2/27/26
Proposed Rule Revision Tracker
Division 17 – Cancellation of Perfected Water Rights

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
Affidavits **-0200(1)**	**Kimberley Priestley (RAC; WW)** - The rule application appears narrower than that in statute. ORS 540.660(1) directs a watermaster to file an affidavit if they have reason to believe that circumstances exist that prevent a water right from being exercised "according to the terms and conditions of the water right….". ORS 540.660(1) also provides that the affidavit shall state that there is no physical way that the water may be applied "to a beneficial use" "in accordance with the terms and conditions" of the water right certificate. OAR 690-017-0200(1) however, stops short of this and only directs an affidavit if the water right cannot be exercised; it does not include the terms "within the terms and conditions of the water right" or "beneficial use". While the OWRD has added this language to what must be in the affidavit in sub (2), which we support, leaving it out of the initial standard in (1) could inadvertently narrow the OWRD's determinations to only those situations where no water is used, rather than water not being used "within the terms and conditions of the water right" or for the "beneficial use" of the underlying right. To rectify this, the language "beneficial use within the terms and conditions of the water right" should be inserted into (1), as well as remaining, as proposed, in (2).	This rule and the recommended language partially cite statute in 540.660 (1). In the interest of clarity, the Department has removed some of the language and replaced it with "as specified in ORS 540.660(1)." The alternative would be to directly copy the entire text from statute. In the interest of brevity in the rules, OWRD has cited statute.	Change made.
Affidavits **-0400(1)**	**Kimberley Priestley (RAC; WW)** - This section inserts new language that qualifies "evidence" submitted to	Change made to reflect current approach by not requiring evidence to be submitted as affidavits. Strike sections referencing subsections 2 and 4 for parity and rule structure.	Change made.

	the Department with "in the form of affidavits". ORS 540.631 does not require that the evidence be in the form of an affidavit, rather it just notes "evidence". While existing subsection (2) sets forth what must be in any affidavit, that is limited to situations "where the evidence "is in the form of affidavits". Neither the statutory directives, or the existing rule language, limit evidence submitted to the OWRD to be in the form of affidavits. Please strike "in the form of affidavits" from section (1) to align with statute.	Note, however, no corresponding change was made to subsection (5) because affidavits have a clear standardized formal process.	
-0400(1)	**OWRD Staff Proposed Change** – 0400(1) should be revised to recognize that ORS 540.612, in addition to ORS 540.610(3) & (4), provides for an exemption from forfeiture. Other portions of the proposed rules already do that, such as 690-017-0010(8), 690-017-0400(6)(d), and 690-017-0600(2)(a).	OWRD added ORS 540.612 to the list of exemptions.	Change made
Grammar **-0400(2)(b)**	**Kimberley Priestley (RAC; WW)** - It would seem more efficient all around to require the certificate number rather than the "page number of the certificate".	OWRD modified. For older water rights, the page number is the certificate number, but that may not be obvious because it is not identified as the certificate number. Changed to: Certificate number (or page number)	Change made.
Aerial imagery; evapotranspiration **-0400(4)**	**April Snell (RAC; OWRC) -** We have concerns about the addition of "aerial imagery" and "evapotranspiration data" to 690-017-400 (4). Aerial imagery is a snapshot in time, which can be useful, but without specific time delineation it may not reflect actual water use and agricultural practices. Similarly, evapotranspiration data can be useful in some instances, but Oregon lacks the on the ground monitoring needed to verify this data, particularly in areas with multiple types of crops. We request these additions be removed	As per statute and the proposed rule language, the standard of proof in cancellation of water rights subject to forfeiture is the preponderance of the evidence. Inclusion of aerial imagery and evapotranspiration as support for the notice of proposed cancellation in the proposed rules does not change the standard of proof. Even without the change, the Department could use this data. OWRD is opting to include it here for transparency.	No change made
Cancellation scope	**Kimberley Priestley (RAC; WW)** - Again, this rule provision appears to be narrowing the scope of what is subject to cancellation. The governing statutes are	OWRD partially agrees; there may be instances outside of (2)(g) that meet the standard of forfeiture. OWRD is concerned, however, about making significant changes to this section which were not	No change made.

-0400(2)(g)	clear that a water right can be cancelled not only if the water is not used, but also if the use is not for the beneficial use of the water right in accordance with the terms and conditions of the water right. So, for example, if a water right holder was using water for their beneficial use but their diversion structure only allowed diversion of half of the water granted under their water right, the unused water is subject to partial forfeiture and can be cancelled (see ORS 540.610(3)). As such, this section needs to be amended so that the required statement is that the affiant knows that the use has not been used at all or has not been used beneficially within the terms and conditions of the water right.	part of the RAC discussion or the notice of proposed rulemaking. Therefore, we decline to make further changes at this time. Given that (2)(g) is the most likely scenario, it makes sense that is part of the affidavit. With changes included above for -400(1), other situations can be provided as information submitted to the department. Further, for OWRD, should other scenarios exist we can make findings as it pertains to (2)(g) stating that the situation is not relevant but that the facts still meet the standard of forfeiture.	
-0400(5)(b)	**Kimberley Priestley (RAC; WW)** - We appreciate the new language that attempts to address concerns raised with V2.	Comment in support	No change made
-0600(1)	**OWRD Staff Proposed Change –** Missing standard language related to requests for party status and contested cases.	Added: requests for party status, and contested case proceedings	Change made.
Risk of cancellation	**Ryan Krabill (RAC; OFB) -** We also have serious concerns with any rule changes that could make cancellation outcomes more likely through accelerated timelines, default finality, or heightened "gotcha" requirements for rebuttal. OFB supports allowing agricultural water right owners to obtain waivers of five-year cancellation for nonuse when sufficient reasons exist, and OFB supports repealing the portion of water right law that allows cancellation after five years of nonuse. While OWRD may be seeking procedural alignment and clarity, the rules should be drafted and implemented in a way that does not expand cancellation risk beyond what is necessary, especially where nonuse is temporary, documented, or tied to normal cycles, programs, or economic conditions.	We understand the concerns and seriousness of forfeiture. In many cases, the intent of the rules is to align to statute, and in doing so the rules more accurately represent the exemptions from forfeiture, as well as rebuttals to forfeiture that can be utilized to protect a water right from forfeiture. The rebuttals and exemptions are specified by statute and appear to address at least some of the areas of concern. Other changes to the rules are nondiscretionary such as the automatic final order provisions, protest provisions, and default hearing schedule from 2025 legislation. Regarding defaults, note that existing law was the same (60 days to protest) and that notice of the hearing requirement was a shorter amount than what is being proposed. Finally, some changes modify the rules as current rules are narrower than the statute; it is important to remember that failing to cancel a forfeited water right can impact other water users who have consistently and lawfully made use of their water right.	Change made.

2/27/26

	We respectfully request clear guardrails … prevent procedural "defaults" from creating unintended cancellation risk,	OWRD has made a few changes to attempt to address the concerns: 1. 690-017-0600(3)(b) -We have added that OWRD can request more information prior to going to hearing or closing the matter. While this already informally exists as an option, this would make it clear. 2. 690-017-0600(1) - We have made it clear that within the 33 days OWRD can reconsider or withdraw the PFO – this is already the case, but again, it has been added for clarity by pointing to 690-002-0235(4).	
-0700(3)	**OWRD proposed staff change:** Following conversations with the commission in February, regarding delegation of the authority to consider exceptions and issue a final order, the Department recommends instead a delegation order.	At the February Commission meeting, staff and the Commission discussed options on this matter. After hearing the commission's desire to delegate, but also to be able to retain some involvement, as needed. The Department recommends deletion of the rule "The Director shall consider any exceptions to the Administrative Law Judge's proposed order and issue a final order." A delegation order can be rescinded by vote of the Commission should it desire to take back this authority, whereas a rule would require rulemaking. Further, the Department will explore options for retaining some Commission involvement (as needed). OWRD will present a delegation order for Commission consideration and discussion, likely later this year, should the Commission agree with this proposed path.	Change made.

2/27/26

Proposed Rule Revision Tracker

Division 18 – Allocation of Conserved Water

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
Grammar **-0010(4)**	**OWRD Staff Proposed Change** - The rules in this division apply to applications submitted on or after April 1, 2026. "on or" is missing	Added "on or"	Change made.
Living certificate Comments on -0020 **Change made in -0050, -0062, -0065**	**April Snell (RAC; OWRC)** - We are not supportive of removing the definition of "living certificate" from the definitions listed in 690-018-0020. This deletion occurs in several places in this division and other rule divisions, and we request that it be restored in all places. This deletion will lead to a requirement for a new certificate to be issued after each conserved water project, which will create more work for the Department, the districts, and lacks any reasoning as to why. These "living (water right) certificates are currently a useful way for the districts and the Department to track transactions over time, and if needed can be incorporated into a new water right certificate. **Kimberley Priestly (RAC; WW) -** We support the V3 removal of the term "living certificate" that was found in V2. As we noted in our V2 comments "living certificate" is not a term/concept that is found anywhere in statute, and in fact is directly contrary to the ACW's requirement that new certificates be issued. See ORS 537.470(6). The issuance of new certificates is important both for the underlying right and the new instream right. If a water right is reduced because ACW transaction, the water needs to be expeditiously removed from the certificate so that there is no confusion in relation to any future transfer applications, regulation of the underlying right, m/r and/or other processes. It is also needed to protect against any future statutory changes that might try to	Living certificates are the common term for the process in in ORS 540.530(2). OWRD does not have authority to apply this statute to the ACW statutes. That said, we agree with April that not having the option to do living certificates is highly problematic. OWRD has added some small flexibility to the rules, by changing "upon" to "following" in the event that the significant work typically associated with irrigation district certificates cannot be completed immediately upon issuance. (Following notice, issuance of order, receipt, etc).	Change made in -0050, 0062, and 0065.

	gain access to that water. It is also critically important that the instream portion be protected by a state held instream right as mandated by the Act. We appreciate the removal here and in other relevant sections of this rule (-0050, -0062, -0065).		
-0040(16)	**OWRD Staff proposed change:** This rule continues to be confusing to read and awkwardly phrased.	Modified structure of –0040(16) to more clearly differentiate between the state's portion and the applicant's portion of conserved water as it relates to management of the water instream.	Change made.
Application Requirements -0040(24)	**Gen Hubert (RAC; DRC)** - Strongly support "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…	Comment in support.	No change requested.
Conservation Applications/ Approval -0050(3)(j)	**Gen Hubert (RAC; DRC)** - Support language that assures metering, measurement and management of ACW.	Comment in support.	No change requested.
Conservation Applications/ Approval -0050(9)	**OWRD Staff Proposed Changes** – As it relates to the duration of the Protest Period for ACW, unlike Div. 380, 382, & 325 which clearly state the length of the protest period (e.g., 30 days or 45 days), Div. 18 does not clearly specify the length of the ACW protest period within the text of this rule.	Rule text was amended to include reference to 45 days in OAR 690-002-0220.	Change made.
Change in Use -0090(c)	**April Snell (RAC; OWRD)** - We also have concerns about the addition of language under 690-18-0090(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" This seems overly broad and not clear could benefit from further definition or expansion on how potential injury to instream water rights referenced under this section in relation to standard injury review.	OWRD agrees that including it here is confusing as it is not included in other rule divisions. The standard is "injury to another existing water right" so calling out these two specifically seems to imply that others are not being considered. That is not the case. OWRD has removed the text, "…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;" from this rule. We will evaluate injury to these regardless.	Change made.

2/27/26

Groundwater			
Groundwater	**OWRD staff proposed change and response to comments below on groundwater.** When the conserved water statute was passed it, allowed "any person holding a water right certificate issued under ORS 537.250, 537. 630 or 539. 140" to submit a project. In 1993, the following language was added to the statute, and remains there today. "If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority." ORS 537.470 as it existed then (and today), contemplated that there may instances where the state's portion is not put instream, and it did so when groundwater was explicitly eligible as a conservation project. Further ORS 537.465 which references diversion facilities, is not specific to surface water as it also existed in statute at the same time that groundwater was explicitly called out. The statue was later changed to "water use subject to transfer" in 2003 removing references specifically to surface and groundwater. Based on this assessment, it is clear that groundwater is eligible for the ACW program. It is also clear that the legislature contemplated that there may be instances where the state's portion is not put instream. OWRD has removed explicit references to groundwater as it was evident in the RAC that there may need to be further discussions, and removing explicit references would maintain some flexibility. It is important to understand, however, that the current rules retain implicit authority for the Department to continue its existing practice related to groundwater rights that go through ACW. References to ORS 537.470 have been included and OWRD has added language from statute (quoted above) to OAR 690-018-0012.		Change made to -0012(1.)
Groundwater General	**Gen Hubert (RAC; DRC)** - DRC strongly supports the version 3 removal of rules relating to the use of the allocation of conserved water for groundwater uses. The Department cannot adequately track or protect conserved groundwater and groundwater allocations of conserved water do not meet the intent of the guiding statute for the ACW – to provide "instream" benefits. The inclusion of groundwater allocations of conserved water have potential - if appropriate measures are in place to assure the conservation does not result in further consumptive use and if measures are in place to adequately protect and track groundwater conservation (in the aquifer or at and below nearby discharge springs). The Department does not have the ability to protect the conserved groundwater, and this conservation would not provide a trackable "instream" benefit	See response above. Comment in opposition to inclusion of groundwater.	See response above.

