: This rule is amended to (a) clarify that issuance of an initial review under OAR 690-380-4000 serves as the Department's notice of intent to cancel a layered supplemental water right unless the primary right transfer application is modified to include the supplemental or is withdrawn, (b) add language to describe the Department's process for notifying a landowner, other than the applicant, of layering issues, how they may be resolved, and the timeframe for doing so, (c) clarify the stages of processing when the Department makes its determination and issues an order, and (d) add language to correct rule references pertaining to a report of ownership information.

CHANGES TO RULE:

690-380-2250

Transfer of Supplemental Water Right or Permit ¶

(1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-380-3000, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant intends to transfer the supplemental water right or permit with the primary water right, the applicant shall include information on the supplemental right or permit as part of the transfer application for the primary water right as required under OAR 690-380-3000.¶

(2) If the applicant does not include the supplemental water right or permit in the transfer application, the Department shall notify the applicant ~~and in the land owner, as identified under initial review, as prescribed in OAR 690-380-34000(13),~~ that the supplemental water right will be canceled before the Department issues the order approving the transfer of the primary water right, unless within ~~30 days after the date of Department notification~~ the timeframe provided in OAR 690-380-4000(9) and (10), the applicant modifies the application to include the supplemental water right or permit or withdraws the application.¶

(3) Provided the applicant, other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c), responds to the initial review in a manner consistent with the requirements of OAR 690-380-4000, if the report of ownership information required in OAR 690-380-4000(6) and (7) identifies a landowner that is not the applicant, then the Department shall notify the identified landowner, provide the identified landowner a copy of the initial review, and allow the identified landowner 30 days to provide consent to the proposed transfer and method to address the supplemental right.¶

(4) The Department may approve the transfer of a supplemental water right or permit in accordance with ORS 540.520 and 540.530. The Department shall not approve the transfer of a supplemental water right or permit if the transfer would result in injury or enlargement, or if an identified landowner does not provide consent to the proposed transfer and method to address the supplemental right.¶

(45) If the Department determines it can approve the transfer of the primary water right but ~~does cannot~~ approve the transfer of the supplemental water right or permit, the Department shall notify the applicant and the land-owner, as identified under OAR 690-380-~~34000(13)~~ and (7), of the Department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the Department issues an order approving the transfer of the primary water right ~~transfer order~~, unless the applicant withdraws the transfer application within 90 days.¶

(56) The order issued by the Department approving the transfer of a primary water right shall also cancel any appurtenant supplemental water right or permit not included in the transfer if the applicant does not modify or withdraw the application pursuant to section (2) of this rule or withdraw the application pursuant to section (4) of this rule.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.530

AMEND: 690-380-2260

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to public notice requirements, and (b) provide for issuance of a proposed final order in order to implement Or Laws 2025, ch 575, with respect to opportunities for protest against a proposed final order and contested case proceedings, and finalization of the order.

CHANGES TO RULE:

690-380-2260

Exchanges of Water ¶¶

- (1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.¶
 - (2) After receipt of a complete exchange application, the Department shall give ~~at least 30 days public notice of the application:~~¶
 - ~~(a) By publication in the Department's weekly notice; and~~¶
 - ~~(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks for applications received by the Department public notice and accept~~ written prior to January 1, 2012, but for applications received after January 1, 2012, at least once each week for two successive week public comments for 30 days.¶
 - (3) Any person may submit comments by the date identified in the notices prescribed by ~~subsections (2)(a) and (b)~~ of this rule.¶
 - (4) After the comment period prescribed in section (2) of this rule, the Director shall:¶
 - (a) Issue a proposed ~~order~~ final order recommending approving or denying of the application in compliance with ORS 540.537 taking into account comments received under section (3) of this rule; and¶
 - (b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed final order.¶
 - (5) ~~If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentors to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.~~¶
 - (6) After the public hearing, the Commission may:¶
 - (a) Confirm the Director's decision and authorize issuance of a final order;¶
 - (b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or¶
 - (c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS ~~183.310 to 183.550~~ Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR 690-002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.¶
 - (6) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.¶
 - (7) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.¶
- Statutory/Other Authority: ORS 536.025, ORS 536.027
Statutes/Other Implemented: ORS 540.533 - 540.543, Or Laws 2025, ch 575, Or Laws 2025, ch 282.

AMEND: 690-380-2300

RULE SUMMARY: This rule is amended to include reference to OAR chapter 690, division 18 pertaining to allocation of conserved water and OAR chapter 690, division 77 pertaining to instream leases and transfers, both of which also are subject to OAR chapter 690, division 380 rules.

CHANGES TO RULE:

690-380-2300

Changes in Character of Use ¶

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and 540.520(8) and (9) or as approved by the Department through a water right transfer, certificate of registration modification under OAR chapter 690, division 382, instream lease or instream transfer under OAR chapter 690, division 77, allocation of conserved water under OAR chapter 690, division 18, or pursuant to OAR 690-380-2340.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-2330

RULE SUMMARY: This rule is amended to (a) align the contested case process to implement Or Laws 2025, ch 575, (b) modify rule text to align with statutory language in ORS 540.524(1) and remove redundancies, (c) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation, and (d) provide greater transparency around existing Department policy and practice for not allowing certain transfers to occur prior to termination of the substitution and approval of a new transfer application.

CHANGES TO RULE:

690-380-2330

Substitution of Supplemental Ground ~~Water~~ Right for Primary Surface Water Right ¶¶

- (1) As provided in ORS 540.524, the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the use of the supplemental water right for the primary water right. This rule does not authorize a change in place of use, character of use, point of diversion or point of appropriation.¶¶
- (2) A substitution may not be made under section (1) of this rule if the use of the supplemental ~~ground~~ water right results in an enlargement or expansion of the primary ~~surface~~ water right or if the use results in injury to other existing water rights.¶¶
- (3) An application shall be submitted on a form provided by the Department with the appropriate fee as established under ORS 536.050. The Department may request additional information if necessary to assist with the injury and enlargement evaluation.¶¶
- (4) Upon receiving an application, the Department shall provide notice, ~~accept protests and conduct hearings on protests in th~~ of the application in the Department's weekly public notice manner ~~described in ORS 540.520(5) to (7) and OAR 690-380-4000 to 690-380-4200~~.¶¶
- (5) ~~The Director shall issue an orderd~~ accept written public comments for 30 days.¶¶
- (5) The Director shall issue a proposed final order recommending approvingal or denyngial of the substitution within 90 days after the Department receives an application under section (1) of this rule. If the proposed substitution will result in injury or enlargement, the Director shall prohibit or condition the use to avoid or mitigate the injury. ~~The Director or enlargement. The Department shall issue an order approving~~ provide notice of the proposed final or denying the substitution within 90 days after the Department receives an application under section (1) of this ruler and accept protests and requests for party status in the manner described in OAR 690-380-4020 and 690-380-4030.¶¶
- (6) For the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental ground water right shall be treated as a primary water right.¶¶
- (7) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this rule may be terminated upon a request by the water right holder or by an order of the Director if the Director determines that the use of the ground water as the primary water right causes injury or enlargement. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.¶¶
- (8) Following approval of a substitution as outlined in section (7) of this rule, no change in place of use, character of use, point of diversion, or point of appropriation may occur except upon termination of the substitution and approval of a new transfer application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

AMEND: 690-380-2340

RULE SUMMARY: This rule is amended to provide more direction on the information necessary to demonstrate the quantity of water diverted for the original specific industrial use and to ensure, consistent with ORS 540.520, that the quantity of water to be used for general industrial use does not exceed that amount. This rule was also amended to provide OWRD with the ability to request additional information when needed to validate submitted water use data/information and to establish the right is not subject to forfeiture under ORS 540.610. The amended rule adds email address for electronic sending of documents and communication.

CHANGES TO RULE:

690-380-2340

Specific-to-General Industrial Water Use Change ¶¶

A water right transfer is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:¶¶

(1) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;¶¶

(2) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and¶¶

(3) The person who makes the change in water use provides the following information to the Department:¶¶

(a) The name, email address (if available), and mailing address of the person using water under the water right;¶¶

(b) The water right certificate number;¶¶

(c) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued;¶¶

~~(d) The quantity of water diverted to satisfy the authorized specific use under the original water right; and¶¶~~

~~(e) A description of the general industrial use to be made of the water after the change~~Water use measurement data, system capacity information, or other data acceptable to the Department regarding the maximum instantaneous rate and annual volume of water diverted to satisfy the authorized specific use under the original water right, as well as the date(s) or time frame associated with the data or information provided; and¶¶

~~(e) A description of the general industrial use to be made of the water after the change.¶¶~~

(4) The Department may request additional information necessary to validate the data or information provided under section (3)(d) of this rule or to establish that the water right is not subject to forfeiture under ORS 540.610.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-3000

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology and electronic documentation and notification, (b) provide general clarifications, (c) add language to assist with fish screen and passage evaluation for transfers involving point of diversion changes, (d) update certain language pertaining to documentation submitted as part of the application to support attestations of beneficial use of water or rebuttal to forfeiture to provide the Department with more certainty when evaluating beneficial use of water under the water right or that the right is not subject to forfeiture, add language to clarify that information is to be provided on the Department's evidence of use affidavit, and (e) clarify when ownership information is required for different application types, as it relates to the applicant's signed statement of acknowledgement. This rule is also amended to clarify that a separate transfer application is required for each water use subject involved in the proposed transfer, except under certain circumstances, and to document conforming changes (rule structure). This rule is further amended to reflect that OWRD believes that the Historic Transfer process under OAR 690-380-2120 only applies to historic surface water POD changes.

CHANGES TO RULE:

690-380-3000

Application for Transfer ¶

A separate application is required for each water use subject to transfer that is involved in the proposed transfer, except for those circumstances outlined in OAR 690-380-2240(1) and (5) or unless the criteria under OAR 690-380-3220 are met. Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:¶

(1) Applicant's name, mailing address, email address (if available), and telephone number.¶

(2) Type of change proposed.¶

(3) Name appearing on permit, certificate, decree or proof of appropriation.¶

(4) Name of decree and certificate number, if applicable.¶

(5) Permit number and certificate number, if applicable.¶

(6) Source of water (from permit, decree or certificate).¶

(7) Date of priority.¶

(8) The existing authorized and proposed points of diversion or appropriation located accurately in reference to a public land survey corner. If the request is for a change in point of diversion, then the application shall also:¶

~~(9a) The authorized existing~~ Indicate whether the proposed point of diversion is located upstream or downstream from the existing authorized point of diversion; and¶

(b) Provide any information, if known, regarding fish screens and passage at the proposed point of diversion, including but not limited to the following:¶

(A) Any previous ODFW fish screening certification letter and/or passage approval number;¶

(B) A copy of any preliminary ODFW fish screen and/or passage determination; and¶

(C) Name and contact information for the ODFW representative(s) with whom the applicant is working.¶

~~(9)~~ The existing authorized use of water.¶

(10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.¶

(11) The existing authorized place of use identified by its location within the public land survey and tax lot number.¶

(12) Evidence that the water has been used beneficially over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:¶

(a) A completed evidence of use affidavit on a form provided by the Department;¶

~~(ab)~~ If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:¶

(A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water; which may include, but is not limited to:

(BA) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or

(CB) Dated satellite imagery, dated aerial photographs of the lands, or other photographs containing sufficient detail to establish the location and date of the photograph; or

(bC) Any other documentation with sufficient detail to support the affidavit attesting to beneficial use of the water right during the past five years.

(c) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described:

(A) For all applications other than a change in point of diversion to reflect historical use under OAR 690-380-2120, upon receipt of the initial review described in OAR 690-380-4000 and prior to the Department issuing a proposed final order on the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-40100(4) and 6); or

(B) For an application to make a change in point of diversion to reflect historical use under OAR 690-380-2120, prior to Department approval of the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-40100(5);

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant. Such an entity may only apply for a transfer under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(14) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(15) The proposed use of water.

(16) The proposed place of use shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-380-3100.

(19) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(20) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(21) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected water right is located or that serves the right and any district in which the affected water right would be located or that would serve the right after the proposed transfer.

(22) An oath that the information contained in the application is true and accurate.

(23) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

(24) The signature of the applicant, and if an entity, the title of the person signing the form.

(25) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-

3400.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.531, ORS 536.050, Or Laws 2025, ch 282

AMEND: 690-380-3100

RULE SUMMARY: This rule is amended to (a) refer to the standards in OAR Chapter 690, Division 305, for greater clarity and consistency in mapping requirements across water right transactions, and (b) refer to OAR 690-014-0050 which outlines certain requirements for certified water right examiners for digital seals and signatures.

CHANGES TO RULE:

690-380-3100

Map Requirements ¶¶

(1) A map shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the standards in OAR chapter 690, division 305, as well as the following criteria:¶¶

(a) ~~Except as otherwise provided under OAR chapter 690, division 380 or 382, the map shall be prepared by a certified water right examiner.~~¶¶

(b) ~~The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.~~¶¶

(c) ~~The preferred map size is 8-1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.~~¶¶

(d) ~~Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.~~¶¶

(e) ~~The map scale shall be:~~¶¶

(A) ~~1" = 400';~~¶¶

(B) ~~1" = 1,320';~~¶¶

(C) ~~The scale of the final proof or adjudication map for the existing right of record;~~¶¶

(D) ~~The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or~~¶¶

(E) ~~Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale prepared by a certified water right examiner.~~¶¶

(f) ~~Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.~~¶¶

(g) ~~The map shall be plotted to the accuracy consistent with the map scale.~~¶¶

(h) ~~The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:~~¶¶

(A) ~~Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or~~¶¶

(B) ~~Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).~~¶¶

(i) ~~If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.~~¶¶

(j) ~~If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).~~¶¶

(2) ~~The map(s) shall include the following information:~~¶¶

(a) ~~A north arrow, the scale, and a clear legend;~~¶¶

(b) ~~The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is digital stamp or seal and signature are acceptable, provided the signature is original requirements under OAR 690-014-0050 are satisfied;~~¶¶

(c) ~~The location of each existing and proposed point of diversion or appropriation;~~¶¶

(d) ~~For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;~~¶¶

(e) ~~For a change in place of use or character of use, the location of the authorized and proposed place of use of~~

the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;¶

(f) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;¶

(g) ~~The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;¶~~

(h) ~~Notwithstanding the requirements of subsection (1)(g), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;¶~~

(i) ~~Notwithstanding the requirements of subsection (1)(g), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and¶~~

(j) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

AMEND: 690-380-3220

RULE SUMMARY: This rule is amended to clarify the requirements for submitting a single transfer application involving multiple water rights.

CHANGES TO RULE:

690-380-3220

Separate Application Required for Each Water Right ¶¶

For changes involving more than one landowner or water use subject to transfer, a separate transfer application is required for each water use subject to transfer from each landowner involved, ~~except~~ when one or more of the following circumstances applies:¶

(1) A change in point or points of diversion or appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships;¶

(2) A change in use or place of use of all rights on a single parcel from all sources;¶

(3) A change in use or place of use from as many as four land-owners may be allowed within a district. Such a change must be for the same water right and not total more than 10 acres transferred; or¶

(4) Transfers between two parcels using water from the same source.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.520

AMEND: 690-380-3400

RULE SUMMARY: This rule is amended to (a) renumber statutory reference to reflect changes made to ORS 541 by legislative action in 2011, and (b) clarify that the waiver of fees due to ODFW's determination and written endorsement that a proposed change will result in a net benefit is not applicable to any request under OAR 690-380-5050 for consent to injury.

CHANGES TO RULE:

690-380-3400

Waiver of Fees ¶

The Director shall waive \$100 or 50 percent of the application fee, whichever is greater, for that portion of a change to a water right permit under ORS 537.211(4) or a water right subject to transfer under 540.520 or 540.523, that is:¶

(1) To establish an instream water right pursuant to ORS 537.348;¶

(2) Is necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.~~375~~932; or¶

(3) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat except when this determination is as a result of a request for consent to injury to an instream water right as outlined in OAR 690-380-5050.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 541.932, ORS 536.050

AMEND: 690-380-3410

RULE SUMMARY: This rule is amended to renumber statutory reference to reflect changes made to ORS 541 by legislative action in 2011.

CHANGES TO RULE:

690-380-3410

Waiver of Mapping Requirements ¶¶

(1) The Director may waive or assist the applicant in satisfying the requirements of OAR 690-380-3100 for a change to a water right subject to transfer under ORS 540.520 or 540.523, if the change is:¶¶

(a) To establish an instream water right pursuant to ORS 537.348;¶¶

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.932; or¶¶

(c) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.¶¶

(2) A request to waive or assist the applicant in satisfying the mapping requirements of OAR 690-380-3100 shall be submitted on a form provided by the Department. The form must be completed by the applicant and signed by the appropriate field staff prior to submittal of the transfer application.¶¶

(3) A waiver of mapping requirements under this rule shall only be approved if:¶¶

(a) The transfer would establish an instream water right as described in subsection (1)(a) of this rule:¶¶

(A) If the entirety of the right is being transferred to an instream water right and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream; or¶¶

(B) A map meeting the requirements of OAR 690-380-3100 is available showing the lands not included in the transfer and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream.¶¶

(b) At the determination of the Director, other circumstances are present that make an application map unnecessary.¶¶

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 541.932

AMEND: 690-380-4000

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, phased application processing and notice requirements, and electronic forms of documents, (b) make a conforming change and correct reference to another rule, (c) include language formerly located in OAR 690-380-4010 that now pertains to the initial review process in this rule, (d) add language to clarify requirements related to the process for an applicant to request consent to an injurious transfer, and (e) add language to allow for processing efficiency when appropriate as it relates to application amendments. This rule is also amended to clarify the deadline by which an applicant must request additional time if needed to provide any outstanding information and that the total time allowed cannot exceed 90 days total from the date the Department provided notice of the initial review to the applicant. This rule is further amended to align initial review, proposed final order, and final order approval criteria, and to provide that the Department may revise the initial review or incorporate into a PFO if applicant revises its application.

CHANGES TO RULE:

690-380-4000

~~Request for Comments~~ Initial Review ¶

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000, all fees have been paid, and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14)00-0010.¶

(2) If the Department determines that the application does not include the required information, or fees, or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.¶

(3) If the Department determines the application is complete, all fees have been paid, and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and ~~request public comments on the application~~.¶

~~(a) In the weekly notice published by the Department; and~~¶

~~(b) By regular mail, or with the consent of the recipient, by electronic means to each affected local government and irrigation district identified by the applicant undertake an initial review of the application that includes an assessment of whether:~~¶

~~(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-300-0010(59) and, for a right described under 690-300-0010(59)(d), the proof of completion is approved under OAR 690-380-6040;~~¶

~~(b) The portion of the water right to be transferred is cancelled pursuant to ORS 540.610;~~¶

~~(c) The right is subject to forfeiture under ORS 540.610;~~¶

~~(d) The water user is ready, willing and able to use the full amount of water allowed under the right;~~¶

~~(e) The proposed transfer would result in enlargement as defined in OAR 690-380-0100(2);~~¶

~~(f) The proposed transfer would result in injury as defined in OAR 690-380-0100(3); and~~¶

~~(g) Any other requirements set forth in applicable laws for water right transfers are met.~~¶

~~(4) For an initial review that indicates an application is not consistent with the approval criteria outlined in OAR 690-380-5000(1) and should be denied, the initial review shall:~~¶

~~(a) Describe any inconsistencies with the approval criteria; and~~¶

~~(b) Identify any conditions or restrictions that, if included in the transfer, would address the inconsistencies.~~¶

~~(5) Upon completion of the initial review, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application and allow the applicant 30 days from the date of notice to:~~¶

~~(a) Notify the Department to stop processing the application; or~~¶

~~(b) Notify the Department to continue processing the application and provide any outstanding information to the Department including, but not limited to:~~¶

~~(A) Amending the application to address any issues or deficiencies identified by the Department in the initial review; and~~¶

~~(B) For permanent transfers under OAR 690-380-2000, submitting documentation to satisfy the requirements of sections (6), (7), and (8) of this rule, as applicable.~~¶

(6) Upon receipt of the initial review, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information:¶

(a) A report of ownership information as defined in OAR 690-380-0100(9) for the land to which the water right is appurtenant;¶

(b) A copy of water right conveyance agreement(s) for the land to which the water right is appurtenant, if applicable; and¶

(c) If the landowner identified in the report of ownership information is not the applicant, documentation to demonstrate that the applicant is authorized to pursue the transfer, which shall include:¶

(A) A notarized statement by the landowner(s) identified in the report of ownership information consenting to the transfer;¶

(B) If the interest in the water right has been conveyed, a notarized statement consenting to the transfer from the person or authorized representative(s) of the entity to whom the interest in the water right has been conveyed identified in a water right conveyance agreement; or¶

(C) Other documentation demonstrating that the applicant is authorized to pursue the transfer.¶

(7) The report of ownership information required under subsection (6)(a) of this rule must:¶

(a) Be prepared no earlier than three months prior to the date of the initial review showing current ownership; or¶

(b) If the interest in the water right has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.¶

(8) Upon receipt of an initial review indicating that an application should be denied due to a finding of injury, if the applicant intends to request consent to the injurious transfer pursuant to OAR 690-380-5030 as applicable, then the applicant shall submit the following:¶

(a) For a finding of injury to any water right other than an instream water right as identified in OAR 690-380-5030(1), a written statement in accordance with OAR 690-380-5030(1) notifying the Department that the applicant intends to request consent to the injury of the water right(s) and indicating the applicant understands that, upon receipt of the complete listing of injured water rights and contact information from the Department, the applicant must provide the information required under OAR 690-380-5030(1) and OAR 690-380-5040; or¶

(b) For a finding of injury to any instream water right granted pursuant to a request under ORS 537.336 or created pursuant to ORS 537.346(1) and held in trust by the Department, a written statement in accordance with OAR 690-380-5050(1) notifying the Department that the applicant intends to request consent to injury to an instream water pursuant to OAR 690-380-3000(24)5030(2) and OAR 690-380-5050.¶

(49) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application. Department shall close the file for the application and take no further action on the application if, within 30 days from the date of the notice described in section (5) of this rule, the applicant:¶

(a) does not notify the Department as provided in subsections (5)(a) and (b) of this rule;¶

(b) does not provide all outstanding information as provided in subsection (5)(b) of this rule; or¶

(c) notifies the Department to stop processing the application.¶

(10) If requested within the 30-day time period specified in section (5) of this rule, the Department may allow an applicant up to 60 additional days, not to exceed a total of 90 days from the date the Department provided notice of the initial review to the applicant pursuant to section (5) of this rule, to provide the outstanding information described in subsection (5)(b) of this rule if the applicant requests additional time and the Department determines that the applicant is undertaking reasonable efforts to provide the information in a timely manner to the Department.¶

(11) The initial review shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.¶

(12) If the applicant amends the application or provides additional information in support of approval of the application, the Department may either revise the initial review and give notice of the revised initial review in the manner set forth under OAR 690-380-4005 or incorporate the amendments into the proposed final order

Statutory/Other Authority: ORS 536.025, ORS 536.027
Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

ADOPT: 690-380-4005

RULE SUMMARY: This rule is adopted to implement Or Laws 2025, ch 282, with respect to phased application processing and public comment and notice.