2/27/26

Groundwater **-0050(5)(c)(C)(i)** **-0050(5)(c)(D)(ii)** **-0065(2)(c)(A)** **-0065(3)(b),**	**Jeff Stone (RAC; OR Assoc of Nurseries)** - I am writing to request that the Oregon Water Resources Department ("OWRD") revise its proposed rules for OAR Chapter 690, Division 18 to ensure the rules clearly recognize that groundwater rights are eligible for the Allocation of Conserved Water ("ACW") program set forth in Division 18. Specifically, OAN requests that OWRD re-insert the rule provisions OWRD proposed on October 14, 2025 in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b), which clarify that groundwater conserved under the ACW program will remain in its source aquifer. As a RAC member, OAN supported OWRD's proposed revisions and insertions captured in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b). OWRD's proposed changes to these provisions were clear, reasonable, and in alignment with statutory authority. As such, we were surprised to see that OWRD's December 22, 2025 version of the rules—the version of the rules OWRD released for public comment—do not feature any of the language related to groundwater rights or preservation of water in the source aquifer that was contained in the earlier version of Division 18. Based on OWRD's proposed rule revision document dated December 22, 2025, we understand that OWRD believes it has clear authority to process groundwater right certificates under the ACW program, but that it has replaced the proposed groundwater right provisions with general references to ORS 537.470(3) to give the agency "flexibility as it considers implementation of the statutes." Since the ACW program was introduced, OWRD has processed surface water rights and groundwater rights	See response above. Comment in support of inclusion of groundwater.	See response above.

	under the program, and it recognizes that the agency has the statutory authority to do so. OWRD has specifically pointed to the legislation that established the ACW program, Senate Bill 24 (1987), which recognized that any person who holds a groundwater right certificate may participate in the ACW program. The current statutory language provides that a person or group that holds a "water use subject to transfer under ORS 540.505" may submit an application for the ACW program. See ORS 537.465(1). A "water use subject to transfer" may be a surface water right or a groundwater right. Per OWRD's own analysis, there is no question as to whether groundwater right holders may participate in the ACW program. As we head into a future where opportunities to obtain new water rights are non-existent or extremely limited, the ACW program will be a crucial pathway for both surface water right holders and groundwater right holders to expand their operations and gain much needed operational flexibility while advancing conservation goals. Oregon's policy on water conservation is set forth in no uncertain terms in ORS 537.460(2)(a), which provides that the state policy is to "[a]ggressively promote conservation." As noted above, there is no indication that groundwater rights should be excluded from such a critical conservation program. In the interest of clarifying OWRD's existing authority, providing a roadmap for groundwater right holders who would like to participate in the ACW program, and adhering to the state's policy of promoting conservation, OWRD should reinsert its original proposed language in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b) into Division 18. OWRD has acknowledged that it has statutory authority to process groundwater right certificates as part of the		

	ACW program, and we believe that addressing groundwater right certificates specifically in the ACW program rules set forth in Division 18 is a commonsense action that will promote water conservation, flexible water use, and efficient administration of the Division 18 rules.		
Groundwater **-0050(7)(c)(C)** **-0065(2)(c)**	**Rick Parsons (CWRE, Parsons Water Consulting)** - The Conserved Water statute (1987 Senate Bill 24) considered the development of conservation proposals for ground water rights issued under ORS 537.630. A number of comments from RAC members regarding the Division 18 Rulemaking allude to "new ground water rules" and "expanding conservation rules to [include] ground water". These statements are off the mark since the Conserved Water statute and subsequent adoption of the Division 18 rules explicitly contemplated and provided direction on the allocation of conserved water associated with ground water rights. In the ongoing Rulemaking Process, the Department has simply proposed adding language to clarify its current policy related to the disposition of the state's portion of the conserved water that comes about from a conservation proposal involving a ground water right. I encourage OWRD retain the language in the following sections of the proposed Division 18 rules (11/19/2025 v2) regarding the state's portion of conserved water. • 690-018-0050 (7) (c) (C) • 690-018-0065 (2) (c)	See response above. Comment in support of inclusion of groundwater.	See response above.
Groundwater **-0050(7)(c)(C)(i)** **-0050(7)(c)(D)(ii)** **-0065(2)(c)** **-0065(3)(b**	**Jeremy Austin (RAC; COLW)** -We strongly support the removal of language that was proposed in previous versions of the draft rules that would have expanded the ACW program to include groundwater rights. This includes removal of previously proposed language in subsections: • OAR-690-018-0050(7)(c)(C)(i) • OAR-690-018-0050(7)(c)(D)(ii)	See response above. Comment in opposition to inclusion of groundwater.	See response above.

	• OAR-690-018-0065(2)(c) • OAR-690-018-0065(3)(b		
Land Use Compatibility			
Land Use **Div 18, 310, 380**	**Submitted by Leah Cogan (RAC; GSI) on behalf of Michael Martin (RAC; League of OR Cities); Mark Landauer (RAC; Special Districts Association of OR); Adam Denlinger (OR Water Utilities Council); Mike Buettner (OR Water Utilities Council); Jason Green (OR Assoc. of Water Utilities) -** During the rulemaking, our members paid close attention to the proposed changes related to land use compatibility in Divisions 18, 310, 380, and 382. Land use issues are very complex. We appreciate OWRD's willingness to listen to the concerns of public water suppliers and to postpone any major rule changes to allow time for better coordination between OWRD and the Department of Land Conservation and Development (DLCD) and potentially to update the Land Use Planning Procedures Guide. Taking a step back now allows more time for thoughtful consideration of these issues and a better outcome that maintains consistency with the State Agency Coordination program, the Land Use Planning Procedures Guide, and Division 5 rules. OWRD shared that it plans to work more closely with DLCD to better integrate land use and water management and that interested parties will have an opportunity to share concerns and ideas. OWUC, LOC, OAWU, and SDAO look forward to being part of these conversations.	Comment in support	No change made.
Land use compatibility **-0040(22)(a)** **-0090(2)(c)** **-0050(3)(c)**	**Jeremy Austin (RAC; COLW)** - Please see our comments on Div 310 and incorporate into Div 018, where applicable. This includes, but is not limited to, subsections: • OAR-690-018-0040(22)(a) • OAR-690-018-0090(2)(c) • OAR-690-018-0050(3)(c)	OWRD's Land Use Information Form asks the local planning official to cite the "most significant, applicable plan policies & ordinance section references" if the planning official identifies that a discretionary land use approval is required. Therefore, the planning official cites the land use regulations relevant to the approval, in addition to identifying if the approval has been obtained, denied, is being pursued, or is not being pursued.	No changes made

	Comments on Div 310 relating to Div 17 land use compatibility: The proposed rule language would amend the application requirements for a permit to appropriate water concerning the required compliance with local land use regulations required by ORS 197.180. ORS 197.180(1) requires that "state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use: (a) In compliance with the goals, rules implementing the goals and rules implementing this section; and (b) In a manner compatible with acknowledged comprehensive plans and land use regulations." The proposed language does not adequately ensure the Department will "take actions" "in a manner compatible with acknowledged comprehensive plans and land use regulations" as required by ORS 197.180(1) because the proposed language, OAR 690-005-0035, and the Guide, all omit the critical language "and land use regulations." Comprehensive plans are guiding policy documents, but their language is often vague or aspirational, often including language like "The County should do…" or "Seek opportunities to do…" or "Support efforts to do…" More regulatory local land use law is most often found in other local land use regulations, usually a local zoning code or local development code. Therefore, it is critical to add the language "local land use regulations" in addition to "acknowledged comprehensive plans[s]" in order to ensure that proposed water permits are reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1).	OWRD acknowledges that OAR Chapter 690, Division 5 does not contain a definition of acknowledged comprehensive plan. Note that the Land Conservation and Development Commission's rules at OAR 660-031-0010 define acknowledged comprehensive plan to mean both the comprehensive plan and implementing ordinances. The Department has determined that any broader changes around land use should be addressed at a later time that allows for a more comprehensive review. Discussions with the Commission about future updates to the State Agency Coordination program will begin with the February 2026 Commission meeting.	
Other			
Scope	**April Snell (RAC; OWRC)** - The changes proposed in Division 18 are not driven by the 2025 legislation and merit additional discussion. Additionally, there was very	While there are some portions of the changes that are not driven by 2025 legislation, many of the changes are as a result of the changes to ORS 537.470 in section 15 of HB 3544	No change made.

	little time dedicated to this section during the RAC process (part of one meeting) and an acknowledgement by Department staff that there are more potential changes that could be made to improve the ACW program and associated processes. We recognize and appreciate that some proposed changes were removed from the current draft rules but feel strongly that no changes should be made to this section and instead a separate RAC be created rather than rushing partial changes through. It would be more prudent to spend the time to thoughtfully craft changes with a RAC group that has experience and interest in the ACW program rather than do partial adjustments as part of the rushed process.	(contested case provision) and section 37 of HB 3342 (removal of newspaper notice and instituting initial review, etc.). In addition, many of what appears to be changes are driven by reorganization of the rules, which are in part due to the introduction of the initial review process resulting from the 2025 legislation.	
Process **Div 18, 77, 380**	**James Fraser (RAC; TU)** - TU works closely with landowners on instream flow restoration projects, and we appreciate the instances where WRD have clarified language in rule divisions related to instream transfers (Division 380), the Allocation of Conserved Water program (Division 18), as well as instream leases and instream water rights (Division 77). TU's verbal and written comments have already provided specific input on numerous rule provisions, and we will not repeat those here because many have been handled in the final rule package to our satisfaction.	Comment in support	No change made.
Deschutes Basin **Div 18, 77**	**Kate Fitzpatrick (RAC; DRC; Bend Hearing; summarized from transcript)** - And we specifically today just want to comment on appreciation for the improvements to Division 77 and Division 18 we made in stream leasing and permanent in stream transfers and the allocation of conserved water statutes. Related to Division 77, DRC works with 80 irrigation districts and about 350 landowners annually to in stream lease up to 75 cubic feet per second back to	Comment in support	No change made.

	our streams alongside an additional 74 CFS that have been permanently transferred in stream. And we also utilize Division 18, which has protected 174 cubic feet per second in partnership with irrigation districts to our streams through the allocation of conserved water program. These are very important programs and rules for flow restoration in the Deschutes Basin and reaches that had once been fully diverted. And we just wanted to comment that the improved efficiencies proposed in the rules will be beneficial to the resource and will improve the workflow for practitioners like the DRC and irrigation partners who use these programs and state staff who process these transactions.		
Definitions "natural flow"	**Mary Powell (N/A; Bend) -** Some of the terminology commonly used and understood by water professionals have misleading names or attached conditions that alter the meaning that are not apparent at first. Such as: • "Natural Flow"; one would think this is the natural unimpeded flow available year to year to the river maybe even a historical flow however the Districts in Bend consider it any water not otherwise appropriated or stored in reservoirs and available to them by seniority. I don't know whether it is used otherwise in water law, rules, writings, but someone had to explain it to me. In OAR-690-018: a definition of natural flow would be helpful and if it is otherwise used I would hope it would be explained.	Natural flow is not a term used in the rules. Best practice for rule writing is to only define terms that are used in the rules. Commenter's interest appears to be increasing understanding of words used in the community; we believe that would be better addressed in publications, instead of rule.	No change made.
-0050(7)(a)(B)	**OWRD staff proposed change:** Missing comma in 7(a)(B)	Added	Change made.
--0062(2)	**OWRD staff proposed change:** Missing "quantity of" and "the" in subsection 2 so there is parallel phrasing between two amounts in the rule in subsection 2.	Added	Change made.

Out of Scope			
Out of Scope -0012(2)	**Gen Hubert (RAC; DRC)** - While this is a statutory allowance, the ability to submit an allocation of conserved (ACW) water with the plus 1 minute priority date warrants further review (of statute), especially for partially or fully publicly funded projects. If a junior water right utilizes the plus 1 minute allowance, this could result in very little water protected instream. The intent of the ACW is to provide the benefit of protected flow while improving efficiency. If a mid-priority date utilizes the plus 1 minute priority date for the conserved water, the protected water will also not have the same reliability as the diverted water. This could improve the conserver's reliability while still impacting more junior water rights (water users and instream). When conserved water is publicly funded and protected instream, it should retain the same priority date and reliability as the original water right.	Outside scope of this rulemaking. Statutory change.	No change made.
Out of Scope -0012(3)	**Gen Hubert (RAC; DRC)** - 690-018-0012(3) and other rules that relate to measurement – the addition of 3rd party or Department verification of the conserved water rate and volume could assure transparency of the protected water measurements, especially when publicly funded.	Outside of the scope of this rulemaking. Requires more policy discussion to further understand the costs and benefits of such an approach.	No change made.
Out of Scope "duty water" -0018(1) -0020(3) -0020(4)	**Jim Powel (N/A; Bend)** - Add clarification that the ACW surface water pathway applies to only "duty" water, l . Rule Notations include: • 690-018-0010(1) "any water conserved" is implied to be eligible and subject to allocation based on ORS 537.470(3). • 690-018-0020(3) states that "Conservation means the reduction of the amount of water diverted to satisfy an existing beneficial use ..."; and • 690-018-0020(4), mentions the "maximum amount of water that can be diverted using the	Outside scope of this rulemaking and notice. This would need significantly more research and discussion, including an evaluation of whether there is authority to do this.	No change made.

	existing facilities" as one of the metrics in determining "Conserved Water" 2. History • The concept of ACW with a 50-50 split and the potential for spreading, as well as that of making instream use a beneficial use, arose within a Bend-Deschutes County study of the Deschutes Basin in 1986. Both concepts were intended to encourage on farm conservation and a protected improvement of surface water resources. The available technology and costs impacting districts at the time did not practically enable sustained conservation within the canal infrastructure itself. • In the Deschutes Basin, five district irrigation diversions included not only duty water but also a 1928-33 decreed extra diversion usufruct - a percentage (33-65%) of the duty diversion (based on a district's irrigated acreage) specifically designated to offset "losses and obstructions in the canals" as established by the Circuit Court and State Engineer. That same decree increased the Deschutes Basin duty water from ~3.5 to ~ 5.45 AF/A per season, the most generous duty in the state. When the 1986 OWC summarily refused to consider either concept, our Representative introduced bills supporting them in 1987. The Legislature changed the split to 25-75 and applied the concepts statewide. Diversion waters eligible for AWC provisions were based on duty water alone. 3. Current Events in The Deschutes Basin: • For the past several years, the Basin has been utilizing previous collaborative processes to formulate an initial Regional Basin Plan.		

	• Public Funding (PL566 and state grants particularly) and new technology have placed conservation by canal piping within reach for districts. The districts all applied for funding, completed NEPA processes, and agreed to return conserved water from piping to the public and protected instream flow. • Most districts and the Regional Watermaster have returned non-duty water as well as ACW determined portions of duty water conserved by district piping projects to the state. One of our districts now is suggesting that the ACW provisions apply to <u>all</u> water diverted by districts, including the extra decreed water, and implying it may consider non-duty waters in the calculations of district retained water under the statute. If this were to happen, it would be the equivalent of increasing the duty on affected acres by 45% - or from 5.45 to 9.91 AFIA. Like the original decree, this additional retained water would reduce water resources available to junior right holders or instream protections. 4. Rationale: • All basins now effectively base the ACW on duty water. None but five districts in the Deschutes Basin have the opportunity to divert water in excess of duty water to compensate for transmission losses. • Clarifying ACW eligibility's being limited to duty water would continue to put all basins and districts on an equal footing — which was one of the considerations by the Legislature in assigning the 25-75 split percentage allocations of waters conserved under this act.		

2/27/26

Proposed Rule Revision Tracker
Division 380 – Water Right Transfers

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
Change in POD/POA			
Change in POD/POA -2110(3)	**Kimberley Priestley (RAC; WW) -** We strongly support the newly proposed language that clarifies the OWRD can condition transfers to prevent injury and enlargement. That said, we would urge the OWRD to consider removing the qualifier "resulting from the change."	The qualifier language, "resulting from the change," is appropriate given that OWRD's as that is the basis for determining injury or enlargement. The Department does not evaluate injury and enlargement in absence of the change.	No change made.
Change in POD/ historical -2120	**Kimberley Priestley (RAC; WW) -** We appreciate and support OWRD's amendments to this section of rule that remove "point of appropriation". The statute is very clear that this avenue for change applies only to surface water and is not allowed for groundwater. See WaterWatch comments to V1.	Comment in support	No change made.
Change in POD/historical -2120(2)(b) & (2)(b)(B)	**OWRD staff proposed change** – OWRD previously determined that this rule only applies to surface water rights, so the draft proposed rules deleted most occurrences of the words, "…*or appropriation*…" throughout this rule, but not all.	The words, "…*or appropriation*…" have been deleted from -2120(2)(b) & (2)(b)(B).	Change made.
Change in POD/historical -2120(3)(E), (4)	**Kimberley Priestley (RAC; WW) -** V3 changes the directives relating to instream water rights; removing notice to applying agencies and instead providing notice to OWRD as the agency that holds the water right in trust for the people of Oregon. Given OWRD must provide public notice of the change, and also consult with ODFW, we do not object unless ODFW registers concerns. Given instream rights are held in	Comment without objection	No change made.

	trust for the public, the opportunity for the public to provide comment is paramount		
Change in POD/historical -2120(5)	**Kimberley Priestley (RAC; WW) -** As with other sections, we support additional language clarifying the OWRD's conditioning authority.	Comment in support	No change made.
-2120(5)b)	**OWRD staff proposed change:** remove extra period	Completed	Change made.
Exchange, Substitution, Change in Industrial Use			
Exchanges of Water -2260	**Kimberley Priestley (RAC; WW) -** In our V1 comments we recommended new rule language to make clear that: "Any water right acquired by a public agency for a public purpose shall not be eligible to participate in an exchange under this section." OWRD responded by saying that it would need to be legislated. We disagree. ORS 540.533, the statute that allows exchanges, is limited to "any person" who holds a water right. Oregon's APA defines "person" as any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character **other than an agency**. See ORS 183.310(8), emphasis added. Given that the APA specifically says an agency is not a person, to align the rules with the governing statute that limits utilization of exchanges to "any person," the rules need to be updated to ensure that a public agency that holds a water right for a public purpose is not eligible to use this tool.	The definition of person under the water statutes does include agencies. Per ORS 536.007, "As used in…ORS chapters 536 to 540, 542 and 543…'Person' includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof." ORS 536.007(6).	No change made.
Substitution -2330(8)	**Laura Schroeder (RAC; OGWA)-** Proposed OAR 690-380-2330(8) seeks to add an additional requirement that a substitution under ORS 540.524 be terminated before any subsequent transfer or change application involving that right may be approved. This requirement adds substantive conditions that are not found in the	OWRD does not agree with the interpretation presented in this comment. The statute as adopted in 1999 states "this subsection does not authorize a change in place of use, type of use, point of diversion or point of appropriation." Therefore, OWRD does not believe that this	No change made.

	plain meaning of ORS 540.524. This statute limits what a substitution does not authorize (changes to a water right such as additional POA, change in POU, etc.), but it does not require that a substitution that either is going through the review to final order process determining injury or that has already been approved by a final order be terminated at any time but particularly not before the water right holder seeks a transfer under ORS 540.520. The proposed rule infers additional meaning into ORS 540.524 that is not supported by the plain statutory language, the legislative intent underlying the 1999 enactment of the statute, or existing water right transfer procedures. As proposed, OAR 690-380-2330(8) would require a water user to terminate their substituted right before proceeding with a transfer application, incorrectly inferring that transferring a substituted right constitutes an automatic injury. This interpretation is inconsistent with ORS 540.524 which already provides an established process to terminate substitutions during the substitution approval process to determine injury. Further, the transfer process pursuant to ORS 540.520 already provides robust mechanisms to ensure that no injury occurs to existing water rights, priority dates are preserved, and proposed changes are fully evaluated by the Department through notice, protest, and contested case proceedings. Requiring termination of a substitution before a transfer application may even be reviewed does not enhance these protections. Instead, the proposed requirement will eliminate much of the practical benefits of substitutions and increase the number of filings required by applicants. Given that the purpose of this proposed rulemaking is to make agency water right	would allow any other changes in place of use (POU), type of use (USE), point of diversion (POD), or point of appropriation (POA) to occur while the substitution of sources is in place. Additionally, OWRD does not believe the text of the draft proposed rules infers that transferring a substituted right constitutes automatic injury. Rather, OWRD believes the proposed rule language, as drafted, conveys the intent of the statute to not allow other types of changes while a substitution is in place. The statute, also as originally adopted in 1999, allows termination upon request of the water right holder and it indicates that upon termination the substituted primary and supplemental rights revert to their original status. OWRD believes that because the statutory language does not restrict the reversion and does not require any type of review of the reversion request, it supports OWRD's interpretation that no change can be made to the water right while the substitution is in place. Statute recognizes the limitations of substitutions and allows a guaranteed reversion so a transfer can be sought if desired. The commenter asserts that -2330(6) "establishes how substituted rights are to be treated during review" and that (8) creates a conflict with (6) by "by effectively prohibiting review unless the substitution is terminated." OWRD disagrees that -2330(6) describes review of an application. Subsection (6) implements ORS 540.524(6) almost verbatim. ORS 540.524(6) makes it clear that a substituted	

	processes more clear, efficient, and consistent, this is especially concerning. Finaly, proposed OAR 690-380-2330(8) is inconsistent with other provisions within Division 380. OAR 690-380-2330(6) states that "for the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental groundwater right shall be treated as a primary water right." This provision establishes how substituted rights are to be treated during review by the Department. Proposed subsection (8) conflicts with this framework by effectively prohibiting review unless the substitution is terminated, creating ambiguity and inconsistency within the rule itself. While we honor the purpose of the proposed rulemaking (to address growing backlogs and inefficient processing rules), we are concerned that the proposed rule's inclusion of OAR 690-380-2330(8) undermines the legislative intent of Senate Bill 301 (1999) and incorrectly assumes that a transferred substituted right will automatically cause injury. This requirement does nothing to increase efficiency of the Department, nor does it protect against injury to other water rights. Instead, the proposed rule adds procedural barriers that are not required by existing statute and will increase administrative backlog and contested cases. We request the withdrawal of the proposed rule OAR 690-380-2330(8) and for a revised rule to be republished that is consistent with the plain meaning of the statutory language of ORS 540.524 and existing transfer procedures under ORS 540.520. An alternative, consistent with existing and applicable rules, would require that where a transfer application involves a	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 "for the purpose of ORS 540.610". ORS 540.610 addresses forfeiture for nonuse rather than application review.	

	substitution that has already been approved by final order, the substitution remains effective and if pending, that the substitution application be procedurally aligned with the transfer so that both matters proceed concurrently. In other words, where a substitution has been finalized prior to the transfer, it should remain in place. If not finalized by order, then the substitution application should continue alongside the transfer process. This approach would preserve the already established statutory procedures for terminating a substitution when requested by the water right holder or by determination by the Director that the use of the ground water as the primary water right causes injury. Certainly, processing both substitution and transfer simultaneously will reduce the backlog and if required, move forward with only one contested case instead of two. Additionally, we request that these comments inform that effort. Thank you for considering our comments on the proposed rule.		
General industrial use -2340	**Kimberley Priestley (RAC; WW)** - We support the changes made to this section of rule that clarify the parameters that apply to determine the quantity used (and thus applicable limits).	Comment in support	No change made.
Application Requirements			
Transfer applications -3000	**Kimberley Priestley (RAC; WW)** - We support additional language making it clear that an application can only include one water right per application, except in very limited circumstances (e.g. layered rights).	Comment in support	No change made.
Transfer applications -3000(8)	**Kimberley Priestley (RAC; WW)** - We support the retention of the additional requirements here. See V1 comments for details.	Comment in support	No change made.
Transfer applications	**Kimberley Priestley (RAC; WW)** - We support the additional changes in V3, as well as the clarification	OWRD declines to make the requested change to broaden the requirement for providing water	No change made.

-3000(12)	that these are not exhaustive standards, but would ask the OWRD to reconsider our comments on V1 requesting additional standards. The OWRD response was that additional standards were outside of the scope of rulemaking. We disagree, requiring more information of the applicant upfront will expedite the agency's review, which is in line with the intent of water right processing improvements.	use information to the full forfeiture look back period (20 years) at this time and other associated documentation recommendations. The topic is out of scope as it requires a more thorough discussion with interested parties.	
Transfer applications -3000(12)(b)(B)	**Kimberley Priestley (RAC; WW)** - We support the addition of dated satellite imagery.	Comment in support	No change made.
Transfer applications -3000(12)(c)	**Kimberley Priestley (RAC; WW)** - We support the retention of this section.	Comment in support	No change made.
Application Review			
Initial review -4000 **Comment was on 4000, but changes made to 2110, 7010, and 690-382.**	**Kimberley Priestley (RAC; WW)** - In our V2 comments we noted that this section needs to be expanded to include the new transfer denial standards in HB 3342 (17)(5) that apply to some transfer applications to change groundwater points of appropriation. We did not see the change to this section, or to the PFO section, of the hearing draft rules (V3). The OWRD response to our comment was that this section needs more discussion. While it might need more discussion, the OWRD at the very least should simply insert the language of the statute into the rule so that caseworkers have all the information in one place. The noted provision is in fact the law; regardless of any potential controversy around the statutes' existence, this language needs to be in the rules.	HB 3342 (17) is specific to permit amendments (ORS 537.211(5)), while HB 3342 (19) pertains to groundwater registrations (ORS 537.610(5)). HB 3342 (24) pertains to transfer applications under ORS 540.505 to 540.585 (ORS 540.586). They provide that OWRD may deny a change in point of appropriation under certain circumstances. OWRD has included a similar change with differences between the statutory references depending on the applicable ORS: "The Department may deny a change in the point of appropriation pursuant to [fill in the correct statute]." The change is included in the following rule divisions: 690-380-2110, 690-380-7010, 690-382-0300.	Change made to 690-380-2110 and -7010; also 690-382-0300.

2/27/26

Initial review; consent to injury -4000 **Comment on -4000, change made to -5050**	**Kimberley Priestley (RAC; WW)** - Additional comments related to consent to injury: We appreciate the changes made to the V3 version that alter the wording to clarify that transfer applicants can "request" a consent to injury but there is in fact no "approval process" as earlier iterations stated. Consent to injury is wholly discretionary; there is no mandate that the agencies must consider consenting nor are there standards that result in approval if they are met. In other words, there is no obligation to approve a consent to injury request in any instance. If OWRD is going to allow a request for CTI at the IR stage, there likely needs to be adjustments to the processing clock for the agency evaluation of the request (if the agency chooses to evaluate the request). Absent that, the rules should make clear that the default for no action/response on the request is that there is not consent to injury	OWRD agrees that the state agency that requested the instream water right has the discretion to recommend or to not recommend OWRD consent to the injury to the instream water right. Any request from OWRD to the state agency for a recommendation of whether or not OWRD consent to the injury will occur after issuance of the Initial Review, provided the applicant meets the requirements outlined in OAR 690-380-4000(5). Not only did OWRD have to move the consent to injury evaluation to earlier in the process (i.e., from after issuance of the proposed final order to after issuance of the initial review) to accommodate statutory changes under Or Laws 2025 c.575 §3, 3a [ORS 536.077], but we believe this new process will also provide more transparency. To ensure clear communication between state agencies occurs, OWRD does not move forward with processing a "consent to injury" transfer without first receiving a written statement from the state agency indicating that they either recommend or do not recommend OWRD consent to the injury. OWRD believes that the concern is better addressed by adding the following to -5050(1)"...the Department shall seek a recommendation **on whether to consent or not consent** from the agency..."	Change made to 690-380-5050.
Initial review; ready, willing, able -4000(3)(d)	**Kimberley Priestley (RAC; WW)** - We strongly support the inclusion of the requirement that the applicant be ready, willing and able to put the water to full beneficial use. This is an important requirement to protect against speculation	Comment in support	No change made.

Initial review; applicability -4000(3)(g)	**Kimberley Priestley (RAC; WW)** - As we have stated previously, this section should be replaced with the broader "any other requirements of law and rule are met" and/or simply cross out "for water right transfers". As noted in our V1 and V2comments, there are other laws that restrict what can be done under transfers. As an example, the Scenic Waterway Act states: "No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways." ORS 390.835. Any water allocation or reallocation request is subject to this mandate, transfers cannot be used as a loophole to get around this. Similarly, there are rules that restrict transfers as well, such as basin plans. Transfers cannot be used as a loophole to get around other rules and laws. To allow such would encourage all manner of gamesmanship to Oregon's water permitting and reallocation structure. By limiting legal application only to "for water right transfers", the OWRD is offering a loophole to other laws rather than protecting against them. This qualifier should be struck.	This matter was important to many members of the RAC with different perspectives. OWRD believes the language, as drafted in the proposed rules, best addresses the RAC's diverse views; therefore, OWRD declines to make further changes. OWRD would consider the scenic waterway example to be included within the Department's authorities and covered by the existing rule language. Our perspective is that this is rather broad. Even then, OWRD rules cannot confine statute. Note that OWRD does not typically apply basin plans to transfers; though 2025 legislation has included specific authority to deny points of appropriations in certain instances related to critical groundwater areas.	No change made.
Initial review -4000(9)	**Kimberley Priestley (RAC; WW)** - please insert "permanently" before "close application". While OWRD has note this is redundant, we feel it prudent to insert here so a user cannot come back later and argue that they want to "reopen" it because it was not permanently closed (and thereby retain their priority date).	OWRD has made the change.	Change made.
Initial review; amendment -4000(12)	**Kimberley Priestley (RAC; WW)** - The applicant should not be able to amend the application after the IR stage. They should have to reapply. That said, if the OWRD keeps this section, we urge language that notes that if the information/amendment changes a "denial" to an	The draft proposed rules align with Or Laws 2025 c.575 §§20, 20a [ORS 540.520(6)], which specify that upon notice of the initial review (i.e., issuance of the IR), the applicant has 30 days to notify the Department to continue processing	No change made.

	"approval" the OWRD must issue a new IR, and not proceed to PFO. As is, the rules provide that if the applicant amends the application, the OWRD has discretion to reissue an IR or "or incorporate the amendments into the proposed final order". This would give the OWRD the discretion to go straight to proposed final order, at which point the only option for the public would be to protest. At the very least, if a change alters the OWRD determination from "denial" to "approval" the rules should note that it will be re-noticed	the application and provide any outstanding information to the Department, including amending the application to address any issues or deficiencies identified by OWRD in the initial review. If necessary, the applicant can request an additional 60 days (not to exceed a total of 90 days from date of IR issuance) to provide any outstanding information. In general, individuals interested in applications should weigh in during the comment period if they have an interest in an application, regardless of whether it is to approve or deny, as that is the opportunity to provide the department with information on the application. In the interest of maintaining proposed rule language aimed at application processing efficiencies while still allowing OWRD certain discretion, because there is a wide range of circumstances and degree of complexity that may change a "denial" to an "approval," OWRD declines to require all changes of this nature be re-noticed to open up a second 30-day comment period.	
Timeline to provide outstanding info -4000 and -4005	**OWRD staff proposed change:** Revisions are needed to more accurately align this rule with the proposed rule language in OAR 690-380-4000(5) and (10). As written, it could be misconstrued as allowing the applicant more time to notify OWRD that they wish to continue processing the application. Further, rule language in -4000 could be misconstrued to require closure within 30 days when an exception exists in section (10).	Moved and modified the text, "or an additional time period allowed under OAR 690-380-4000(10)" that was immediately following "OAR 690-380-4000(5)" to make it clear that the additional time under OAR 690-380-4000(10) only applies to the time allowed for the applicant to provide the additional information; it does NOT apply to the deadline for the applicant to affirmatively respond to the IR that they want to continue processing the application. OWRD also added to section	Change made.