CHANGES TO RULE:

690-380-4005

Request for Comments

If, within 30 days from the date of the Department's notification to the applicant described in OAR 690-380-4000(5) or an additional time period allowed under OAR 690-380-4000(10), the applicant notifies the Department to proceed with the application and provides any outstanding information necessary to continue processing the application, the Department shall proceed with processing the application and give notice of the initial review in the Department's weekly public notice and accept written public comments for 30 days.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.520, Or Laws 2025, ch 282

AMEND: 690-380-4010

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, alignment of initial review, proposed final order and final order approval criteria, and removal of initial review process language to relocate under the Initial Review section, (b) correct references to other rules, (c) remove language related to the now obsolete draft preliminary determination, but that still applies to an initial review, so it was moved to OAR 690-380-4000, and (d) modify some provisions related to forfeiture. This rule is also amended to clarify that any other requirements for transfers refers only to those requirements "applicable to" transfers.

CHANGES TO RULE:

690-380-4010

Preliminary Determination of Proposed Final Order

(1) After the conclusion of the public comment period described in OAR 690-380-4000(45)(1)(b), the Department shall prepare a preliminary determination.

(a) Issue a proposed final order indicating whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4000(5)(1)(b) and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610; Give notice of the transfer application and proposed final order in the manner described in OAR 690-380-4020; and,

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement; If applicable, issue draft remaining right certificate(s).

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be denied, the preliminary determination shall:

(a) Describe the basis for the denial; and

(b) Identify any conditions or restrictions that, if included in proposed final order shall include an assessment of whether the application is consistent with the transfer, would a following approval of the transfer criteria:

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) For permanent transfers under water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-3800-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria 10(59) and, for a right described in OAR under 690-3800-30010(13)(b) or (c) shall submit the following information:

(a) A report of ownership information (59)(d), the proof of completion has defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to be approved under OAR 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to which the water right is appurtenant; and

(c) If the landowner identified in the report of ownership information ORS 540.610;

(c) The right has been used over the past five years according to the terms and condition is not the applicant, documentation to demonstrate that the applicant is authorized to pursue the transfer, which shall of the right and that the right is not subject to forfeiture under ORS 540.610;

(d) The water user is ready, will include:

(A) A notarized statement by the landowner(s) identified in the report of ownership information consenting to the transfer;

(B) If the water user is ready and able to use the full amount of water allowed under the right;

(e) The proposed transfer would not result in the water right enlargement has been conveyed, a notarized statement consenting to the transfer from the person or authorized representative(s) of the entity to whom the water right is appurtenant as defined in OAR 690-380-0100(2);

(f) Except as provided in OAR 690-380-5030, the proposed transfer would not result in the water right has been conveyed if the transfer would result in injury as defined in a water right conveyance agreement; or OAR 690-380-0100(3); and

(6g) Other documentation demonstrating that the applicant is authorized to pursue the transfer.¶

(6) The report of ownership information required under subsection (5)(a) of this rule must:¶

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or¶

(b) If the interest in the water right has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.¶

(7) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250. Any other requirements for applicable to water right transfers are met.¶

(3) For a proposed final order that indicates that an application should be denied because it is not consistent with the approval criteria outlined in section (2) of this rule, the proposed final order shall:¶

(a) Describe the basis for the denial; and¶

(8b) If the applicant amends the application identify any conditions or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate restrictions that, if included in the transfer, would allow approval of the transfer.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

AMEND: 690-380-4020

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282 and ch 575, including changes in document terminology, proposed final order notice including when newspaper notice is required, standardizing requests for party status, and electronic forms of documents, (b) clarify information for the proposed final order notice; and (c) correct references to other rules.

CHANGES TO RULE:

690-380-4020

Notice of Preliminary Determination ~~o~~posed Final Order ¶¶

~~(1) After the time for the applicant to respond to the Department's~~ Upon issuance of the Department's proposed final order and, if applicable, draft preliminary determination, the Department shall issue the preliminary determination and ~~g~~aining right certificate(s), the Department shall: ¶¶

~~(a) Send copies of to the applicant by registered or certified mail in accordance with ORS 183.415; and~~ ¶¶

~~(b) Give notice of the transfer application and preliminary determination:~~ ¶¶

~~(a) Proposed final order: (A) By publication in the Department's weekly public notice;~~ ¶¶

~~(b) Except as provided in section (5) of this rule, (B) By publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication~~ each week for applications received by the Department prior to January 1, 2012, but ~~two consecutive weeks, if the Department determines that f~~or applications received after January 1, 2012, for a period of at least ~~two weeks and not lesse~~ than five water rights would be injured as a result of the change proposed in the ~~thr~~an one publication each ~~weeks~~fer application; and ¶¶

~~(c) By sending by regular mail, or with the consent of~~ electronic means, or if requested by the recipient, by electronic means ~~regular mail~~, a copy of the preliminary determination and notice ~~o~~posed final order, and the notice, and if applicable, the draft remaining right certificate(s), to each person who submitted comments under OAR 690-380-4000 ~~(35(1))~~. ¶¶

(2) The notice shall include the following information about the application: ¶¶

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required under OAR 690-380-4000; ~~5;~~ ¶¶

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the right ~~the proposed final order and, if applicable, draft remaining right certificate(s) or portion thereof to be transferred,~~ and the authorized source for the right; ¶¶

(c) The application file number; ¶¶

(d) The applicant's name and mailing address; ¶¶

(e) A statement that any person may file, jointly or severally, with the Department a protest ~~or standing statement~~ within 30 days after the date of final publication of the notice ~~in the Department's weekly public notice as~~ prescribed by subsections (1)(a) and (b) of this rule, ~~whichever is later;~~ and ¶¶

(f) A summary of the Department's preliminary determination; and ~~o~~posed final order. ¶¶

~~(g) For a notice published in a newspaper, the date on which the last publication will occur.~~ ¶¶

~~(3) If newspaper notice is required in subsection 1(b)(B), as provided in ORS 540.520(57), the cost of publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.~~ ¶¶

~~(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, i~~ If publication in a newspaper is required, a copy of the notice, and a request for payment for the cost of publishing the notice ~~shall be sent to the applicant by electronic means, or if requested by regular mail.~~ The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of ~~newspaper~~ publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment. ¶¶

~~(5) No notice by publication in a newspaper is required for:~~ ¶¶

~~(a) A change in place of use;~~ ¶¶

~~(b) A change in point of diversion or appropriation to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or~~ ¶¶

~~(c) Applications for a change in the point of diversion or appropriation of less than one-fourth mile and where there are no intervening diversions or wells between the old point of diversion or appropriation and the proposed new point of diversion or appropriation.~~ ¶¶

~~(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.~~

(74) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.520, ORS 540.532, Or Laws 2025, ch 575

AMEND: 690-380-4030

RULE SUMMARY: This rule is amended to: (a) implement Or Laws 2025, ch 575 sections 2, 3 and 20 by removing protest and standing requirements that have been replaced by Or Laws 2025, ch 575; and (b) remove provisions regarding notification of intent to pursue approval of a transfer under OAR 690-380-5030 to 690-380-5050 that are now covered in OAR 690-380-4200.

CHANGES TO RULE:

690-380-4030

Protests and Requests for Hearings-

~~(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later:¶¶~~

~~(a) Any person may file, jointly or severally, with the Department, a protest or standing statement; and¶¶~~

~~(b) If the Department's preliminary determination is that a proposed change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050.¶¶~~

~~(2) A person filing a protest under this rule must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.¶¶~~

~~(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-380-4020(3) to the Department prior to or concurrent with the filing of the protest.¶¶~~

~~(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue dur~~Except as described subsection (2) of this rule, protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR Chapter 690 Division 002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.¶¶

~~(2) Within 30 days after the publication ing the hearing.¶¶~~

~~(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-380-0100(11)department's weekly public notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearingperson may file a protest against the proposed final order.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 183.310 - 183.550, ORS 536.050, ORS 540.530, Or Laws 2025, ch 575

AMEND: 690-380-4200

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 575 by removing subsection (2)(a), which has been replaced by language in OAR 690-380-4030 that describes the law governing contested case proceedings in a manner consistent with Or Laws 2025, ch 575 section 2, 3 and 20, (b) more clearly describe the process outlined in current OAR 690-380-4200(2)(b) regarding the procedure the Department must follow when there is an assertion that the water right proposed for transfer has been forfeited through nonuse, (c) remove language outlining procedural steps for the applicant to file notification of intent to pursue approval of a transfer under OAR 690-380-5030 to 690-380-5050 because this is now moot as these steps were moved from between the proposed final order and final order to an earlier stage now between the initial review and proposed final order; the applicant's opportunity for this is after the Department's issuance of the initial review and no longer triggered by issuance of the proposed final order, and (d) add language describing the procedural steps for the applicant to file notification of intent to pursue consent of an injurious transfer in cases where the Department's proposed final order finds that the change will not result in injury, but after a hearing, the Office of Administrative Hearing's issues a proposed order that the change will result in injury (consents to injury).