		4000(5)(b) and (9) the text, "except as provided in section (10) of this rule," as this is an exception to the requirement that everything be provided within 30 days.	
PFOs			
PFO -4010(2)(c)	**Kimberley Priestley (RAC; WW)** - We strongly support the retention of the language that requires a finding that the water right has been used in the past five years and also that it is not subject to forfeiture. That said, we still think it would be clearer if they were split into two different findings.	OWRD believes the language, as drafted in the proposed rules, is clear and declines to make further changes.	No change made.
PFO -4010(2)(d)	**Kimberley Priestley (RAC; WW)** - We strongly support the retention of the language that requires the applicant be "ready, willing and able"; however, we would suggest that the tie to "the full amount of the right'" be changed to "portion of the right to be transferred", as the "full amount of the right" might not be subject to transfer. This mirrors language in the rest of this section. Regardless, we thank the OWRD for retaining the "ready, willing and able" language.	OWRD replaced the text, "…the full amount of water allowed under the right:" with the "…the portion of the right to be transferred;"	Change made.
PFO -4010(2)(g)	**Kimberley Priestley (RAC; WW)** - As noted previously, we believe the better standard is "any other requirements set forth in applicable law and rule" and/or simply cut the language "applicable to water right transfers". While arguably the proposed standards does subject transfers to all laws not just transfer specific laws, it would be clearer to just state this so the Department's application of all applicable laws (e.g. the State Scenic Waterway Restrictions) do not invite challenge.	Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on -4000(3)(g) above.	No change made.
Hearings			

Hearings -4200(2)	**Kimberley Priestley (RAC; WW)** - We strongly support the consolidation of forfeiture claims into the cc hearing as it creates process efficiencies.	Comment in support	No change made.
Hearings -4200(2)	Laura Schroeder (RAC; OGWA) - Proposed OAR 690-380-4200(2) states that the Department will automatically initiate cancellation proceedings if a protest to a transfer asserts forfeiture due to nonuse. This provision is inconsistent with Oregon's existing statutory forfeiture framework for cancellation proceedings that requires evidentiary submissions through notarized affidavits and formal notice before cancellation proceedings may be initiated. This proposed rule encourages unsupported forfeiture claims and impedes due process, leading to increased contested cases and administrative inefficiency. In addition, allowing unsubstantiated claims for forfeiture made in a protest to stop development for decades effectively eliminates water rights of use and impedes the public's use of water. Pursuant to OAR 690-017-0400, the decision to initiate cancellation proceedings shall be based on evidence submitted to the Department in the form of notarized affidavits from two individuals. A mere assertion of forfeiture within a transfer protest does not satisfy this evidentiary requirement. Further, ORS 540.631 requires that upon initiation of forfeiture proceedings, the Department must provide written notice by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. These notice requirements reflect the Legislature's intent that forfeiture proceedings align with full due process protections. Permitting cancellation proceedings to begin based solely on a forfeiture claim asserted in a	If assertions of non-use and forfeiture are made against a water right involved in a transfer application, OWRD must first deal with the forfeiture issue before it can continue processing the transfer application, or the Administrative Law Judge will have to address it as part of the hearing. The Department is attempting to harmonize the laws, though we recognize it is challenging. The language in -4200(2), as drafted in the proposed rules, specifies that any issuance of a notice of cancellation proceeding by OWRD shall be done in accordance with ORS 540.631, and that any hearing held pursuant to 690-380-4200(1) shall also include the procedures described in the Div. 17 Cancellation of Perfected Water Rights rules under 690-017-0600 to 690-017-0900. OWRD has distinguished between notice of proposed cancellation and notice of cancellation proceeding as it recognizes in these instances that it may not agree with the forfeiture matter, but that it must be dispensed of in order to allow the transfer to proceed. It is inefficient to require two separate proceedings to occur, putting the transfer proceeding on hold to address the forfeiture assertion before coming back to the transfer proceeding.	No change made.

	transfer protest bypasses required safeguards and eliminates any requirement on the protestant to provide evidentiary support for the forfeiture claim as well as the subsequent review by the Department to evaluate the forfeiture claim. If this rule were adopted, the mere claim of forfeiture by a protestant with its $1425.00 fee will stop a development worth millions of dollars, force a continued non-beneficial use of the appropriated public use by the applicant or cancel that beneficial, appropriated use because the use cannot continue during the delay caused by the contested case procedure. All of these disastrous outcomes will only increase the Department's failure to meet its budget as stated in this report: Water Rights Transactions. We request the withdrawal of proposed rule OAR 690-380-4200(2) and for a revised rule to be republished that requires 1) any protestant claiming forfeiture to include within their protest the required evidentiary support; 2) an evaluation of the forfeiture claim by the Department within 30 days; and 3) if the claim is unsupported, that the Department proceed with processing the transfer deeming the forfeiture claim resolved. Thus, the Department should proceed immediately to cancellation proceedings incorporated within the protest contested case hearing only if the Department finds that the evidentiary support for forfeiture made by the protestant withstands the clear and convincing standard required. The proposed rule should further clarify that established procedures for cancellation proceedings are to be followed. This approach preserves due process and aligns with previously established Department proceedings pursuant to Oregon laws, protecting		

	Oregon citizens' access to the continued beneficial use of the appropriated public waters and reducing an unnecessary backlog of contested cases. Additionally, we request that these comments inform that effort.		
Hearings -4200(3)	**Kimberley Priestley (RAC; WW)** - We support the OWRD's determination to retain the 15-day time period. We would oppose any expansion of that timeline.	Comment in support	No change made.
Transfer Approval			
Transfer approval; forfeiture -5000(1)(c)	**Kimberley Priestley (RAC; WW)** - We strongly support the retention of the language that requires a finding of use in over the past 5 years and that it is not subject to forfeiture. That said, we still think it would be clearer if they were split into two different findings.	OWRD believes the language, as drafted in the proposed rules, is clear and declines to make further changes.	No change made.
Transfer approval; ready, willing, able -5000(1)(d)	**Kimberley Priestley (RAC; WW)** - We strongly support the requirement the applicant be "ready, willing and able"; however, we would suggest that the tie to "the full amount of the right'" be changed to "portion of the right to be transferred", as the "full amount of the right" might not be subject to transfer and/or have been cancelled as part of the transfer process	OWRD replaced the text, "…the full amount of water allowed under the right:" with the "…the portion of the right to be transferred;"	Change made.
Transfer approval; applicability -5000(1)(f)	**Kimberley Priestley (RAC; WW)** - Again, we would urge that the OWRD make a finding that any other applicable laws/rules are met. As written, (f) is too narrow and could lead to potential litigation if the OWRD were to apply other applicable laws that are not specifically tied to transfers but apply nonetheless.	Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on -4000(3)(g) above.	No change made.
Consent to Injury			
Consent to injury -4000(8), -5030, & -5050	**Kimberley Priestley (RAC; WW)** - Consent to injury—whether to instream or consumptive use water rights—is limited to consent to injury caused by point of diversion changes only. ORS 540.530(b) and (c) limits the ability to consent to injury to surface water "point of	OWRD does not agree with the assertion that ORS 540.530(1)(b) & (c) is limited to only allow consent to injury caused by changes to surface water points of diversion. ORS 537.705 provides OWRD the authority to permanently change the	Change made.

	diversion" changes (sub (b) applies to consumptive use rights, sub (c) applies to instream water rights). Please adjust the introductory language accordingly to make clear that applicants can only request consent to injury if the injury is caused by a "point of diversion" change. Injury caused by changes in point of appropriation, changes in place of use or changes in type of use cannot be "consented" to. The rules need to be crystal clear on this point to avoid misuse of this tool. Please clarify that the request for consent to injury only applies to injury that is caused by proposed point of diversion changes. Please adjust the introductory language accordingly by striking "point of appropriation". Please amend to limit the language to "point of diversion" changes. Clarification is needed throughout OAR 690-380-5050 to make it plainly apparent that the ability of the agencies to consent to injury to an instream water right only applies injury as a result of proposed "point of diversion" changes as outlined in ORS 540.530(1)(c). Agencies cannot consent to injury for changes in point of appropriation, changes to type of use or changes to place of use	type of use, place of use, or point of appropriation of a groundwater right, provided the proposed change complies, as nearly as possible, with the procedures set forth in ORS 540.520 and 540.530. Further, while the consent to injury process outlined in ORS 540.530(1)(b) & (c) applies to injury resulting from a change in point of diversion or appropriation, OWRD does not believe the statute prohibits other types of changes (e.g., type of use or place of use) from being proposed and considered in the same transfer application as the injury-causing point of diversion/appropriation change, though it is clear the consent to injury statutes do not apply to type of use or place of use changes. That said, OWRD believes revisions to clarify that this rule -4000(8) pertains only to findings of injury caused by changes in point of diversion or appropriation are warranted.	
Injurious transfers -5030(1)&(2)	**OWRD staff proposed change** – As drafted, the proposed rules do not clearly identify all requirements that must be satisfied before OWRD makes a determination of whether it will consent to injury and approve a point of diversion or appropriation transfer that results in injury to a water right(s) other than an instream water right.	The text "…following the issuance of an initial review pursuant to OAR 690-380-4000…" was removed from -5030(1) and instead placed into the introductory language under 690-380-5030 because this text applies to both -5030(1) & (2). Related to –5030(1): In addition to the requirements already outlined in -5030(1)(a) & (b) for consent to injury to other than an instream water right, the applicant must	Change made.

		also submit to OWRD an affidavit from every holder of the injured. Therefore, -5030(1) is restructured to clarify that, following issuance of the IR but prior to OWRD making a determination of whether it will consent to injury and approve the application, the applicant must do three things: 1) Notify OWRD that they intend to request consent to injury; 2) Notify OWRD that they understand that, upon receiving the list of injured water rights/contact info from OWRD, they'll be required to submit an affidavit of consent from every holder of the injured water rights; and 3) Submit affidavits of consent to OWRD that conform to the requirements of 690-380-5040 from every holder of the injured water rights. Related to –5030(2): The structure of -5030(2) for consent to injury to an instream water right was also modified to clearly include the requirement that the applicant, in response to issuance of the IR under -4000, must notify OWRD that they intend to request consent to injury to the instream water right as outlined in 690-380-4000(8)(b).	
Affidavits of Consent -5040	**OWRD staff proposed change** – Existing introductory language in 690-380-5040 is inconsistent with existing language in 690-380-5040(4), as it relates to proposed changes in point of diversion/appropriation.	Added "or appropriation" immediately following "point of diversion.	Change made.
Consent to injury;	**Kimberley Priestley (RAC; WW)** - We strongly support the change from "shall" to "may", as "may" explicitly tracks the governing statute. This is critically important	OWRD agrees that use of the word "may" in the draft proposed rule language, both in –5030 and in –5050(8), clearly conveys that OWRD has	No change made.

instream water rights -5050(8)	because the statute is very clear that even if the recommending agency consents to injury, OWRD still retains the discretion to deny the consent to injury on its own volition. Consenting to injury is wholly discretionary to all agencies involved; the agencies can decline to consent for any reason. In addition to this change, we repeat our comments of V1, which is that this section needs quite a bit of further work to ensure that it is consistent with statute and that there is a robust and transparent process related to consent to injury to an instream water right. The rules need to be reworked to make clear the following provisions of statute are clear: • The agency requesting the instream water right has wide discretion to not consent to injury of the instream water right. The statute does not require any findings and/or explanation as to why the agency is choosing not to consent. All is required is that they tell OWRD it does not consent. • The OWRD has a trust duty to the people of the State of Oregon for whose benefit the Department holds in trust the instream water right to maintain water instream for public use pursuant to ORS 537.332(3). The CTI rules need to include a determination (and findings) of whether the OWRD's decision fulfills its trust obligations. • We also suggest the OWRD consider providing direction on consideration of whether a proposed change is for the purpose of implementing a restoration project; which was the original intent of the statute. • The factors for an agency to review if they chose to go forward and consider a consent to injury should be clarified in rule (e.g. ODFW's internal guidelines should	discretion to either approve or deny a consent to injury transfer. Other items raised in this comment require more analysis and more thorough discussion and are beyond the scope and time for this rulemaking.	

	be incorporated for ODFW requested instream water rights). • To the extent the requested transfer application is for a larger project, the agency must evaluate all related water rights/applications, transfers/applications and other relevant factors related to the project. We have offered some initial language for consideration in Appendix A (attached to our comments if V1), but these likely need more refinement and discussion.		
Beneficial Use			
Proof of use -6030 **Div 14**	**Kimberley Priestley (RAC; WW)** - OWRD should add language that makes clear that if a COBU prepared by a CWRE is not submitted within the time required under Div 14, the water right will be cancelled.	The item raised in this comment requires more analysis and more thorough discussion. Beyond the scope and time for this rulemaking.	No change made.
Permit Amendments			
Permit amendments; type **-7000** **-7010(1)(c)**	**Kimberley Priestley (RAC; WW)** - The statutes only allow for "change" in point of diversions, not "additional points of diversion": The permit amendment statutes allow for "a change" in point of diversion; they do not allow for expansion of one point of diversion to allow "additional" points of diversions. A change means a substitution, not an expansion or addition. OAR 690-380-7000, read in conjunction with OAR 690-380-7010, allows "additional" points of diversion, which is not allowed by law. OWRD response to our V1 comments on this was that this request falls outside the scope of this rulemaking. We strongly disagree. The existing rules are in direct conflict with statute; thus the noted language should be removed as part of the OWRD's efforts to align rules with statute. As is, these rules allow a huge loophole to public interest permitting requirements that would otherwise apply to the	OWRD does not agree with the interpretation that the statutes prohibit additional points of diversion as part of a permit amendment. OWRD does not consider adding a point of diversion through a permit amendment to be an expansion of the right since the total quantity of water that may be diverted under the right is limited by the authorized rate and duty specified in the right.	No change made.

	multiple points of diversion a water right holder ultimately seeks. Please delete "or additional point(s) of diversion" as this practice is not allowed by statute. See argument in –7000 above.		
Change of source from SW to GW -7020	**Kimberley Priestley (RAC; WW)** - The language and intent of the governing statute is to allow a surface water right holder to change their source to groundwater, not to allow both. As such, this section needs to clarify that it is a change from POD to POA, not an addition of a POA to the existing POD. The rule language as written is not clear on this. We would suggest the words "instead of surface water" follow "appropriation of groundwater" in the first sentence. We do not believe it is redundant to state this clearly here.	OAR 690-380-7020(1) specifies that this type of change may be allowed, provided the requirements outlined in OAR 690-380-2130(2) to (11) are met. OAR 690-380-2130(7), states that the original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion for the portion of the water right transferred. OWRD added to "instead of surface water" and also clarified that it could be a portion thereof, as the proposed change may only be a portion of the permit.	Partial change made.
-7020	**OWRD staff proposed change.** -7020 as originally drafted was a very long sentence that was hard to understand.	OWRD made changes to make the rule more succinct and improve readability. OWRD removed rule and statue references to definitions which are unnecessary.	Change made.
Permit amendments; requirements -7100(17)	**Kimberley Priestley (RAC; WW)** - Same comments as V1/V2: The OWRD should require a notarized oath, not just an "oath". Penalties should apply to anyone who makes false statements on an application. OWRD response to comments was that this falls outside of the scope of this rulemaking. We feel it does fall within the scope of efficiencies; OWRD wastes time and resources when applicants and/or water right holders make false statements.	This proposed rule language for permit amendments identically matches existing rule language for applications for transfer at -3000. Requiring that an applicant engage the services of a notary public prior to submitting an application would impose an additional burden on applicants without a clear link to reducing the risk of false statements. A notary verifies someone's identity and that the person is not being coerced into signing a document but does not verify that all statements are true and accurate.	No change made.

Notice of amendment -7200	**Kimberley Priestley (RAC; WW)** - Same comments as V1/V2: These rules should include the public process afforded other water right transactions (IR/comment, PFO/Protest, Protest/Petition for party status). OWRD said this is out of scope of the rulemaking, but we will note that OWRD did change the hydro rules (Div 53, 54) to allow IR/comment, PFO/protest/party status even though that is not subject to HB 3544. It seems that the same logic would apply here.	OWRD did not change hydro to include IR/comment. Hydro already had a PFO and protest period within the rules. Unlike hydro, this would require significant restructuring of the rule as well as the department's current process. Further, permit amendments need to be completed timely as it needs to be done within the completion date.	No change made.
Amendment FO -7300(1)(h)	**Kimberley Priestley (RAC; WW)** - As we noted in comments to V1 and V2: In addition to injury and enlargement, the rules should make clear that the permit amendment must also comply with all other applicable laws; not just those narrowly directed at permit amendments. For example, OWRD could not approve a permit amendment that would result in a dam or diversion structure being built in a Scenic Waterway (which would violate the statutory mandates of the Scenic Waterway Act.	Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on -4000(3)(g) above.	No change made.
Enlargement			
-0100(2)(c)	**Anton Chiono (RAC; CTUIR) -** Under the definition of "enlargement" in OAR 690-380-0100, we appreciate that you were responsive to our earlier comments and included our proposed insertion (underlined) to (2)(c), such that it read: (c) Failing to keep the original place of use from receiving water from the same source <u>under the same water right</u>: However, in the final proposed rule, this revision was removed. **We ask that you please restore this inserted language.** Specifying that a POU may not be transferred if it continues receiving water from the same source <u>under the same water right</u> would help clarify what the "same source" entails, i.e., the source listed on the	OWRD continues to have concerns about the requested changes to the rules and does not recommend inclusion. When reviewing a transfer application, OWRD evaluates for both evidence of beneficial water use under the water right proposed for transfer, injury, as well as enlargement. In regards to proposals to make changes to the place of use of water rights, regardless of whether the change is instream or out-of-stream, OWRD has a long-standing practice of requiring the lands from which a water right is removed to be "dried up" following approval of	No change made.

	water right. This would provide much clearer guidance to watermasters in their transfer reviews and improve the process for all involved. Such a clarification is minor and uncontroversial, and necessary only in 690-380-0100(2)(c) and the newly added rule language in 690-380-2200(2). As transfer applications increase with the dwindling availability of water, this minor-but critical-clarification to Division 380 will forestall considerable problems going forward. **Please see full letter for discussion re: "Problem with Current Rules":** (1) groundwater is not the same "source" as surface water; (2) continued sub-irrigation from another "source" is not enlargement; (3) a valid water right is entitled to its full rate and duty at its point of diversion. We think the more likely actual intent of the original rule language in OAR 690-380- 0100(2)(c) was to prevent the enlargement of a water right that would arise if the same source of water specified on the water right were diverted and applied to both the original POU and the new POU to which the right is being transferred. This is a common sense, plain-language reading of the rule. And, indeed, such a practice would result in more water being diverted from the stream than the water right holder is legally entitled to, thereby enlarging the right and depriving others of water to which they are legally entitled. Nonetheless, the current lack of clarity on what constitutes "same source" has led to wildly different interpretations of this rule and an unequal application of the law. Thankfully, the remedy is easy, minor, and non-controversial. It is also very compatible with the agency's stated goals for this rulemaking, which included "tak[ing] the opportunity to make other policy and process improvements to impacted rule divisions."	the proposed change. Failing to prevent the original place of use (i.e., the "FROM" lands) from continuing to receive water from the same water source at the same time the water is being used at the new place of use constitutes enlargement. OWRD is interested in continuing discussions with the tribe after this rulemaking is complete as we believe that the rule change is not the proper mechanism to address the concern. We met with Mr. Chiono in early February and we believe that with further discussions with our staff and with Mr. Chiono that there may be other ways to address the concerns we heard that are driving the request for the rule change.	

-0100(2)(c)	**Kimberley Priestley (RAC; WW) -** We urge the OWRD to reinsert the qualifier "under the same water right" to the end of subparagraph 690-380-0100 2(c) that was in the V2 version.	Please see OWRD response to comments provided by Anton Chiono (RAC; CTUIR) on -0100(2)(c) above.	No change made.
-0100(2)(c); -2200(2)	**James Fraser (RAC; TU) -** Trout Unlimited respectfully requests that WRD revise OAR 690-380-0100(2) (c) and OAR 690-380-2200 (2) by adding a clarification that landowners may transfer water instream from sub-irrigated acres. **Please see full letter for background discussion.** **-0100(2)(c) -** Input/Concern: TU shares the concerns elaborated by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in letter dated 11/5/25 and other comments. WRD had subsequently revised the clause to add "under the same water right" and TU appreciated that clarification. Unfortunately this language is now removed in the proposed rule package. Proposed Rule Language/Description of Proposed Fix: Add back the new language "under the same water right" or add CTUIR's proposed "diverted and applied" language. With this edit, the language in the Notice would read (edit in **bold)**: "Failing to keep the original place of use from receiving water **under the same water right** (**alternatively: diverted and applied**) from the same source; or" **-2200(2)** TU commented in our December 5, 2025 letter that WRD should revise 2200 to match the Department's clarification in 0100, but we do not see that edit in the final rule package. Proposed Rule Language/Description of Proposed Fix:	Please see OWRD response to comments provided by Anton Chiono (RAC; CTUIR) on -0100(2)(c) above.	No change made.

	Add "under the same water right" or similar language to match 0100(2) (c). With this edit, the language in the Notice would read (edit in **bold**): "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 **under the same water right (alternatively: diverted and applied)** from the same source.		
-0100(2)(c) -4010(2)(e) (Div 380, 77)	**Gen Hubert (RAC; DRC) -** 690-380-0100(2) and 4010(2)(e) – review for injury and enlargement should be the same for Division 380 and Division 77. Division 077-0075 provides far more detail regarding this review. We suggest either Division 77 should be updated to the same less descriptive review as Division 380 or Division 380 should be updated to the more descriptive review under Division 77.	Since the same details are considered as part of OWRD's injury and enlargement evaluation regardless of whether an application for a Div. 380 permanent transfer or a Div. 77 instream transfer is being reviewed, OWRD agrees that consistent criteria between the two rule divisions makes sense. OWRD does not want to remove the detailed review criteria in Div. 77 as it articulates what the department does (both for 77 and 380). The ideal situation would be to add it to 380 so that 380 is more transparent about what we already do. OWRD is concerned that this matter may be outside of the scope of the notice for Div. 380 as it adds review criteria to the rule that was not included in the notice. Therefore, while we think it would be ideal to have consistent language, we believe it to be outside of the scope of the rule notice.	No change made
Land Use Compatibility			

General (Div 380, 310)	**Jeremy Austin (RAC; COLW)** - As stated in our comments on Div 310, we want to emphasize that in order to comply with ORS 197.180(1), the proposed rule language should require a final land use decision from a local government before approving a proposed transfer. This includes exhaustion of the administrative appeal process for a land use approval. We would recommend this requirement be included as a criteria for approval in the PFO subsection, 690-380-4010, or other subsection that OWRD deems appropriate.	OWRD's Chapter 690, Division 5 rules define "Land Use Approval" to mean "a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired." The Department has determined that any broader changes around land use should be addressed at a later time that allows for a more comprehensive review. Discussions with the Commission about future updates to the State Agency Coordination program began with the February 2026 Commission meeting.	No change made.
Land use -5100(3)	**Kimberley Priestley (RAC; WW)** - We support the proposed deletion.	Comment in support	No change made.
Land use -3000(19) -7100(14) -8003(2)(d) **(Div 380, 310)**	**Jeremy Austin (RAC; COLW)** - See LandWatch's comments above on OAR 690-310-0040(1)(a)(L). The current language does not adequately ensure the Department will "take actions" "in a manner compatible with acknowledged comprehensive plans and land use regulations" as required by ORS 197.180(1) because the rule omits the critical language "and land use regulations." Further, this rule division includes an exception to demonstrating compatibility with local land use regulations for transfers that meet four specified criteria.	OWRD's Land Use Information Form asks the local planning official to cite the "most significant, applicable plan policies & ordinance section references" if the planning official identifies that a discretionary land use approval is required. Therefore, the planning official cites the land use regulations relevant to the approval, in addition to identifying if the approval has been obtained, denied, is being pursued, or is not being pursued. OWRD acknowledges that OAR Chapter 690, Division 5 does not contain a definition of	No change made.

	LandWatch questions the merits of the exceptions and ask OWRD to reconsider retaining this in rule. The exception applies to transfers on lands zoned EFU or within irrigation districts. In our experience in the Deschutes Basin, these lands are both where the majority of water rights exist, and also where many of the most controversial and complicated land use disputes arise. Further, there is nothing in the permit amendment statute that allows for these exceptions. These factors lead us to question why these lands are excepted from the otherwise applicable requirement for land use compatibility for water right transfers. We understand that the other three criteria mean the exception does not apply to all proposed transfers in EFU zones and irrigation districts, as some of those transfers involve a change other than in the place of use, a placement or modification of a structure, and do not involve irrigation water uses only. Still, we question how many proposed transfers, and what volume of our basin's precious water resources, are exempt from land use compatibility requirements largely because they are proposed in EFU zones or in irrigation districts. Many lands within Deschutes Basin irrigation districts are not zoned EFU. Some of these lands are inside urban growth boundaries; some are zoned for rural residential use. Transfers of water between these lands should be required to demonstrate compatibility with local land use regulations. As an example, consider a proposed transfer of irrigation water historically applied to rural EFU land to an irrigation use inside an urban growth boundary. A showing of compatibility with local comprehensive plans and land use regulations is likely more important to fulfill the Departments	acknowledged comprehensive plan. Note that the Land Conservation and Development Commission's rules at OAR 660-031-0010 define acknowledged comprehensive plan to mean both the comprehensive plan and implementing ordinances. The exceptions to providing land use information outlined in the proposed rules under -7100(14)(a)-(d) and -8003(2)(d) for permit amendments and temporary transfer renewals mirror the exceptions specified for other transfer processes in Divisions 380 & 382, including existing rules for new temporary transfers under -8002(1)(a) and -8004(1)(a), for purposes of consistency and efficiency. While none of the transfer statutes – including groundwater registration modifications and permit amendments – specifically call out land use requirements or exceptions to land use, we still require land use compatibility and consistency as part of the applications for these processes. The four specified criteria for an exception are derived nearly verbatim from the Department's Division 5 rules at -0025 and the Department's Land Use Planning Procedures Guide. The Department has determined that any broader changes around land use should be addressed at a later time that allows for a more comprehensive review. Discussions with the Commission about future updates to the State Agency Coordination program began with the February 2026 Commission meeting.	

	responsibilities under ORS 197.180 in this scenario than other, non-excepted situations. We recommend the Department require a showing of compatibility with local comprehensive plans and land use regulations for all transfers and not continue to provide an exception to this showing for certain lands, especially absent a rationale for why this exemption supports the State's responsibility to steward our public water resource.		
Land Use -7100(14)	**Kimberley Priestley (RAC; WW)** - There is nothing in the permit amendment statute that allows for the exceptions spelled out in (14)(a)-(d).	See response to Jeremy Austin above.	No change made.
Other			
General (Div 18, 77, 380)	**James Fraser (RAC; TU)** - TU works closely with landowners on instream flow restoration projects, and we appreciate the instances where WRD have clarified language in rule divisions related to instream transfers (Division 380), the Allocation of Conserved Water program (Division 18), as well as instream leases and instream water rights (Division 77). TU's verbal and written comments have already provided specific input on numerous rule provisions, and we will not repeat those here because many have been handled in the final rule package to our satisfaction.	Comment in support.	No change made.
Div 380; notice of transfer	**Richard Smith -** The current and proposed notification procedure are both inadequate. By the time a property owner becomes aware that a transfer or new water right have been applied for it is almost always to[o] late to make a public comment. All well owners within a one mile radius of the proposed POA should be notified by usps mail well in advance of the allotted time for comment.	The "notice" process for permanent transfers is outlined in the draft proposed rules under 690-380-4005 (Request for Comments) and 690-380-4020 (Notice of Proposed Final Order). The proposed rules implement the notification requirements in 2025 legislation (HB 3342). Notifying all well owners within a one-mile radius of a proposed POA would add a level of time and cost that would be inconsistent with	No change made.