CHANGES TO RULE:

690-380-4200

Hearings ¶

(1) If a protest is filed under OAR 690-380-4030, the Department shall hold a hearing on the matter.¶

(2) ~~Notice and conduct of the hearing shall:¶~~

~~(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and¶~~

(b) If a protest has asserted that a water right to be transferred has been forfeited through non-use, includelf a protest has asserted that a water right to be transferred has been forfeited through non-use, the Department shall issue a notice of cancellation proceeding in accordance with ORS 540.631, and the hearing held pursuant to OAR 690-380-4200(1) shall also include the procedures described in OAR 690-017-0600 to 690-017-0900. The hearing on the transfer protest(s) shall include issues related to the notice of cancellation proceeding. The Department may also consolidate for hearing the protest(s) of a transfer application with a notice of proposed cancellation if:¶

(a) The transfer application and the notice of proposed cancellation affect the same water right(s), and¶

(b) The Department issues the notice andof procedures described in OAR 690-017-0500 to 690-017-0900.¶

~~(3) If after hearingposed cancellation prior to referral of the transfer protest to the Office of Administrative Hearings.¶~~

(3) If the Department issues a proposed final order finding that a change in point of diversion or appropriation will not result in injury, but after hearing the Office of Administrative Hearings issues a proposed order finding that the change will result in injury, the applicant may file a notification of intent to pursue approval of the request consent to the injurious transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, ant to OAR 690-380-5030(1) stays the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050for a period of 90 days. A notification of intent pursuant to OAR 690-380-5030(2) stays the deadline for filing exceptions for a period of 180 days.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

AMEND: 690-380-5000

RULE SUMMARY: This rule is amended to (a) update the citation for the definition of “water use subject to transfer” to that found in OAR chapter 690, division 300, (b) add language to align approval criteria for the initial review, proposed final order and final order; (c) implement Or Laws 2025, ch 575 sections 2, 3 and 20 by removing language concerning issuing a final order if no timely protests are filed and adding language providing that, if no timely protests are filed, a proposed final order becomes a final order, and if applicable draft remaining right certificate(s) become final, by operation of law unless timely withdrawn by the Department. This rule is also amended to clarify that any other requirements for transfers refers only to those requirements “applicable to” transfers.

CHANGES TO RULE:

690-380-5000

Approval of Transfers ¶

(1) A transfer application shall be approved if the Department determines that:¶

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-3800-00100(14(59)) and, for a right described under 690-3800-00100(14(59)(d), the proof of completion has been approved under OAR 690-380-6040;¶

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;¶

(c) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;¶

(d) The water user is ready, willing and able to use the full amount of water allowed under the right; ¶

(e) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);¶

(~~f~~) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in OAR 690-380-0100(3); and¶

(eg) Any other requirements ~~for~~ applicable to water right transfers are met.¶

(2) ~~Except as otherwise provided in OAR 690-380-4020(8), the Department timely received, as a matter of law, the proposed final order shall issue become a final order consistent with the preliminary determination described in 690-380-4010 if no protests or notifications of intent are received under 690-380-4030(1), and if applicable draft remaining right certificate(s) shall become final on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.¶~~

(3) Not more than 33 days after the close of the time period for submitting a protest, the department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

AMEND: 690-380-5030

RULE SUMMARY: This rule is amended to (a) clarify requirements that must be satisfied in order for the Department to approve an injurious change in point of diversion or appropriation, and (b) correct grammar.

CHANGES TO RULE:

690-380-5030

Approval of Injurious Transfers ¶¶

The Department may approve a transfer of a point of diversion or appropriation that would injure another water right if:¶¶

(1) For any water right other than an instream water right, ~~the applicant files following the issuance of an initial review pursuant to OAR 690-380-4000, the applicant, as outlined in OAR 690-380-4000(8):~~¶¶

(a) Notifies the Department that the applicant intends to request consent to injury of the water right(s); and¶¶

(b) Indicates that the applicant understands that, upon receipt of the complete listing of the injured water right(s) and water right holder contact information from the Department, the applicant must file an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040; and¶¶

(2) For any instream water right ~~held by the Department pursuant to ORS 537.336 or 537.346, granted pursuant to a request under ORS 537.336 or an instream water right created pursuant to ORS 537.346(1) and held in trust by the Department, provided~~ the Department consents to the change after complying with the provisions of OAR 690-380-5050.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 537.341

AMEND: 690-380-5040

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, and (b) include reference to proposed orders that may be issued by an administrative law judge following a contested case hearing.

CHANGES TO RULE:

690-380-5040

Affidavits of Consent ¶¶

An affidavit consenting to a proposed change in point of diversion under OAR 690-380-5030(1) shall be notarized and shall include statements that the affiant:¶¶

(1) Is the holder of a water right that the Department has determined would be injured;¶¶

(2) Has reviewed the ~~preliminary determination or initial review of the Department, or, as applicable, the proposed order of the Department~~ issued by the administrative law judge after a contested case hearing, concluding the transfer would result in injury and recognizes the nature of the injury;¶¶

(3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and¶¶

(4) Consents to the injury resulting from the proposed change in point of diversion or appropriation.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

AMEND: 690-380-5050

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, (b) update rule citation references for processes that were renumbered due to implementation of Or Laws 2025, ch 282, (c) move some of the procedural steps for the consent to injury process between the proposed final order and final order to the earlier stage of between initial review and proposed final order. Pursuant to Or Laws 2025, ch 575, proposed final orders default to final order 33 days after the close of the protest period if a protest is not received; the changes to this rule are intended to provide the applicant another avenue besides the protest process to pursue the consent to injury process, and (d) add language to provide greater clarity and reference to additional approval criteria found in OAR 690-380-4010 for proposed final orders. This rule is also amended to clarify the purpose of holding the joint public meeting described in OAR 690-380-5050(7), and to better align OAR 690-380-5050(8) with statutory authority in ORS 540.530(1)(c) and (e) as it relates to issuance of a proposed final order recommending approval and (1)(d)(A) consultation with Tribes.

CHANGES TO RULE:

690-380-5050

Consent to Injury of Instream Water Rights ¶¶

(1) ~~Following the issuance of an initial review pursuant to OAR 690-380-4000,~~ if the applicant notifies the Department that the applicant intends to ~~pursue~~request consent to injury to an instream water right as outlined in OAR 690-380-4000(8)(b), the Department shall seek a recommendation from the agency that requested the instream water right.¶¶

(2) In requesting a recommendation under section (1) of this rule, the Department shall provide to the appropriate agency a copy of the ~~preliminary determination~~initial review issued under OAR 690-380-40100 or proposed order issued after hearing and, to facilitate the analysis of cumulative impacts, identify any previously approved transfers injuring the same instream water right as the proposed transfer.¶¶

(3) If the agency that requested the instream water right recommends that the Department consent to injury, the agency's recommendation shall be in writing and include:¶¶

(a) A description of the extent of the injury to the instream water right;¶¶

(b) A description of the effect of the injury on the resource;¶¶

(c) An evaluation of the net benefit that will occur as a result of the proposed change that includes an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and¶¶

(d) Any proposed conditions necessary to ensure that the proposed change will be consistent with the recommendation.¶¶

(4) On receipt of a recommendation to consent to injury that complies with section (3) of this rule, the Department shall ~~¶¶~~

~~(a)~~ Provide notice of the opportunity to comment on the recommendation:¶¶

~~(a)~~A) To the applicant, any protestants or persons who filed comments under OAR 690-380-40305, and affected Indian Tribes; and¶¶

~~(b)~~B) By publication in the Department's weekly notice; and¶¶

(b) Seek to consult with affected Indian Tribes pursuant to ORS 540.530(1)(d)(A).¶¶

(5) Within 30 days after the date of the notice required in section (4) of this rule, any person may submit written comments on the recommendation or a written request for a public meeting to review the recommendation.¶¶

(6) The Department shall provide copies of any comments submitted in response to the notice in section (4) of this rule to the recommending agency.¶¶

(7) Within 90 days of receipt of a written request for a public meeting on the recommendation, the Department and the agency providing the recommendation shall hold a joint public meeting to review the recommendation and to ~~accept~~receive public comments.¶¶

(8) If no comments or requests for a public meeting to review the recommendation are received by the Department in response to the notice provided under section (4) of this rule or if, after consideration of any written comments or the discussions during the public meeting described in section (67) of this rule or tribal consultation in subsection 4(b), the recommending agency notifies the Department that it will not withdraw its recommendation to consent to injury, the Department ~~shall~~may issue an ~~order~~ proposed final order recommending approval of the transfer and consenting to the injury to the instream water right. The ~~order shall~~ proposed final order shall, in addition to the considerations and approval criteria outlined in OAR 690-380-4010, include:¶¶

- (a) Findings on the extent of the injury to the instream water right and the effect on the resource;¶
- (b) Findings on the net benefit that will occur as a result of the change that reflect an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and¶
- (c) Any conditions necessary to ensure that the change will be consistent with the findings and will result in a continued net benefit to the resource consistent with the purposes of the instream water right.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575, Or Laws 2025, ch 282

AMEND: 690-380-5060

RULE SUMMARY: This rule is amended to (a) correct a grammatical error, (b) reorder existing language for clarity, and (c) update a reference to Or Laws 1989 that has since been codified in statute.

CHANGES TO RULE:

690-380-5060

Fish Screening and By-Pass Devices ¶¶

(1) Pursuant to ORS 540.525, when an application for a change in point of diversion is received, the Department shall consult with ~~the~~ ODFW to determine whether a fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion. ¶¶

(2) If requested by ODFW, a condition requiring a proper fish screen at the new point of diversion shall be attached to any transfer approval order for a change in point of diversion. ¶¶

(3) The Department's consultation with ODFW shall determine whether the diversion is: ¶¶

(a) Equipped with an appropriate fish screen or by-pass device; or ¶¶

(b) Included in the list of priority screening projects established under ~~section 8, chapter 933, Oregon Laws 1989~~ ORS 498.306(14)(a). ¶¶

(3c) If the original point of diversion is included in the priority list referenced in subsection (23)(b) of this rule, the Department, after consulting with ODFW, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion. ¶¶

(4) ~~If requested by ODFW, a condition requiring a proper fish screen at the new point of diversion shall be attached to any transfer approval order for a change in point of diversion.~~ ¶¶

(5d) Any individual required to install a fish screening or by-pass device under ~~this section(3)(c)~~ at a point of diversion for a diversion of under 30 cubic feet per second may participate in ODFW's cost sharing program for the installation of screening and by-pass devices.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.525, ORS 540.532, ORS 498.306

AMEND: 690-380-5100

RULE SUMMARY: This rule is amended to repeal OAR 690-380-5100(3), because it is inconsistent with OAR 690-005-0035(4)(a).

CHANGES TO RULE:

690-380-5100

Compatibility with Acknowledged Comprehensive Plans ¶¶

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for transfers except as specified in OAR 690-005-0025 and 690-380-3000(19).¶¶

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in 690-005-0040 (Resolution of Land Use Dispute).¶¶

~~(3) The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-380-4000.~~

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.510 - 540.531

AMEND: 690-380-6030

RULE SUMMARY: This rule amendment repeals language that is now obsolete.