	I have personally been very negatively affected by the lack of notification and forced to drill a new well.	the rulemaking's intent to streamline processes. The best way for a landowner to protect their interests is to follow OWRD's public notice publication. If there are other options that are timely and cost effective, the Department is open to exploring that, but as of now, that is outside of the scope of this rule change.	
Div 380; dam exemption/ data centers; EO	**Gordon Jones (Bend Hearing; summarized from transcript) -** I just learned that the there's a new Governor's Task Force that's going to be dealing with data centers and energy, and [for] both those, water has historically been used as an energy resource, and data centers require a lot of water used as well. So, I think probably Division 380, the water rights transfers, is my major concern for this rulemaking process. I'm concerned that there's going to be a lot of pressure on Oregon Department of Water Resources for transferring water rights and acquiring water rights and utilizing our rivers and streams as locations for data centers as they have already been used or in the state in many cases. [Page 6 of the Information Handout] clarifies the process applies to surface water now not groundwater, does not apply to changing the location of a dam. At least the word "dam" is in that paragraph for some reason, and I'm not sure why that is. [I have] been involved in the removal of the four dams on the Clackamas River, and I'm a property owner on the Upper Deschutes National Wildlife Refuge. [I have] been involved with OSU a little bit on that dam removal process and [after seeing] how successful it is. I'm an advocate for removing dams, not putting any more dams in. I'm also an advocate for keeping our rivers free flowing and trying to manage our surface water and our	As it relates to the Div. 380 rulemaking, it appears this comment makes reference to the proposed changes to OAR 690-380-2120 (Change in Point of Diversion to Reflect Historical Use). Specifically, the comment mentions changes to clarify that this rule would not apply to groundwater point of appropriation changes and that this rule cannot be used to change the location of an on-channel dam for a water right certificate that authorizes the storage of water. Due to the complex nature of on-channel reservoir permitting, OWRD felt it prudent to clearly identify that on-channel dams cannot be changed through this process; instead, those would need to go through the standard transfer review process. This comment also touches on the potential for transferring water rights so they can be used for data centers. The "historic" transfer process can only be used to administratively change the authorized point of diversion location to the actual, current point of diversion that has been in place for 10 or more years. No change is the character or type of use of a water right is allowed under this rule. Additionally, a fundamental requirement of any water right transfer is that it cannot enlarge the water right	No change made.

	groundwater as carefully and diligently as we possibly can, so that we can preserve the waterways as free flowing. And being waterways that [were] before salmon runs and free flowing arteries, if you will, for the whole state not utilized so much as cooling systems for data centers is one of my main concerns. And I also would like to that's [what my concern is. I think a little more explanation on that particular policy and process, and how it relates to the Governor's Task Force would be interesting.	being transferred and it cannot result in injury to other, existing water rights. The remainder of this comment focuses on issues and policies that fall outside the scope of this rulemaking effort.	
Minor			
-0090	**OWRD Staff Proposed Change -** The rules in this division apply to applications submitted on or after April 1, 2026…not just after April 1.	Based on the language in Section 21b, ch 575, Oregon Laws 2025, it should state "…on or after April 1, 2026…"	Change made.
Copy/paste error -2330(2)	**OWRD Staff Proposed Change –** Delete "or expansion."	This is a copy and paste error. Expansion is the same as enlargement. Delete expansion.	No changes made.
-3410	**OWRD Staff Proposed Change -** Remove this rule from the notice.	The only change needed was a statutory minor correction to update a statutory number reference. Staff already took care of the minor correction, so no further change needed. It will not be included in the final rule filing.	To be removed from filing.
Grammar/word omission -4000(8)(b)	**OWRD Staff Proposed Change:** grammatical error and missing word identified.	Deleted an extra space between the words "to" and "request." Inserted the word "right" between the words "water" and "pursuant."	Changes made.
Out of Scope (not included in notice)			
Municipal -2410(1)	**Kimberley Priestley (RAC; WW)** - (1): Please add the term "municipal" before "beneficial use" to make clear these exceptions only apply to ordinary municipal beneficial uses, not other water rights that might be held by a municipality.	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. -2410 was not included in the notice.	No change made.

	Please return the V2 provision making clear the change cannot injure other water rights. Either in this section, the Div 380 definitions, or the Div 300 rules the OWRD needs to insert a definition of "municipality". The allowances noted in OAR 690-380-2410, are governed by ORS 540.510(3)(b), which defines and limits municipality to: • As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 (Definitions for ORS 777.005 to 777.725 and 777.915 to 777.953) to 777.725 (Borrowing money to pay bonus), 777.915 (Definitions for ORS 777.915 to 777.953) to 777.953 (Annexation) and 778.010 (District known as Port of Portland), a domestic water supply district formed under ORS chapter 264, a water supplier as defined in ORS 448.115 (Definitions for ORS 448.115 to 448.285) or a water authority formed under ORS chapter 450.		
Municipal -2410 ; definitions in 380 or 300.	**Kimberley Priestley (RAC; WW)** Either in this section, the Div 380 definitions, or the Div 300 rules the OWRD needs to insert a definition of "municipality".	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. -2410 was not included in the notice. See response in regards to 690-300. In addition, the definition of municipality varies across statutes (ORS 537.260(4) and ORS 540.510(3)) and rule divisions. Harmonizing these definitions and ensuring there are no unintended consequences is beyond the scope of this rulemaking effort.	No change made.
Time for completion -5140(2)	**Kimberley Priestley (RAC; WW)** - Please strike. The transfer statutes do not allow for extensions of time.	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.	No change made.

2/27/26

Failure to complete/ cancellation -6010	**Kimberley Priestley (RAC; WW)** - We strongly support the OWRD's V3 reversion to the original language in rule; the language changes proposed in V2 were not supported by statute.	Comment in support. Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.	No change made.
Time extension **-6020**	**Kimberley Priestley (RAC; WW)** - We are unaware of any statutory authority for extensions of time to complete transfers. This section should be deleted. One purpose of this rulemaking is to align old rules with statute, given that there is no statutory authority for this deleting it is within the scope of the rulemaking. That said, if the OWRD allows this to remain, it should be modified so that any extension must align with the standards in OAR 690-315 (e.g. good cause, etc); absent that, transfers can be used as loopholes to extension laws that were meant to curb speculation.	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.	No change made.
-0010	**OWRD staff proposed change.** Permit amendment rules were added to this division but are not identified in the purpose of the rules in 0010(1). This rule also references "temporary change in characters of use of a right to store water" which incorrect.	Added: These rules also establish requirements for changes to a water use permit pursuant to ORS 537.211(4). 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.	Change made.
-3000 (12)(c)	**OWRD staff proposed change.** Rule division does not reflect division 17 rules related to forfeiture and new exemptions in statute.	OWRD incorporated statutes that have been added to the Division 17 rules as exemptions from forfeiture. "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), **or is exempt under ORS 540.610(3)-4 or 540.612."**	Change made.

2/27/26
Proposed Rule Revision Tracker
Division 382 – Groundwater Registration Modifications

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
General	**Kimberley Priestley (RAC; WW)** - To the extent we have commented on Div 380 on rule provisions/language that is duplicated in the Div 382 rules, our comments on Div 380 carry over here.	OWRD's response on Division 380 is not re-copied over to this division, unless a change was also made to division 382. See division 380 if a rule change was not made. Rule changes made in 380 that are carried into 382 will be added to this table below.	See changes below.
Proof of Use; HB 3342 -0400	**Kimberley Priestley (RAC; WW)** - As noted in V1 and V2, the rules should require the applicant to include proof of use over the past five years. Absent that this rule would allow people to revive long defunct wells, which could exacerbate existing problems in already overstretched basins. It also could provide a huge loophole to the new groundwater allocation rules, in that long unused groundwater registrations could be "revived" to serve new uses without having to apply for a new right. The OWRD has "declined" to address this concern, based on their conclusion that they don't have the authority to direct this. We disagree. The statutes give the Commission broad authority to impose approval standards in rule. The relevant portion of ORS 537.610(4) reads: (4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. Furthermore, ORS 537.610(2) provides that issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.	OWRD had already declined to add this matter to the rules prior to notice on the basis that evidence of use is typically based on a claim of forfeiture and ORS 540.610 does not apply to undetermined claims (registrations). In this latest comment, OWRD believes that some interesting new points were made that warrant further research and discussion as it pertains to surface water registrations. OWRD is concerned that this matter is outside of the scope of the notice as it would add a new requirement and criteria for approval that was not included in the notice and is also not in statute.	No change made.

	Recorded registrations are required to include, among other things: the amount of ground water pumped or otherwise taken from the well each year. ORS 537.605(3)(k). The groundwater registrations statutes, as a whole, contemplate "beneficial use" for a registration to be valid. Registration serves as authority to continue beneficial use, not as a loophole to the basic tenants of Oregon water law as it relates to use of water. In bill negotiations over HB 2123 (2005), OWRD made assurances to stakeholders that the rule requirements for groundwater registrations would mirror those for surface water registrations, which do include proof of use among other things. To ensure consistency with surface water registrations, and the basic tenants of western water law, proof of use should be required. Please add that here. OWRD response to our comments was that evidence of use was not applicable here. We disagree, based on the arguments above.		
Initial Review -0550 (5)(b), (8), & (9)	**OWRD Staff proposed change** - Changes are needed to make the language in the rule consistent with language in the Div. 380 transfer rules [see 690-380-4000(5)(b), (9), & (10)], some of which was revised in response to comments from Kimberley Priestly (RAC; WW).	OWRD made the following changes to clearly describe the exception to the requirement that the applicant must, within 30 days, provide any outstanding information identified in the Initial Review: In -0550(5)(b), added the language, "*…except as provided in section (9) of this rule*," In -0550(8), added the language, "*Except as provided in section (9) of this rule…*" and inserted the word "*…permanently*" between "*shall*" and "*close*." In –0550(9), added the language, "*If requested within the 30-day time period specified in section (5) of this rule,…*"	Change made.
Initial Review -0550(9)	**OWRD Staff proposed change** - This rule incorrectly cites back to (8)(b), when instead it should point back to (5)(b) to describe the outstanding information identified in the	Replaced the language, "*…to provide the outstanding information described in subsection (8)(b)…*" with the language, "*…to provide the outstanding information described in subsection **(5)**(b)…*"	Change made.

	Initial Review that the applicant must provide in a timely manner.		
Request for Comments -0600	**OWRD Staff proposed change** - Revisions are needed to more accurately align this rule with the proposed rule language in OAR 690-382-0550(5) and (9). As written, it could be misconstrued as allowing the applicant more time to notify OWRD that they wish to continue processing the application.	Moved and modified the text, "or an additional time period allowed under OAR 690-382-0550(9)" that was immediately following "OAR 690-382-0550(5)" to make it clear that the additional time under OAR 690-382-0550(9) only applies to the time allowed for the applicant to provide the additional information; it does NOT apply to the deadline for the applicant to affirmatively respond to the IR that they want to continue processing the application.	Change made.
Evidence of use -0700	**Kimberley Priestley (RAC; WW) -** Add (e): The applicant put the water to beneficial use within the terms and conditions of the groundwater certification within the past five years. See comments above.	See response above	No change made.
Completeness review -0700(e)	**Kimberley Priestley (RAC; WW)** - We disagree with the narrowing of (d) to "applicable to groundwater registrations". The statute gives OWRD broad discretion to develop rules to set the process and standards related to groundwater registrations. The original rules contained this language. All applicable rules/laws should apply.	The original rule language in OAR 690-382-0700(2)(d) stated, "*Any other requirements for registration are met.*" which has the potential to create confusion as these rules relate to the recognition of modifications to groundwater registrations; not to the filing of nor the status of a groundwater registration itself. This matter was important to many members of the RAC with different perspectives. OWRD believes the language, as drafted in the proposed rules, best addresses the RAC's diverse views; therefore, OWRD declines to make further changes. Our perspective is that this is rather broad. Even then, OWRD rules cannot confine statute.	No change made.
-0900	**OWRD Staff proposed change –** There is an extra "concerning" in subsection (1) which makes it confusing.	Deleted concerning after party status.	Change made.
-0900 and -1000	**OWRD Staff proposed change –** Final orders are in two different sections, which is confusing. Collapse to one.	Move the following from -0900(1) to -1000(3): "Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235."	Change made.
Comment was on -0400 **Change made in:**	Kimberely Priestley (WaterWatch): HB 3342 provisions need to be included in the rules: The rules need to include the new standards adopted in the 2025 session that apply to groundwater registrations. Namely:	HB 3342 (17) is specific to permit amendments (ORS 537.211(5)), while HB 3342 (19) pertains to groundwater registrations (ORS 537.610(5)). HB 3342 (24) pertains to transfer applications under ORS 540.505 to 540.585 (ORS	Change made -0300

2/27/26

-0300	(5) The Water Resources Department may deny a change in the point of appropriation under subsection (4) of this section if the proposed point of appropriation is for a source of ground water restricted under ORS 536.415 and the proposed use is subject to the restrictions, unless the proposed point of appropriation is: (a)(A) In a critical ground water area designated under ORS 537.730; (B) In the same aquifer as the existing point of appropriation; and (C) In the same portion of the critical ground water area as the existing point of appropriation; (b) In an area for which a ground water bank that is established by law or by rule mitigates the effects of the use of ground water; or (c) Related to the recovery of stored ground water under an artificial recharge or aquifer storage and recovery project. OWRD response to previous comments on this was that this section needed more discussion. To that we say the statute is the statute, and at the very least the rules need to include the statutory language so that OWRD caseworkers and the public see the restrictions in the rule.	540.586). They provide that OWRD may deny a change in point of appropriation under certain circumstances. OWRD has included a similar change depending on the applicable ORS: "The Department may deny a change in the point of appropriation pursuant to [fill in the correct statute]." The change is included in the following rules: 690-380-2110, 690-380-7010, 690-382-0300.	

2/27/26
Proposed Rule Revision Tracker
Division 77 – Instream Water Rights

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
		Applicability outside OR	
Purpose; state borders -0000(7)	**Gen Hubert (RAC; DRC) -** While the modifications to this text in the V3 are an improvement over earlier iterations, the Department should still recognize that cooperative legislation between states does in fact allow protection of water across state lines.	The protection of water instream out-of-state would be by the state in which the water is being protected, not by OWRD.	No change made..
Purpose; state borders -0000(7)	**Kimberley Priestley (RAC; WW) -** While the language in (7) has been modified and improved since V1 and V2, we still have concerns that this could inadvertently usurp attempts to protect flows across state borders in basins like the Walla Walla. Moreover, there are statutes in place that allow OWRD to issue water rights that reach across state borders, this could thwart agreements to lease that water instream, e.g. see ORS 537.835 which allows OWRD to issue water rights from Mill Creek to the City of Walla Walla for "beneficial use". There is nothing in this statute that limits this to municipal use, simply beneficial use. ORS 537.810-870 is ambiguous enough to raise similar questions. This section is not needed to implement the two new bills or to align outdated rules with statute, thus we would, again, suggest deleting.	The point of diversion is within Oregon in the example provided (City of Walla Walla). OWRD does not have authority to issue a water right to the City of Walla Walla for a POD in Washington, that would be under the jurisdiction of Washington. The protection of water instream out-of-state would be by the state where the water is being protected, not by OWRD. Where OWRD instream water rights are protected in Washington, it is by the state of Washington, not OWRD. OWRD's jurisdiction is to the border. OWRD issues the rights in Oregon, and the other state may protect it once it gets to the border.	No change made.
		Definitions	
-0010(10)	**April Snell (RAC; OWRC) -** Specifically we support the proposed definition of "district," under 690-077-0010(10), which references the specific statutes for irrigation districts and similar local governments, and is the same language proposed in the 2015 RAC	Comment in support	No change made.
Living certificate -0010(19)	**Kimberley Priestley (RAC; WW) -** We support the OWRD's decision in the hearing draft version (V3) to delete the new term "living certificate" that was inserted into the	Comment in support. Note that OWRD deleted the definition because it was not used in division 77. Living certificates can be issued for division 77. They cannot for Division 18.	No change made.

	V2 Draft Rules (see 12/5/2025 comments for detailed explanation of our opposition to this term).		
SDAO -0010(35)	**Jeremy Austin (RAC; COLW)** - LandWatch supports the removal of the previously proposed subsection (35). **Gen Hubert (RAC; DRC)** - We support the deletion of this new definition relating to the Special Districts Association of Oregon. **Kimberley Priestley (RAC; WW) -** We support V3's proposed deletion of this new term that was proposed in the V1/V2 Draft Rules. See comments to V1/V2.	Comment in support.	No change made.
EANF			
EANF -0015(4)	**Jeremy Austin (RAC; COLW)** - LandWatch recommends removing 0015(4) entirely. ODFW is the state agency charged with managing Oregon's fish and wildlife and uniquely has the expertise to determine the flows necessary to support conservation, maintenance and enhancement of fish life, wildlife, fish and wildlife habitat or any other ecological values. As such, in place of ENAF, LandWatch recommends that OWRD rely on ODFW's requested flows as a clear, consistent and defensible basis for instream water rights applications. There are significant concerns with relying on ENAF to protect public uses, including conservation, maintenance and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values. Among the concerns raised during the RAC process, relying on an average fails to consider important daily and weekly fluctuations in stream flows that support fish, wildlife and other ecological values. For example, Tumalo Creek in Central Oregon sees temporal changes in flows that can vary significantly (See figure 1 and 2 below). Here, even a daily average fails to capture the flows that are necessary to protect the full	As noted, OWRD continues to believe that limiting agency requested instream water rights to Estimated Average Natural Flow is consistent with the authority provided under ORS 537.343(2). As noted, the existing rules provide for an exceedance of EANF where periodic flows that exceed the natural streamflow or natural lake level are significant for the applied public use. Further evaluation, research, and discussion of changing this practice would be needed and is outside of the scope of this rulemaking.	No change made.

	ecological value of a stream—let alone month or half month averages. (see Comment letter for Figures).		
EANF (general) -0015(4)	**Kimberley Priestley (RAC; WW) -** Please strike this provision in whole to ensure rules align with statute. There is nothing in statute that allows OWRD a blanket reduction of flows recommended by ODFW, DEQ or Parks. We disagree with the OWRD's response to comments that this change is outside of the scope of the RM. This is precisely within the stated scope of revising rules to ensure they conform with statute. Deletion is necessary to remove from rule existing directives that are not supported by the law. There is no authority for this limitation, and it is contrary to the directives of the Instream Water Rights Act. OWRD countered this request the RAC by asserting that the Director has ultimate authority to set flows under ORS 537.343; we disagree with their analysis as explained below: Under the ISWR Act, OWRD may only approve an instream water right for a lesser quantity of water than is applied for in instances where the reduction is consistent with the intent of "ORS 537.332 to 537.360" (the Instream Water Rights Act). ORS 537.343(1). The language of the Instream Water Rights Act very clearly directs the state to issue instream water rights in the amount necessary to protect the public use applied for by ODFW. Instream flow means the minimum quantity of water necessary to support the public use requested by an agency. ORS 537.332(2). Public use includes but is not limited to conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values. ORS 537.332(5)(b). Public uses are beneficial uses under Oregon law. ORS 537.334(1). For instream water rights for fish and/or wildlife, the request shall be for the quantity of water necessary to support those public uses as recommended by ODFW. ORS 537.336(1).	Please see response above to Jeremy Austin -0015(4).	No change made.

	ENAF is not representative of biological needs of fish. ENAF is simply an "average" of flow for a given month (as derived from historical records) that has no relation to any biological determination. An average is "an estimate or approximate representation of an arithmetic mean." Webster's Third New International Dictionary 1930 (unabridged ed. 2002). In other words, sometimes flows are above the average, sometimes they are below. By statute, instream water rights are to be set for the quantity of water necessary to support the public use applied for; whether they coincide with an "average" flow or not is of no relevance either to the biological needs of the fish or to the statutory directive to issue water rights in the amounts necessary to support the public uses applied for. Based on the full language of the Act, it is clear that the "intent" of the Instream Water Rights Act, as it relates to fish, is to protect those flows needed for the public purpose applied for, which includes all life stages. Flow needs for fish are developed by ODFW, the State's experts on the biological needs of fish. From a biological point of view, it is illogical and insufficient to limit an ODFW requested amount to ENAF; doing so could rob fish of the flows they need when the flows in any given river or stream are in fact above ENAF. Issuing water rights in the amount requested by ODFW does not "create" water, rather it simply protects it when it is in the river. As the OWRD admitted in its response to comments, ODFW flow numbers are tied to the biological needs of fish. OWRD's are not. As such, tying to ENAF does not ascribe to the "intent" of the ISWR Act, which is the only way the OWRD Director can issue ISWR for less than requested by ODFW. In the Director cannot arbitrarily reduce requested flows; any reduction must be consistent with the "intent" of the ISWR Act. In sum, the rules' limiting of the instream water right to ENAF is not consistent with either the language or intent of the Instream Water Rights		

	Act and should be deleted. Deleting this section is entirely within the scope of the RM.		
EANF (leases) -0015(4)	**Kimberley Priestley (RAC; WW) -** As noted previously, we strongly support the OWRD's proposal to remove this limitation from instream water rights that result from transfers, leases and allocations of conserved water. There is no authority in statute to limit transfers/ leases/ ACW to ENAF. That said, as noted above, the ENAF overlay should be removed from the rules in its entirety in order to ensure the rules conform with the ISWR Act.	Comment partially in support; see also response above	No change made..
EANF -0015(4) and related sections/ subsections	**Gen Hubert (RAC; DRC) -** State agency applications for instream water rights are not restricted to Estimated Average Natural Flow by statute and should not be limited by EANF in rule. EANF does not consider ecological needs relatable to flow for aquatic species such as anadromous fish. Water for an out of stream use can apply for the amount of water sufficient for the use, yet instream water rights can be limited by EANF which is unrelated to the ecological needs. EANF should not be a limiting factor for state agency instream water right applications.	Please see response above to Jeremy Austin -0015(4).	No change made.
EANF -0015(5)	**Gen Hubert (RAC; DRC) -** Strongly support the removal of the original (5), which restricted protected flows resulting from instream leases, transfers and allocations of conserved water to EANF, from the rules.	Comment in support	No change made..
EANF -0015(5)(a)-(c)	**Jeremy Austin (RAC; COLW) -** LandWatch supports the deletion of this section. **Kimberley Priestley (RAC; WW) -** We strongly support the proposed deletion of this section. The governing statutes do not limit transfers/leases of consumptive use rights to the amount of a state applied instream water right. See ORS 537.348.	Comment in support	No change made.
-0015(8)	**Kimberley Priestley (RAC; WW) -** We support the additional language through (a).	Comment in support	No change made.

-0015(9)	**Kimberley Priestley (RAC; WW) -** Support language limiting this to state applied instream water rights to align it with statute.	Comment in support	No change made.
-0015(10)	**Kimberley Priestley (RAC; WW) -** The limiting language that ties public use to subsections (4) and (5) are not supported by statute. To comply with statute, please strike "and shall be consistent with Sections (4) and (5) of this rule". See comments for subsection (4) above for rationale.	Please see response above to Jeremy Austin -0015(4).	No change made.
SDAO Notification			
SDAO notification -0020	**Submitted by Leah Cogan (RAC; GSI) on behalf of Michael Martin (RAC; League of OR Cities); Mark Landauer (RAC; Special Districts Association of OR); Adam Denlinger (OR Water Utilities Council); Mike Buettner (OR Water Utilities Council); Jason Green (OR Assoc. of Water Utilities) -** Our members include cities and non-city water districts that provide public drinking water services to many communities around Oregon. We are disappointed that the proposed notification to special districts was removed from the final draft of the proposed rules in OAR 690-077-0020. Special districts are local governments that have locally elected officials who are accountable to the public. As such, we believe that this remains an equity and transparency issue for public water districts. We also believe that notification to special districts would have helped avoid confusion amongst our members and the potential filings of unnecessary protests	OWRD recognizes that there can be value in coordination and also recognizes that advance notice before application poses concerns in terms of the priority date system. If such notification will avoid confusion and protests, ODFW may continue to voluntarily provide information, which is its current practice.	No change made.
SDAO notification -0020(3)	**Jeremy Austin (RAC; COLW)** - LandWatch strongly supports the removal of the proposed language in previous versions of the proposed rules that required special notification to the Special Districts Association of Oregon prior to ODFW filing an instream water right application. **Kimberley Priestley (RAC; WW) -** We strongly support the removal of the language found in V1/V2 which directed pre-notice of the filing of an application to SDAO. This was	Comment in support. See also response above.	No change made.

	not related to HB 3342 or HB 3544 and was in direct conflict with statutory directives to process instream applications in the same manner as out of stream applications. See comments on (5)(j) for further arguments.		
State Agency Applications			
-0020(5)(j)	**Kimberley Priestley (RAC; WW) -** We strongly oppose OWRD's refusal to remove this section of a long-standing rule that does not comport with statute. This section requires ODFW to send a notice of "intent to file ISWR applications to local governments. In order to align Div 77 with statute, this section needs to be struck. This is an unfair provision that gives local governments an advanced, closed-door opportunity to exert political pressure on ODFW to stall/stop submittal of applications, waste ODFW staff time, and set up instream water right applications for legal challenge and many other problems. ORS 537.349 very clearly states that processing of ISWR application shall be in accordance with processing of water right applications, except as provided under 537.343. Noting in ORS 537.343 directs or allows pre-notification of an application. Instream water rights are held in trust for the people of Oregon (ORS 537.332(3)) - they are the peoples' water rights - and thus establishing a process by rule (that is not supported by statute) that gives only certain water user interests and entities, who typically oppose instream water rights, unbalanced and advanced access to influence instream water right application submittal/content is inconsistent with the statutory scheme. OWRD response to comments on this is that this would be a significant shift from current practice. This response ignores the point of the comment; that this provision of rule is in conflict with underlying statute. That the OWRD has been requiring notice in a manner that conflicts with law does not grant it immunity from deletion in this rulemaking,	OWRD assumes the comment pertains to (4)(j). This rule is part of OWRD's compliance with its Land Use State Agency Coordination program. OAR 690-005-0025(7) states division 77 is a land use program. OAR 690-005-0035(2) states how OWRD can comply, including provisions in the rules (in division 77) or by applying procedures in the Department's land use procedures guide. Page 55 of the Land Use Procedures Guide spells out actions to be taken, which include notification. This topic should be addressed as part of discussions around updates to OWRD's State Agency Coordination program. Regarding comment that out-of-stream applications are being treated differently; they are required to have a land use form.	No change made.

	of which one purpose is to conform rule with law. Please strike this provision from the rules. We would also note that this is yet another example of the disparate treatment given to instream as opposed to out-of-stream rights as there is no requirement that out-of-stream applicants give notice to local governments of their water right applications.		
-0020(5)(k)	**Kimberley Priestley (RAC; WW) -** This section should be struck for the same reasons outlined in comments on [-0020(3)].	-0020(5)(k) does not exist in current rule and was removed prior to filing. The provision under 0020(3) related to Special Districts Association of Oregon notifications, was removed prior to filing.	No change made
Application processing; initial reviews; PFOs, protests, FOs, contested cases -0027 through –0053 **NOTE: -0033, -0048, -0053 out of scope**	**Kimberley Priestley (RAC; WW) -** We urge the OWRD to delete the detailed directives on processing an application (through final order/cc) found in sections 690-077-0027 through 690-077-0053. The Division 77 rules should simply state that instream water right applications will [be] processed in the same manner as other water right applications. This would be consistent with the Instream Water Rights Act, which states: **537.349 Processing request for in-stream water right.** Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252. It is cumbersome and inefficient to have 25 pages of rules specifically on instream water rights when there are detailed rules on processing applications, and instream water rights are supposed to be treated the same as other water rights. OWRD should not be describing the same process in separate sets of rules--among other problems, it creates too much potential for inconsistencies, inadvertent or otherwise. OWRD response to our previous comments suggesting deletion of this section and replacing it with directives to process under Div 310 notes that this is outside the scope	This proposal is outside the scope of this rulemaking and the notice; alignment or merging of the rules would require much more analysis and discussion. Such a revision would be a substantial undertaking that is beyond the time and scope of this rulemaking. Several of the rule divisions were not included in the notice and OWRD cannot make changes to those rules.	No change made

	of the rulemaking. We disagree. One of the stated purposes of this rulemaking is to align the rules with statute. Statute requires that processing of an instream right is in accordance with ORS 537.140 to 537.252. provision diverges from the Div 310 rules. Either those rules need to be updated to include the details in the Div 77 rules, or the Div 77 rules need to be updated to delete provisions not in alignment with Div 310.		
Collaborative conversation -0052(2)	**Kimberley Priestley (RAC; WW) -** We appreciate and support the OWRD's retention of the language "collaborative conversation" in V1 and V2. Administrative holds should not be allowed to stall processing of instream rights. We have seen this at the county level already. If interests are opposed to instream rights they should be required to go through the normal public notice/comment process (comments, protests, contested cases) not push for holds to allow for the generation of political pressure via county commissioners, legislators, etc.	Comment in support.	No change made.
MPSF Conversion			
MPSF conversion -0054	**Jeremy Austin (RAC; COLW) -** LandWatch has concerns with the language in this section and request that OWRD confirm that this section aligns with statute, especially ORS 537.346, which says that minimum perennial streamflows "shall be converted to in-stream water rights."	See response below to Kimberely Priestely on -0054.	No change made.
MPSF conversion -0054	**Kimberley Priestley (RAC; WW)** - We continue to have significant concerns with this section. We believe this section of rule should be cut in whole and simply replaced by the language of the statute. The old rules already contravened statute by allowing OWRD the discretion to refuse to convert and MPS on the grounds it was not in the public interest. The new rules add to the existing problems by proposing a wholly new process that includes the ability to protest an MPS conversion. Neither the old directives or the new directives are allowed by statute, and in fact directly contravenes its mandate.	The proposed rules are consistent with ORS 537.346. As noted by the commenter, ORS 537.346(1) requires that the instream water right certificate be issued "in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow." ORS 537.343(3) describes the process for issuing an instream water right certificate and provides that it must be issued "according to the provisions of ORS 537.341." ORS 537.341, in turn, states that the Department shall issue instream water right certificates "subject to the provisions of ORS 537.343." ORS 537.343, in its entirety, requires the issuance of a proposed final order, which may approve,	No change made.