CHANGES TO RULE:

690-380-6030

Proof Of Use; Noncompliance ¶

~~(1) For transfers requested prior to July 10, 1987, at such time given in the order approving the transfer for complete application of water, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.¶~~

~~(2) Transfers requested on or after July 10, 1987~~ Transfers shall have a Claim of Beneficial Use report and map prepared by a certified water right examiner in accordance with OAR chapter 690, division 14.¶

~~(3)~~ If any property described in the order approving the transfer application is not included in the request for a water right certificate, the owners of the transfer shall provide to the Department the name and address of the landowner of that property.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 540.530

ADOPT: 690-380-7000

RULE SUMMARY: This new rule is adopted to implement ORS 537.211(4) that allows the holder of a water right permit to change the point of diversion, change the point of appropriation, change the point of diversion to allow the appropriation of ground water, or use the water on land to which the right is not appurtenant, provided certain criteria are satisfied.

CHANGES TO RULE:

690-380-7000

Types of Permit Amendments

As provided in ORS 537.211(4), the water right permit holder of record may request to change the point of diversion or appropriation pursuant to OAR 690-380-7010, the point of diversion to allow the appropriation of groundwater pursuant to OAR 690-380-7020, or the place of use pursuant to OAR 690-380-7030.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

ADOPT: 690-380-7010

RULE SUMMARY: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes in points of diversion or appropriation. This rule is also adopted to update references to OAR 690-380-2110 to reflect numbering changes in those rules.

CHANGES TO RULE:

690-380-7010

Change in Point of Diversion or Appropriation

The point of diversion or point of appropriation of a water right permit may be changed if the proposed change meets the criteria outlined in OAR 690-380-7300, the proposed change meets the requirements under OAR 690-380-2110(2) and (4)(c), and for a change in point of diversion or additional point(s) of diversion, the new diversion(s) is equipped with a proper fish screen if requested by ODFW.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

ADOPT: 690-380-7020

RULE SUMMARY: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes from surface water points of diversion to groundwater appropriation.

CHANGES TO RULE:

690-380-7020

Change from Surface Water Point of Diversion to a Groundwater Appropriation

The surface water point of diversion of a water right permit may be changed to allow the appropriation of groundwater, provided the proposed change meets the standards set forth in ORS 540.531(2) or (3) and the requirements outlined in OAR 690-380-2130(2) to (11), except that the water right permit need not be a water use subject to transfer, as defined in ORS 540.505(4) and OAR chapter 690, division 300, and meets the criteria outlined in OAR 690-380-7300.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211, ORS 540.531(2), ORS 540.531(3)

ADOPT: 690-380-7030

RULE SUMMARY: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes in places of use. This rule is also amended to provide greater transparency around, and ensure alignment with, existing Department policy that a place of use transfer must involve a physical change that alters where the water right is located and that it must be consistent with requirements related to the prevention of enlargement. This rule is also amended to update state and federal citations (as applicable) related to sensitive, threatened, or endangered species.

CHANGES TO RULE:

690-380-7030

Change in Place of Use

(1) The place of use of a water right permit may be changed, provided the land on which the water is to be used is owned or controlled by the permit holder of record and the proposed place of use is contiguous to the land to which the permit is appurtenant.¶

(2) Notwithstanding the requirements of section (1) of this rule, the water right permit holder of record may change the place of use of all or any portion of water under the permit to land that is not contiguous to the land to which the permit is appurtenant if:¶

(a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.176 and OAR 635-100-0040 or the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C. § 1531, as amended), as determined by the listing agency; and¶

(b) All other requirements of OAR 690-380-7300 are met.¶

(3) For water right permits with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right permit from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380-7300(1)(c) and OAR 690-380-0010(2)(c), the lands from which the water right is removed do not continue to receive water from the same source.¶

(4) As used in this rule, "contiguous" means land sharing a common border or touching, but includes land separated from the land to which a water right permit is appurtenant by the following:¶

(a) Roads;¶

(b) Utility corridors;¶

(c) Irrigation ditches; or¶

(d) Publicly owned rights of way.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

RULE SUMMARY: This new rule is adopted to (a) implement ORS 537.211 pertaining to water right permit amendment application requirements, and (b) implement Or Laws 2025, ch 282, with respect to electronic documentation and notification.

CHANGES TO RULE:

690-380-7100

Permit Amendment Application Requirements

A separate application is required for each water right permit proposed to be amended. Each permit amendment application shall be prepared in ink or typewritten on forms provided by the Department. Permit amendment applications shall contain the following information concerning the permit and any other appurtenant water right, permit, or water use, if applicable:¶

(1) Applicant's name, mailing address, email address (if available), and telephone number.¶

(2) Type of change proposed.¶

(3) Name of the record holder appearing on the water right permit or, if the permit has been assigned pursuant to ORS 537.220 and OAR 690-320-0060, the name of the new record holder to whom the water right permit has been assigned. If the applicant is not the water right permit holder of record, the permit amendment application shall be accompanied by a request for assignment under OAR 690-320-0060 and the appropriate fee required in ORS 536.050 for filing and recording the assignment.¶

(4) The time specified in the permit to perfect the water right, or the time specified in the last-approved extension of time to perfect the water right permit. If the specified time to perfect the water right permit has expired, or will expire in 120 days or less, the Department may return the application. A water right permit for which the specified time to perfect the water right has expired is not subject to amendment under ORS 537.211.¶

(5) Application number and permit number.¶

(6) Source of water listed on the water right permit.¶

(7) Date of priority.¶

(8) The location of the existing authorized and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.¶

(9) The existing authorized use of water.¶

(10) The existing authorized place of use identified by its location within the public land survey and tax lot number.¶

(11) The proposed place of use, if applicable, shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.¶

(12) Reason for the proposed change.¶

(13) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.¶

(14) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those permit amendments that meet the following four requirements:¶

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;¶

(b) That involve changes in place of use only;¶

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and¶

(d) That involve irrigation water uses only.¶

(15) If the request is for a change in point of appropriation, or a change in point of diversion to allow the appropriation of groundwater, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.¶

(16) A listing of the names and mailing addresses of:¶

(a) All affected tribal governments and local governments, including but not limited to, county, city, municipal corporations, and¶

(b) Any district in which the affected water right permit is located or that serves the permit and any district in which the affected permit would be located or that would serve the permit after the proposed permit amendment.¶

(17) An oath that the information contained in the application is true and accurate.¶

(18) The signature of the applicant, and if an entity, the title of the person signing the form.¶

(19) The appropriate fee as required under ORS 536.050.¶

(20) The Department may require the applicant to provide any additional information related to the proposed permit amendment that is necessary in determining whether to approve the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211, Or Laws 2025, ch 282

ADOPT: 690-380-7110

RULE SUMMARY: This new rule is adopted to implement ORS 537.211 pertaining to permit amendments for public corporations.

CHANGES TO RULE:

690-380-7110

Permit Amendment on Behalf of a Public Corporation

For an application made by or on behalf of a public corporation, the Department may issue a permit approving the application without requiring the applicant to obtain prior written authorization or an easement permitting access to lands affected by the proposed permit amendment that are not owned by the public corporation. However, nothing in this subsection shall be construed to allow any person to trespass on the lands of another person.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

ADOPT: 690-380-7200

RULE SUMMARY: This new rule is adopted to (a) implement ORS 537.211, pertaining to the completeness review and notice requirements for permit amendments, (b) include language to clarify the time specified in the permit, or the last approved extension of time, to perfect the water right is not expired and will not expire in 120 days or less from the date the Department received the permit application, so that the completion date is likely to remain unexpired while the application is being processed by the Department, (c) include language to describe the Department's policy and past practice that if the time specified in the permit, or the last approved extension of time, to perfect the water right expires while a permit amendment application is pending, then the Department cannot issue an order approving the application until that is rectified; and d) include language to provide that if a permit extension of time application is not allowable, or is not submitted within 90 days of notification under this rule or, if submitted, the permit extension of time application is denied, then the Department may issue a final order denying the permit amendment application.

CHANGES TO RULE:

690-380-7200

Notice of Permit Amendment

(1) On receipt of an application for permit amendment, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-7100 and if the time specified in the permit, or the last approved extension of time, to perfect the water right is expired or will expire in 120 days or less from the date the Department received the application.¶

(2) If the Department determines that the application does not include the information required by OAR 690-380-7100 or that the time specified in the permit, or the last approved extension of time, to perfect the water right is expired or will expire in 120 days or less from the date the Department received the application, the Department may return the application and any fees to the applicant along with the following, as applicable:¶

(a) A written description of the deficiencies in the application; and¶

(b) A request that the applicant file and obtain approval of a permit extension of time application, if allowable under OAR Chapter 690, Division 315, before filing a new permit amendment application. ¶

(3) If the Department determines the application is complete and the time specified in the permit, or the last approved extension of time, to perfect the water right is not expired and will not expire in 120 days or less from the date the Department received the application, the Department shall file the permit amendment application and publish notice of the application in the Department's weekly public notice.¶

(4) If, during the time the application is pending before the Department, the time specified in the permit, or the last approved extension of time, to perfect the water right expires, the Department shall notify the applicant that a permit extension of time application must be submitted and approved, if allowable under OAR Chapter 690, Division 315, before a final order approving the permit amendment application can be issued. If a permit extension of time application is not allowable or is not submitted within 90 days of notification under this rule or, if submitted, the permit extension of time application is denied, then the Department may issue a final order denying the permit amendment application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

ADOPT: 690-380-7300

RULE SUMMARY: This new rule is adopted to (a) implement ORS 537.211 pertaining to final orders concerning permit amendments, (b) specify criteria that must be satisfied for the Department to approve a permit amendment application, and (c) that any approval of a permit amendment is done through issuance of a final order.

CHANGES TO RULE:

690-380-7300

Permit Amendment Final Order

(1) A permit amendment application shall be approved through issuance of a final order if the Department determines that:¶

(a) The water right permit to be amended is not cancelled;¶

(b) The time specified in the permit to perfect the water right, or the time specified in the last-approved extension of time to perfect the water right, has not expired;¶

(c) The proposed permit amendment would not result in enlargement as defined in OAR 690-380-0100(2);¶

(d) The proposed permit amendment would not result in injury as defined in 690-380-0100(3);¶

(e) All other terms of the permit remain the same, including but not limited to the beneficial use for which the water is used and the number of acres to which water is applied;¶

(f) Prior approval is obtained from the district if the water is transported or conveyed by an irrigation district organized under ORS 545, a drainage district organized under ORS chapter 547, a water improvement district organized under ORS chapter 552, a water control district organized under chapter 553, or a district improvement company or a corporation organized under ORS chapter 554;¶

(g) The holder of the water right permit provides written notice to the Department at least 60 days before making any changes to the lands, point of diversion or point of appropriation described in the permit; and¶

(h) Any other requirements applicable to water right permit amendments are met.¶

(2) For purposes of this rule, a complete permit amendment application shall serve as the written notice to the Department described in subsection (1)(g) of this rule. In no circumstance shall a permit amendment application be construed as being approved prior to the issuance of a final order to approve the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

AMEND: 690-380-8000

RULE SUMMARY: This rule is amended to remove temporary change in character of use of a right to store water because ORS 540.523 does not provide this authority.

CHANGES TO RULE:

690-380-8000

Temporary Transfers ~~¶~~

Any person who holds a water use subject to transfer may request that the Department approve: ~~¶~~

(1) For a period of not to exceed five years, a temporary transfer of: ~~¶~~

~~(a) P the place of use and, if necessary to convey the water to the new temporary place of use, point of diversion or appropriation; or ¶~~

~~(b) Character of use of a right to store water, or ¶~~

(2) For a period of not to exceed 25 years, a temporary transfer in the Deschutes River Basin of place of use, type of use, and point of diversion or appropriation if necessary to convey water to the new temporary place of use, of all or a portion of a water right.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 540.520, ORS 540.523, ORS 540.585

AMEND: 690-380-8002

RULE SUMMARY: This rule is amended to (a) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation, (b) add reference to additional requirements for temporary transfers outlined in OAR 690-380-8010 and OAR 690-380-8020, (c) add language to specify that a previously approved temporary transfer may be revoked if it is resulting in enlargement, and (d) update the statutes implemented by this rule.

CHANGES TO RULE:

690-380-8002

Temporary Transfer Applications under OAR 690-380-8000(1) ¶¶

(1) Applications for a temporary transfer under OAR 690-380-8000(1) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:¶¶

(a) The information required in OAR 690-380-3000;¶¶

(b) The length of time for which the change is being requested;¶¶

(c) The appropriate fee pursuant to ORS 536.050; and¶¶

(d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.¶¶

(2) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right, will not result in enlargement as defined in OAR 690-380-0100(2), and that all applicable requirements of OAR 690-380-8010 and OAR 690-380-8020 are met. In issuing the order, the Department may include any conditions necessary to protect other water rights.¶¶

(3) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.¶¶

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.¶¶

(5) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury or enlargement.¶¶

(6) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ~~SB 820, 2003 O.L.~~ORS 540.523

ADOPT: 690-380-8003

RULE SUMMARY: This new rule is adopted to promote processing efficiencies by allowing the renewal, for not to exceed a period of five years, of a previously approved temporary transfer under OAR 690-380-8000(1) provided certain criteria are satisfied.

CHANGES TO RULE:

690-380-8003

Renewal of a Previously Approved Temporary Transfer Application under OAR 690-380-8000(1)

(1) Any person who holds a water use subject to transfer for which a temporary transfer application was approved within the past 5 years may request that the Department approve renewal of the temporary transfer for a period of not to exceed five years.¶

(2) A request for renewal of a previously approved temporary transfer shall be submitted on the application form provided by the Department titled "Temporary Transfer Renewal" and shall include the following:¶

(a) The Temporary Transfer Application number the applicant is requesting to be renewed;¶

(b) The length of time for which the renewal is being requested;¶

(c) The name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the renewal;¶

(d) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:¶

(A) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;¶

(B) That involve changes in place of use only;¶

(C) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and¶

(D) That involve irrigation water uses only.¶

(e) An oath that the information contained in the renewal application is true and accurate;¶

(f) The signature of the applicant, and if an entity, the title of the person signing the form;¶

(g) The appropriate fee pursuant to ORS 536.050; and¶

(h) A notarized statement from the applicant indicating that:¶

(A) All changes previously approved under the temporary transfer remain the same;¶

(B) The use of water under the previously approved temporary transfer was made in accordance with the terms and conditions of the approval order;¶

(C) All measurement devices required as a condition of the previously approved temporary transfer shall remain in place and in good working order; and¶

(D) The applicant will continue to comply with all other conditions of the previously approved temporary transfer.(3) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to

approve a request for renewal of a previously approved temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right and will not result in enlargement as defined in OAR 690-380-0100(2). In issuing the renewal order, the Department may include any conditions:¶

(i) Necessary to protect other water rights; and¶

(ii) Necessary to comply with the requirements outlined in OAR 690-380-8010 and OAR 690-380-8020.¶

(3) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for renewal of a previously approved temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right and will not result in enlargement as defined in OAR 690-380-0100(2). In issuing the renewal order, the Department may include any conditions:¶

(a) Necessary to protect other water rights; and¶

(b) Necessary to comply with the requirements outlined in OAR 690-380-8010 and OAR 690-380-8020.¶

(4) All uses for which a renewed temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer renewal period, or earlier if requested in writing by the applicant.¶

(5) The time during which water is used under an approved temporary transfer renewal order does not apply toward a finding of forfeiture under ORS 540.610.¶

(6) The Department may revoke a prior approval of the temporary transfer renewal at any time if the Department finds that the transfer is causing injury or is resulting in enlargement.¶

(7) If the Department determines that the application is incomplete or defective, that any of the proposed terms of the renewal are not the same as the previously approved temporary transfer, or that all fees have not been paid,

the Department shall return the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 540.520, ORS 540.523

AMEND: 690-380-8004

RULE SUMMARY: This rule is amended to (a) add new language and remove existing language to implement Or Laws 2025, ch 282, with respect to notice of the application, (b) document conforming changes to correct numbering, (c) correct grammatical errors and statutory reference to align with ORS 540.585(1) as it relates to qualifying entities, and (d) add reference to additional requirements for temporary transfers outlined in OAR 690-380-8020.

CHANGES TO RULE:

690-380-8004

Temporary Transfer Applications under OAR 690-380-8000(2) ¶

(1) Applications for a temporary transfer under OAR 690-380-8000(2) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:¶

(a) The information required in OAR 690-380-3000;¶

(b) The length of time for which the change is being requested;¶

(c) The appropriate fee for the transfer pursuant to ORS 536.050;¶

(d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner;¶

(e) Where applicable, a description of the use of any portion of the water right not proposed to be transferred under OAR 690-380-8000(2);¶

(f) Evidence that an agreement exists between the landowner, district, and receiving municipality if the water right to be temporarily transferred is served by a district.¶

(2) Any portion of the use of a water right that is not temporarily transferred under OAR 690-380-8000(2) may be used on the designated part of the lands described in the original water right permit, certificate, or adjudication under ORS Chapter 539 as evidenced by a court decree, if the use:¶

(a) Does not encompass more than the remaining portion of the lands;¶

(b) Does not enlarge the water right or increase the rate, duty, total acreage benefited or season of use; and¶

(c) Is within the same land ownership as the water right proposed for transfer.¶

(3) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.¶

(4) Upon receipt of a complete application for a temporary transfer under OAR 690-380-8000(2), the Department shall file the application and provide notice of the application in its weekly public notice and accept written public comments for 30 days.¶

(5) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if:¶

(a) The proposed temporary transfer will not result in injury to any existing water right or enlargement of the water right;¶

(b) The person holds a water right subject to transfer;¶

(c) The type of use specified in the original water use subject to transfer is irrigation;¶

(d) The person to whom the right is transferred is:¶

(A) Located within the Deschutes River Basin; and¶

(B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS Chapter 450~~264~~, a water supplier as defined in 448.115 or a water authority formed under ORS Chapter 450;¶

(e) The proposed use is municipal use; and¶

(f) Any applicable requirements under OAR 690-380-8020 are met.¶

(56) In issuing the order, the Department may:¶

(a) Include any conditions necessary to protect existing water rights, including any reporting, measurement, and mapping requirements to ensure that use of any remaining portion of the right is consistent with the transfer; and¶

(b) Prescribe the duration of the temporary transfer period, up to 25 years.¶

(67) For temporary transfers proposing to use a remaining portion of the right under section 2(2) of this rule, the Department shall require the installation of a measuring device, monthly recording of water use, and annual reporting of water use.¶

(78) All temporary transfers allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.¶

(89) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.¶

(~~9~~10) The Department may revoke a prior approval of the temporary transfer at any time if:¶

(a) The Department finds that the transfer is causing injury or results in enlargement; or¶

(b) Reporting, mapping, or measurement conditions associated with use of any remaining portion of the right under section ~~2~~(2) of this rule are not met.¶

(~~10~~1) Prior to revoking a temporary transfer under this rule for failing to comply with any of the conditions of the transfer, the Department may seek compliance with the terms of the temporary transfer.¶

(~~11~~2) The Department shall provide notice and review of temporary transfer applications under this rule pursuant to OAR 690-380-40~~0~~10 through 690-380-4200.¶

(~~12~~3) Opportunities to protest a temporary transfer under this rule shall be pursuant to OAR 690-380-4030.¶

(~~13~~4) The Department shall issue final orders on temporary transfer applications under this rule pursuant to OAR 690-380-5000.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ~~SB 820, 2003 OL~~ORS 540.585, Or Laws 2025, ch 282

AMEND: 690-380-9000

RULE SUMMARY: This rule is amended to (a) conform the rule with updates to ORS 540.560 made by Or Laws 2025, ch 575 section 22; and (b) delegate authority to the Department to issue a final order after a contested case hearing even when exceptions to the Administrative Law Judge's proposed order are timely filed.

CHANGES TO RULE:

690-380-9000

Clarification of Water Rights ¶

(1) If the Director decides that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery, or transfer of that right, the Director may issue an proposed final order clarifying and defining the description of the land to which the right is appurtenant.¶

(2) A clarification proposed final order may not reduce the rate, duty or number of acres stated in the perfected right. The sole purpose of the order is to better define the location to which the water right is appurtenant.¶

(3) Any proposed final order issued under this section shall be served on the legal owner of the land to which the water right is appurtenant and on the occupant of the land, by certified mail, return receipt requested. If the owner or occupant files a written request for a hearing protest within 30 days after serviissuance of the order, the Director or the Director's authorized assistant shall conduct a hearing of the matter under the provisions of ORS 183.413 to 183.484 proposed final order, the Department shall conduct a contested case hearing.¶

(4) Except as described in subsection (3) of this rule, protests of and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR 690-002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.¶

(45) If no exceptions or objections to a protest of a proposed final order is timely received, as a matter of law, the proposed order issued under this rule are filed within the time allowed, the Director shall issue a final order. Said final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.¶

(6) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.¶

(7) The Department's final order shall be filed with the certificate that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant.

Statutory/Other Authority: ORS 183, ORS 339, ORS 536, ORS 537, 540, ORS 540, ORS 649

Statutes/Other Implemented: ORS 540.560, Or Laws 2025, ch 575

AMEND: 690-382-0100

RULE SUMMARY: This rule is amended to (a) provide consistency with Or Laws 2025, ch 575 by removing the "standing" definition, and (b) remove redundant definitions of "protest" and "water use subject to transfer" which are defined in OAR 690-300-0010.

CHANGES TO RULE:

690-382-0100

Definitions ¶¶

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 382. Where a term is defined in more than one rule, the definition in this rule applies. ¶

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground-water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground-water registration. ¶

(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to: ¶

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration; ¶

(b) Increasing the acreage irrigated under a certificate of registration; ¶

(c) Failing to keep the original place of use from receiving water from the same source; or ¶

(d) Diverting more water at the new point of appropriation than is legally available to that certificate of registration at the original point of appropriation. ¶

(3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled. ¶

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation. ¶

(5) "Point of appropriation" means a well or the pump location on a sump at which ground-water is withdrawn from the ground for use under a ground-water right or certificate of registration. ¶¶

~~(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050. ¶~~

~~(7) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the certificate of registration is appurtenant. ¶~~

~~(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800. ¶~~

~~(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed. ¶~~

~~(10) "Water use subject to transfer" means a water use established by: ¶~~

~~(a) An adjudication under ORS Chapter 539 as evidenced by court decree; ¶¶~~

~~(b) A water right certificate; ¶¶~~

~~(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or ¶¶~~

~~(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.~~

Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027

Statutes/Other Implemented: ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

AMEND: 690-382-0200

RULE SUMMARY: This rule is amended to (a) add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved, (b) update document terminology, as it relates to issuance of an initial review, (c) achieve greater processing consistency with OAR chapter 690, division 380 pertaining to transfers and permit amendments, and (d) provide greater clarity around the options for resolving layering issues.

CHANGES TO RULE:

690-382-0200

Layered Water Rights and Certificates of Registration ¶¶

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a certificate of registration that is layered shall be ~~approved or~~ recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.¶¶

(2) When reviewing an application for a registration modification, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.¶¶

~~(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:¶¶~~

~~(a) S~~ The Department's notification shall identify the layering issue(s) that must be resolved and the options for resolution outlined in section (3) of this rule and shall be sent to the applicant through issuance of an initial review.¶¶

~~(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:¶¶~~

(a) As applicable, amend the groundwater registration modification application for concurrent changes in the other layered certificates of registration, submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration or other layered permits, and submit an application as otherwise allowed under section (5) of this rule;¶¶

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or¶¶

(c) Withdraw the application.¶¶

(4) If the Department determines that an application ~~to~~ filed pursuant to (3)(a) of this rule to transfer a layered water use subject to transfer, amend a layered permit, or modify a layered certificate of registration should be denied or not recognized, the Department shall notify the applicant of the Department's intent to issue final orders ~~denying the not recognizing or denying the groundwater registration modification~~ application and all associated applications unless, within 30 days after the date of Department notification, the applicant:¶¶

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or¶¶

(b) Withdraws the applications.¶¶

(5) A certificate of registration that the applicant designates as being for supplemental irrigation use may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the certificate of registration is to be moved.

Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027

Statutes/Other Implemented: ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

AMEND: 690-382-0300

RULE SUMMARY: This rule is amended to add greater clarity by pointing to the definition of "layered."

CHANGES TO RULE:

690-382-0300

Modification of Certificates of Registrations ¶¶

(1) An application for recognition of a modification of a certificate of registration may be filed by:¶¶

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;¶¶

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or¶¶

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.¶¶

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered, as defined in OAR 690-382-0100(4).

Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027

Statutes/Other Implemented: ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

AMEND: 690-382-0400

RULE SUMMARY: This rule is amended to (a) implement Or Laws 2025, ch 282, section 2 provisions concerning allowance for electronic documentation, (b), require the email address, if available, of the applicant(s), (c) add greater clarity as it relates to when it is allowable to include more than one certificate of registration in a single groundwater registration modification application, (d) better align with ORS 537.610, as it relates to referring to the tentative priority date for a right to appropriate ground water under a certificate of registration, (e) provide general clarifications, including to differentiate between the existing registered and, if applicable, previously recognized point(s) of appropriation, place of use, and character of use under the certificate of registration and the proposed point(s) of appropriation, place of use, and character of water use, as applicable, (f) refer to the standards in OAR chapter 690, division 305 for greater clarity and consistency in mapping requirements across water right transactions, (g) specify the supplemental mapping requirements that are similar to OAR 690-380-3100 but that use terminology appropriate for certificates of registration, (h) provide more specificity as it relates to mapping requirement involving more than three layered certificates of registration, (i) update document terminology, as it relates to issuance of an initial review, and (j) implement Or Laws 2025, ch 570, section 3 with respect to OWRD water right transaction fee increases in rule: update the fee amounts here using the same ratio as previously in the rules – this would mean a fee of \$1,900 (70% of Max Fee) for a POU change only; and \$2,730 for all other changes/combo of changes.

CHANGES TO RULE:

690-382-0400

Application for Modification of Certificate of Registration ¶¶

Each application for modification of a certificate of registration shall be prepared in ink or ~~printed~~ typed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:¶¶

(1) Applicant's name, mailing address, email address, if available, and telephone number.¶¶

(2) Type of change proposed.¶¶

(3) Name appearing on the certificate of registration.¶¶

(4) Certificate of registration number for the registration to be modified.¶¶

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration, pursuant to OAR 690-382-0200 and OAR 690-382-0300(2).¶¶

(6) Source of water as described on the certificate of registration.¶¶

(7) ~~Tentative~~ Tentative date of priority.¶¶

(8) ~~The authorized and existing registered and, if applicable, previously recognized point(s) of appropriation and the proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.~~¶¶

(9) ~~The authorized and proposed use of water, if applicable.~~¶¶

(10) ~~The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.~~¶¶

(11) ~~A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner existing registered and, if applicable, previously recognized use of water and the proposed use of water, if applicable.~~¶¶

(10) The existing registered and, if applicable, previously recognized place of use and the proposed place of use identified by its location within the public land survey and tax lot number, if applicable.¶¶

(11) A map, which need not be prepared by a certified water right examiner, meeting the standards in OAR chapter 690, division 305, as well as the following criteria:¶¶

(a) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.¶¶

(b) If the proposed modification involves changes in place of use or character of use for more than three layered, as defined in OAR 690-382-0100(4), certificates of registration, a separate map shall be provided for each certificate of registration.¶¶

(c) The location of each existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) of appropriation.¶¶

(d) For a change in point of appropriation that does not also include a change in place of use, identification of the

lands to be served by the proposed point of appropriation. If the proposed point of appropriation is not intended to serve the entire certificate of registration, the specific lands to be served shall be identified and the number of registered acres to be served by the new point of appropriation shall be listed.¶

(e) For a change in place of use or character of use, the location of the existing registered and, if applicable, previously recognized place of use and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the certificate of registration involved in the proposed modification has multiple tentative priority dates or uses, the lands to be served by each tentative priority date and on which each use is proposed must be separately identified.¶

(f) The location of any part of the certificate of registration not involved in the proposed modification. For modifications involving less than 67 percent of the entire place of use of the certificate of registration, the map shall include at least the location of the portions of the registration not involved in the proposed modification which are included in the same quarter-quarter sections as the proposed modification. The applicant shall have the burden of proving the proposed modification involves less than 67 percent of the entire place of use of the certificate of registration. However, the Department may require a greater portion of the certificate of registration or the entire certificate of registration to be mapped, if necessary to make a determination of potential injury.¶

(g) The location of property lines for the property involved in the modification, in the vicinity of the modification. For modification of municipal, quasi-municipal, and other similar certificates of registration, the property lines need not be shown; however, the service area boundaries shall be indicated.¶

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:¶

(a) Where existing registered and, if applicable, previously recognized water uses and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;¶

(b) That involve changes in place of use only;¶

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and¶

(d) That involve irrigation water uses only.¶

(13) For a change in point of appropriation, copies of water well reports for the ~~authorized~~existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground-water body developed or proposed to be developed.¶

(14) A listing of the names and mailing addresses of:¶

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and¶

(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.¶

(15) An oath that the information contained in the application is true and accurate.¶

(16) The following information related to the authority of the applicant to pursue the proposed modification:¶

(a) A signed statement that the applicant understands that, upon receipt of the ~~draft preliminary determination~~initial review described in OAR 690-382-0700(4)550 and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in 690-382-070550(56) to demonstrate that the applicant is authorized to pursue the modification;¶

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the ~~right~~certificate of registration is in the name of the municipality or a predecessor; or¶

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.¶

(17) The signature of the applicant, and if an entity, the title of the person signing the form.¶

(18) The appropriate fee required under ORS 537.610 as follows:¶

(a) For examination of an application to only change the place of use under a certificate of registration, ~~\$875~~70 percent of the amount allowed in ORS 537.610.¶

(b) For examination of all other applications to modify a certificate of registration, ~~\$1,25~~the maximum amount

allowed in ORS 537.610.

Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027, Or Laws 2025, ch 570

Statutes/Other Implemented: ORS 537.610, ORS 540.505- - 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws) Or Laws 2025, ch 570, Or Laws 2025, ch 575, Or Laws 2025, ch 282

RULE SUMMARY: This new rule is adopted to (a) make a change in document terminology, as it relates to the initial review, (b) identify processing steps that align with initial review processing steps for other transfer types, (c) implement Or Laws 2025, chapter 282, section 2, provisions concerning allowance for electronic documentation, (d) include language formerly located in OAR 690-382-0600 that pertains to the completeness review process now located in this rule and to make clear that an application is not complete if not all fees have been paid, (e) include language formerly located in OAR 690-382-0700 that pertains to the initial review process now located in this rule and reflect the correct rule citation referencing the definition of “report of ownership” as modified under OAR 690-382-0100, (f) add language to allow for processing efficiency when appropriate as it relates to application amendments, and (g) clarify that “any other requirements” for groundwater registration modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

CHANGES TO RULE:

690-382-0550

Completeness Review and Initial Review

- (1) On receipt of an application for modification, the Department shall review the application to determine if all fees have been paid and the applicant has included the information required by OAR 690-382-0400.¶
- (2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.¶
- (3) If the Department determines the application is complete and all fees have been paid, the Department shall file the application and undertake an initial review of the application that includes an assessment of whether:¶
 - (a) The proposed modification would result in enlargement, as defined in OAR 690-382-0100(2);¶
 - (b) The proposed modification would result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;¶
 - (c) The proposed modification would result in injury as defined in OAR 690-382-0100(3); and¶
 - (d) Any other requirements applicable to the modification of the certificate of registration are met.¶
- (4) For an initial review that indicates a modification application is not consistent with the approval criteria for recognition outlined in OAR 690-382-1000(1) and should not be recognized, the initial review shall:¶
 - (a) Describe any inconsistencies with the approval criteria for recognition; and¶
 - (b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would address the inconsistencies.¶
- (5) Upon completion of the initial review, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application and allow the applicant 30 days from the date of notice to:¶
 - (a) Notify the Department to stop processing the application; or¶
 - (b) Notify the Department to continue processing the application and provide any outstanding information to the Department including, but not limited to:¶
 - (A) Amending the application to address any issues or deficiencies identified by the Department in the initial review; and¶
 - (B) Submitting documentation to satisfy the requirements of sections (6) and (7) of this rule, as applicable.¶
- (6) Upon receipt of the initial review, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following:¶
 - (a) A report of ownership information as defined in OAR 690-382-0100(6) for the land to which the registration is appurtenant;¶
 - (b) A copy of any water right conveyance agreement(s) for the land to which the registration is appurtenant; and¶
 - (c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include: ¶
 - (A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information; ¶
 - (B) If interest in the registration has been conveyed, a notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been

conveyed as identified in a water right conveyance agreement; or ¶

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.¶

(7) The report of ownership information required under subsection (6)(a) of this rule must:¶

(a) Be prepared no earlier than three months prior to the date of the initial review showing current ownership; or¶

(b) If the interest in the certificate of registration has been conveyed, be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.¶

(8) The Department shall close the file for the application and take no further action on the application if, within 30 days from the date of the notice described in section (5) of this rule, the applicant:¶

(a) does not notify the Department as provided in subsections (5)(a) and (b) of this rule;¶

(b) does not provide all outstanding information as provided in subsection (5)(b) of this rule; or¶

(c) notifies the Department to stop processing the application.¶

(9) The Department may allow an applicant up to 60 additional days to provide the outstanding information described in subsection (8)(b) of this rule if the applicant requests additional time and the Department determines that the applicant is undertaking reasonable efforts to provide the information in a timely manner to the Department.¶

(10) The initial review shall constitute the notification required under OAR 690-382-0200 that there are layered water rights, permits, or registrations that must be addressed prior to recognition of the modification.¶

(11) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the initial review or incorporate the amendments into the proposed final order, as appropriate.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.610

Statutes/Other Implemented: ORS 537.610, ORS 540.505 - 540.532

AMEND: 690-382-0600

RULE SUMMARY: The rule is amended to (a) remove language related to the initial review that is now located under OAR 690-382-0550, (b) identify processing steps that align with applicant response to the initial review processing steps for other transfer types, and (c) implement Or Laws 2025, chapter 282, section 2, provisions concerning allowance for electronic documentation.

CHANGES TO RULE:

690-382-0600

Request for Comments ¶¶

~~(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required, within 30 days from the date of the Department's notification to the applicant described by in OAR 690-382-0400.¶¶~~

~~(2) If the Department determines that the application does not include the required information, 550(5) or an additional time period allowed under OAR 690-382-0550(9), the applicant notifies the Department shall return to proceed with the application and any fees to the applicant along with a written description of the deficiency provides any outstanding information necessary to continue processing the application.¶¶~~

~~(3) If, the Department determines the application is complete, the Department shall file shall proceed with processing the application and shall request written public comments on the application: ¶¶~~

~~(a) In the weekly notice published by the Department By publication in the Department's weekly public notice; and ¶¶~~

~~(b) By regular mail, or with the consent of the recipient, by electronic means notification by electronic means, unless the recipient has requested mailing, to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14). ¶¶~~

~~(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.~~

~~Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.610, ORS 540.505- - 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws) Or Laws 2025, ch 282~~

AMEND: 690-382-0700

RULE SUMMARY: This rule is amended to (a) make a change in document terminology, as it relates to the proposed final order, (b) provide general clarity as it relates to the approval criteria and notice of the proposed final order, (c) correct references to other rules, (d) remove language related to the now obsolete draft preliminary determination, but that still applies to an initial review and so was moved to OAR 690-382-0550, and (e) clarify that “any other requirements” for groundwater registration modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

CHANGES TO RULE:

690-382-0700

Preliminary Determination-oposed Final Order

(1) After the conclusion of the public comment period described in OAR 690-382-0600(42), the Department shall ~~prepare a preliminary determination of:~~

(a) Issue a proposed final order indicating whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule; and

(b) Give notice of the modification application and proposed final order in the manner described in OAR 690-382-0800.

(2) The Department's ~~preliminary determination-oposed final order~~ shall ~~include an assessment of whether~~ whether the application is consistent with the following approval criteria for recognition:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway ~~not~~ receiving less water than previously available ~~water~~ during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury; and

(d) Any other requirements for registration modifications are met.

(3) ~~For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:~~

(a) Describe the basis for the Department's conclusions; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

(4) ~~The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be included in the modification, or to withdraw the applications defined in OAR 690-382-0100(3); and~~

(d) Any other requirements applicable to the modification of the certificate of registration are met.

~~(5)~~ Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria describFor a proposed fin OAR 690-382-0400(16)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-382-0100(7) for the land to which the certificate of registration is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the certificate of registration is appurtenant; and

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;

(B) Notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.

(6) ~~The report of ownership information required under subsection (5)(a) of this rule must:~~

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the certificate of registration has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the

water right conveyance agreement was recorded.¶

~~(7) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to an order that indicates that an application should not be recognized because it is not consistent with the approval criteria for recognition outlined in section (2) of this rule, the proposed final order shall:¶~~

~~(a) Describe the basis for the Department's conclusions; and¶~~

~~(b) Identify any conditions or restrictions that, if included in the order recognition of the modification.¶~~

~~(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate, would allow recognition of the modification.~~

Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027

Statutes/Other Implemented: ORS 537.610, ORS 540.505- 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws) Or Laws 2025, ch 575

AMEND: 690-382-0800

RULE SUMMARY: This rule is amended to (a) implement measures to be consistent with changes made in Or Laws 2025, ch 575, with respect to change in document terminology, newspaper notice, requests for party status, and setting the standard 45-day protest period, (b) implement Or Laws 2025, ch 282, with respect to provisions for allowance for electronic documents, (c) remove redundant language with respect to notice of the proposed final order, and (d) provide general clarifications, including to differentiate between the existing registered and, if applicable, previously recognized water uses to be included in the notice of proposed final order.

CHANGES TO RULE:

690-382-0800

Notice of Preliminary Determination ~~oposed~~ Final Order ¶¶

~~(1) After the time for the applicant to respond to the Department's draft preliminary determination~~ Upon issuance of the Department's proposed final order, the Department shall ~~issue the preliminary determination and give notice of the application to modify the registration and the preliminary determination;~~ ¶¶

~~(a) By publication in the Department's weekly notice;~~ ¶¶

~~(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week;~~ ¶¶

~~(a) Send a copy of the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415; and~~ ¶¶

~~(b) Give notice of the application to modify the registration and the proposed final order;~~ ¶¶

~~(A) By publication in the Department's weekly public notice; and~~ ¶¶

~~(B) By sending by regular mail, or with the consent of the recipient, by electronic means a copy of the preliminary determination~~ electronic means, or by regular mail if the recipient has requested mailing, a copy of the proposed final order and the notice to the applicant and each person who submitted comments under OAR 690-382-0600. ¶¶

(2) The notice shall include the following information about the application: ¶¶

(a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required by OAR 690-382-0600; ¶¶

(b) The locations of the applicant's existing registered and, if applicable, previously recognized water uses and proposed water uses, the amount of water allowed under the registration to be modified, and the authorized source for the registration; ¶¶

(c) The registration and certificate numbers; ¶¶

(d) The applicant's name and address; ¶¶

(e) A statement that any person may file, jointly or severally, with the Department a protest ~~or standing statement~~ within 3045 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later; ¶¶

(f) A summary of the Department's preliminary determination; and ¶¶

(g) For a notice published in a newspaper, the date on which the last publication will occur. ¶¶

(3) The cost of publication in a newspaper shall be paid by the applicant in advance of the publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs. ¶¶

(4) ~~On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice and a request for payment for the cost of publishing the notice. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.~~ ¶¶

(5) ~~No notice by publication in a newspaper is required for:~~ ¶¶

(a) A change in place of use; or ¶¶

(b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application. ¶¶

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule. ¶¶

~~(7) The Department may deny recognition of the modification if the applicant fails to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule publication in the Department's weekly public notice;¶~~

~~(f) A summary of the Department's proposed final order; and¶~~

~~(g) A statement of the opportunity for a person to file a request for party status pursuant to OAR 690-002.~~

~~Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws) Or Laws 2025, ch 282, Or Laws 2025, ch 575~~

AMEND: 690-382-0900

RULE SUMMARY: This rule is amended to implement Or Laws 2025, ch 575, sections 2 and 3, relating to protests, requests for party status and by incorporating the standard 45-day protest period.

CHANGES TO RULE:

690-382-0900

Protests and ~~Requests for Hearings~~ ¶¶

~~(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.¶¶~~

~~(2) A person fil~~Protests of, requests for party status concerning, and contested case proceedings concerning a protest must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.¶¶

~~(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.¶¶~~

~~(4) Each person submitting a protest must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing.¶¶~~

~~(5) The Department shall provide to persons who have filed standing statements as def~~inposed final orders are governed by Or Laws 2025, ch 57, sections 2 and 3, and OAR chapter 690, division 2. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-38002-0100(8) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing~~235.¶¶~~

~~(2) Within 45 days after the publication in the Department's weekly public notice, any person may file a protest against the proposed final order.~~

Statutory/Other Authority: ~~ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027~~

Statutes/Other Implemented: ~~ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)~~Or Laws 2025, ch 575

AMEND: 690-382-1000

RULE SUMMARY: This rule is amended to (a) provide general clarification as it relates to the final order on recognition of modifications, (b) implement Or Laws 2025, ch 575 section 3 by removing protest requirements that have been replaced by Or Laws 2025, ch 575, by removing existing language concerning issuing a final order if not timely protests are filed, and by adding language providing that, if no timely protests are filed, a proposed final order becomes a final order by operation of law unless timely withdrawn by the Department, and (c) clarify that “any other requirements” for groundwater registration modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

CHANGES TO RULE:

690-382-1000

Final Order on Recognition of Modifications ¶¶

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:¶¶

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);¶¶

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;¶¶

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and¶¶

(d) Any other requirements ~~for~~ applicable to the modification of the certificate of registration are met.¶¶

~~(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in 690-382-0700 if no protests are received under 690-382-0900.¶¶~~

~~(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.¶¶~~

(4) The 3) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.¶¶

(4) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.¶¶

(5) The final order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground-water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.¶¶

~~(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.~~

~~Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.610, ORS 540.505- - 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws) Or Laws 2025, ch 575~~

REPEAL: 690-382-1100

RULE SUMMARY: This rule is repealed to implement Or Laws 2025, ch 575 sections 2 and 3 by removing protest and contested case hearing notice and conduct requirements that have been replaced by Or Laws 2025, ch 575 and are now referenced in OAR 690-382-0900(1).

CHANGES TO RULE:

~~690-382-1100~~

~~Hearings-~~

~~(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:~~

~~(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;~~

~~(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or~~

~~(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.~~

~~(2) Notice and conduct of the hearing shall be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise.~~

~~Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)~~

~~Statutes/Other Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)~~

AMEND: 690-382-1200

RULE SUMMARY: This rule is amended to correct a rule reference, as OAR 690-380-0070 does not exist, and the applicable information is in OAR 690-380-3000(19). This rule is also amended to repeal OAR 690-382-1200(3), because it is inconsistent with OAR 690-005-0035(4)(a).

CHANGES TO RULE:

690-382-1200

Compatibility with Acknowledged Comprehensive Plans ¶

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-30070(139).¶

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in 690-005-0040 (Resolution of Land Use Dispute).¶

~~(3) The Director may presume that the certificate modification would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-382-0800.~~

Statutory/Other Authority: ~~ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws), ORS 537.610, ORS 536.027~~

Statutes/Other Implemented: ~~ORS 537.610, ORS 540.505- _ 540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)~~