	The relevant section of ORS 537.346(1) states: All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow. Notably, ORS 537.346 says unequivocally that minimum perennial streamflows "shall be converted to in-stream water rights." In other words, the OWRD does not have any discretion to "not" convert MPS to instream water rights. While the statute states the conversion shall be done "after the Water Resources Commission reviews the streamflows," it does not provide for protests or hearings on the conversions. Instead, it requires that the conversions take place as a ministerial matter of course. Yes, the statute says a certificate shall be issued "in accordance with ORS 537.343," but that simply refers, as the statute says, to the certification, not the process in ORS 537.343 for new instream water rights. It does not make sense to subject minimum flow requirements already set by rule to the same process as new instream water rights. The proposed new process does not align with statute and is far outside of the scope of this rulemaking. At this juncture, we would suggest the OWRD cut this section in whole and simply put the language of the statute in the rule.	approve for a lesser amount, or reject the requested instream amount. Had the legislature intended to exempt minimum perennial streamflow conversions from the proposed final order process described in ORS 537.343, ORS 537.346(1) would have needed to state that the certificate must be issued *notwithstanding* ORS 537.343, but otherwise in accordance with ORS 537.341. Further, the statute requires the Commission to "review" not just convert.	
Instream Transfers			
Instream Transfers -0075	**Jeremy Austin (RAC; COLW)** - LandWatch requests that OWRD verify this process is consistent with out-of-stream water right application processing requirements. If it is not, either strike this section, or update Div 380 to make it	Since the same details are considered as part of OWRD's injury and enlargement evaluation regardless of whether an application for a Div. 380 permanent transfer or a Div. 77 instream transfer is being reviewed, OWRD agrees that consistent criteria between the two rule divisions makes	No change made.

	consistent with the process outlined for instream transfers.	sense. OWRD does not want to remove the detailed review criteria in Div. 77 as it articulates what the department does (both for 77 and 380). The ideal situation would be to add it to 380 so that 380 is more transparent about what we already do. OWRD is concerned that this matter may be outside of the scope of the notice for Div. 380 as it adds review criteria to the rule that was not included in the notice. Therefore, while we think it would be ideal to have consistent language, we believe it to be outside of the scope of the rule notice.	
Instream Transfers -0075 -0077(3)	**Gen Hubert (RAC; DRC) - –** Processing an Instream Transfer Application. OWRD is required by statute to review instream transfers similarly to out-of-stream transfers. Division 77 Application processing rules appear much more descriptive and stringent than those for Division 380. To align the two with regards to Application processing, either the more descriptive analysis regarding return flows and losing reaches should be removed from Division 77 or added to Division 380. Rules are referred to for guidance. If the same review guidance is not noted in Division 380, then it would appear that the same stringent analysis (Division 77) would not be required. This also relates to evaluation under Division 77-0077(3).	See response above to Jeremy Austin on -0075.	No change made.
Processing IS transfer application -0075(3)(a), (b), (c)(A), (c)(B)	**Kimberley Priestley (RAC; WW) -** In order to adhere to statutory directives, the noted sections should be cut in whole. ORS 537.348 (1) states in relevant part: "Except as provided in subsection (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585." Per this directive, the OWRD is required to review instream transfers in the same manner as out-of-stream transfers (Div 380 rules). Despite this, the Div 77 rules have a number of requirements that go far beyond Div 380, including analyzing return flows, losing reaches, etc. These are not found anywhere in Div 380. Instream	See response above to Jeremy Austin on -0075.	No change made.

	transfers are supposed to be reviewed in the same manner as out-of-stream transfers. OWRD should either strike this whole section, or in the alternative, add all these provisions to Div 380. To keep as is, where instream transfers are scrutinized to a much greater degree than out-of-stream transfers, and often cut back accordingly when the same transfer if not instream would not have been, is inequitable, inconsistent with statute, and goes against state policy which encourages instream protection and restoration. OWRD response to comments states that "instream transfer processing is the same as Div 380 transfer process. Div 380 transfers do look at any loss when transferring a water right, its just that Div 77 has more of it laid out in the rule than Div 380 does, but it is being addressed." This comment misses the point, the point of the original comment is that any process needs to be the same in rule. Rules grant certainty that the same process must apply to instream and out-of-stream. Rules also provide additional legal leverage if there are disagreements. So in other words, as the Div 380 and Div 77 stand today, it is easier to challenge an instream tran[s]fer than an out-of-stream transfer. This is very unfair and not supported by law. Again, we urge the OWRD to align processing of instream and out-of stream water rights, transfers and leases as required by statute.		
Instream Leases			
-0076(4), (4)(b)	**April Snell (RAC; OWRC) -** We are supportive of language in 690-077-0076 (4) that will allow less unnecessary paperwork for districts submitting instream lease applications on behalf of the water rights they hold in trust for their patrons. We think some of the new language in (4)(b) is unnecessary (as districts are public entities already subject to public records requests) but do not have significant concerns about its inclusion.	Comment mostly in support	No change made

-0076(4)(a) **-0076(2)(c)**	**Gen Hubert (RAC; DRC) -** We would like to suggest a clarification here - that the signed lease can be submitted by the lessee as noted in 0076(2)(c) the lessee may assist with the lease application.	OWRD agrees with clarification is needed here. Changed -0076(4)(a) to add, "In the case where the lessee is other than the Department, the lease application shall be submitted by the individual or organization and signed by the individual or an authorized representative of the organization, as applicable"	Change made.
-0076(4)(b), (h)	**Gen Hubert (RAC; DRC) -** Strongly support this addition - the district holding the district water user forms, water right conveyance agreements and lessor documentation on file for those participating in a district lease. This is aligned with other temporary water movements associated with districts. This will greatly improve the efficiency of building district pooled leases and importantly, the Department's review and approval of district leases.	Comment in support	No change made
Processing IS lease application -0077(3)	**Kimberley Priestley (RAC; WW) -** This section should simply state that "The Department shall evaluate the instream lease application for injury and enlargement" and cut the second sentence.	See response above to Jeremy Austin on -0075.	No change made
Processing IS lease application -0077(3)(a)-(d)	**Kimberley Priestley (RAC; WW)** - Same comment as -0075. The "except as provided in subsection (2) to (6)" of ORS 537.348 does not absolve the OWRD from processing instream leases in the same manner as out-of-stream, but rather notes specific attributes not allowed "to a person who transfers a water right by purchase, lease or gift", which includes "lease." So again, unless these same standards are added to Div 380, they should be struck from this section. OWRD response to comments states that: "instream transfer processing is the same as Div 380 transfer process. Div 380 transfers do look at any loss when transferring a water right, it's just that Div 77 has more of it laid out in the rule than Div 380 does, but it is being addressed." As with -0075, the OWRD comment misses the point. The point of the original comment is that any process needs to be the same in rule. Rules grant certainty that the same process must apply to instream and out-of-stream. Rules also provide additional legal leverage if there are disagreements. They need to be consistent across	See response above to Jeremy Austin on -0075.	No change made.

	instream and out-of-stream. To fail to do so puts instream rights at a disadvantage, which is not supported by statute.		
-0077(4)	**Kimberley Priestley (RAC; WW)** - We would suggest rewording so it clearly states that there is a 21 day comment period on an instream lease, dating from the day of the public notice. And then go into the other language.	OWRD revised both 690-077-0077(1) & (4), as follows: -0077(1) is amended to read, "On receipt of a complete instream lease application, the Department shall give notice of the application in its weekly public notice and accept written public comments for 21 days." -0077(4) is amended to read, "If any comments are received in response to the notice under section (1) of this rule that allege injury to other existing water rights or enlargement of the existing water right proposed for instream lease, the Department shall provide the comments to the parties, and the Department shall review the comments prior to issuance of an order approving or denying the lease application."	Change made.
-0077(11)	**Gen Hubert (RAC; DRC) -** Thank you for the clarifying edits here. We support this change, **Kimberley Priestley (RAC; WW) -** The V3 language is much clearer. Thank you for the edits here.	Comment in support	No change made
Other			
-0065(3)	**Kimberley Priestley (RAC; WW)** - See comments on cited sections of the Div 77 rules	OWRD is unclear on this request.	No change made.
-0080	**Jeremy Austin (RAC; COLW)** - LandWatch supports removing this section as it does not make sense and conflicts with other rule divisions (e.g. Division 17). **Gen Hubert (RAC; DRC) -** We support the deletion of the cancellation provision for Instream Water Right. **Kimberley Priestley (RAC; WW) -** We support the continued proposed deletion of this section.	Comment in support	No change made.
-0100	**Kimberley Priestley (RAC; WW) -** We appreciate the process added here.	Comment in support	No change made.
Instream lease renewals	**Gen Hubert (RAC; DRC) -** Appreciate rules clarifying the lease renewal process. If (1)(a) is not a statutory	OWRD's intent with this rule is to allow for an expedited watermaster review process. That said, while this is aimed at	No change made.

-0105	requirement, it should not be included in the rule. However, a 5-year limit for renewal does make sense if it is more specifically tied to an expedited watermaster review process since beneficial use would have been established by the prior lease record within the 5-year window.	streamlining the process, OWRD is still statutorily required under ORS 537.348(4) to publish notice of instream lease applications (including renewals) and accept written comments for 21 days.	
Instream lease renewals -0105	**OWRD Staff Proposed Change** – Clarity in this rule title is needed to more clearly convey that the intent of this rule to allow for an expedited watermaster review process if an instream lease renewal application is submitted within 5 years from the date of expiration specified in the last final order approving the instream lease.	OWRD modified the title for OAR 690-077-0105 to read as, "Application for Expedited Instream Lease Renewal."	Change made.
-0105	**Kimberley Priestley (RAC; WW)** - New requirement: The applicant should have to provide evidence to the OWRD that, absent the instream lease, they are ready, willing and able to put the water to the original beneficial use. Without such a requirement, the proposed process would allow a water right holder to hang onto a water right indefinitely and potentially try to use the water for a new consumptive use in the future. While we support water instream, given the rules are not clear that if the original use goes away the underlying right could not be transferred to a new consumptive use we think this omission leaves open the door for future mischief. Given that, we would suggest two amendments. First, given instream leases are similar to temporary transfers, which do require, upon expiration, that the transfer revert to the original use, the rules should be clear that the use reverts to the original use (including type of use and place of use). In response to comments, OWRD noted this is what happens. There is nothing in rue that says this; if that is the case it should be in rule. We would also ask that OWRD clarify that the lease holder cannot transfer the instream lease to a new out-of-stream use at the end of the lease. That type of transfer can only take place if the water can in fact revert to the original use. Absent these changes, the rules leave open the potential for mischief.	The law is clear that leasing water instream is a beneficial use of water. For an instream lease, the water right must have been beneficially used within the past 5 years or, if not used, demonstrated that the water use is not subject to forfeiture. Because an instream lease renewal application must be submitted within 5 years from the date of expiration specified in the last final order approving the instream lease, beneficial use under the water right for an instream purpose has clearly occurred. OWRD does not interpret the law to mean that use must begin under the original water right before a transfer can occur, following an instream lease. As stated above, use of water instream through an authorized lease or transfer is a beneficial use. The comments pertaining to the reversion of the water right, upon expiration of the instream lease, back to the existing authorized use and place of use are appreciated, and it reflects OWRD's existing practices. OWRD will continue to include this language in approvals. That said, we think this comment applies throughout several areas of Div. 77, not just temporary transfer renewals, and should apply more holistically than in just this rule. While we think this could be a good addition to the rules, OWRD is concerned that needed changes are outside of the scope of the rule notice.	No change made.

2/27/26

General			
General **Living certificate**	**April Snell (RAC; OWRC) -** As previously stated above, we have concerns about the proposed deletion of a "living (water right) certificate" here and throughout the operative sections of Division 77 and other divisions. Even though Department retains in the proposed rules the flexibility intended by the term we request that definition be restored.	Living certificate was not used in the rules, which is why it was deleted. Terms should not be defined unless they are used in the rule. OWRD agrees that living certificates are important tools for efficiency purposes and intends to continue to utilize them in the context of this division despite the lack of definition.	No change made.
General **Div 18, 77, 380**	**James Fraser (RAC; TU)** TU works closely with landowners on instream flow restoration projects, and we appreciate the instances where WRD have clarified language in rule divisions related to instream transfers (Division 380), the Allocation of Conserved Water program (Division 18), as well as instream leases and instream water rights (Division 77). TU's verbal and written comments have already provided specific input on numerous rule provisions, and we will not repeat those here because many have been handled in the final rule package to our satisfaction.	Comment in support	No change made.
Deschutes Basin **Div 18, 77**	**Kate Fitzpatrick (RAC; DRC;** Bend Hearing; summarized from transcript) - And we specifically today just want to comment on appreciation for the improvements to Division 77 and Division 18 we made in stream leasing and permanent in stream transfers and the allocation of conserved water statutes. Related to Division 77, DRC works with 80 irrigation districts and about 350 landowners annually to in stream lease up to 75 cubic feet per second back to our streams alongside an additional 74 CFS that have been permanently transferred in stream. And we also utilize Division 18, which has protected 174 cubic feet per second in partnership with irrigation districts to our streams through the allocation of conserved water program.	Comment in support	No change made.

	These are very important programs and rules for flow restoration in the Deschutes Basin and reaches that had once been fully diverted. And we just wanted to comment that the improved efficiencies proposed in the rules will be beneficial to the resource and will improve the workflow for practitioners like the DRC and irrigation partners who use these programs and state staff who process these transactions.		
Fees	**Ryan Krabill (RAC; OFB) -** With respect to instream water rights-related process changes, OFB asks the Department to proceed carefully so that procedural reforms do not unintentionally shift costs or burdens onto existing out-of-stream users or create a de facto advantage through process alone. OFB believes that there should not be a fee to file appeals for instream water rights, and that when the state files for instream water rights in a basin or watershed there should be a single application. OFB therefore requests that OWRD confirm—clearly in rule text and implementation—that instream-related reforms will not rely on fee mechanisms or fragmented application approaches that conflict with this approach. We respectfully request clear guardrails that …ensure instream-related procedural changes do not shift burdens onto out-of-stream users	Most agency fees, including protest fees, are set in statute and further discussion of these fees is not within the scope of this rulemaking. Further, requiring one instream water right application for an entire basin would be a significant change and is beyond the scope of what is contemplated in this rulemaking and beyond the scope of notice.	No change made.
Scope	**April Snell (RAC; OWRC)** - OWRC was a member of the most recent previous RACs related to Division 77 (2015 and 2021,) which were properly structured as a single division rulemaking and allowed for more time to properly discuss proposed changes. However, neither RAC was actually completed and some of the proposed changes in the current draft were not discussed or agreed upon in the previous RAC efforts, or are not tied the 2025 legislation. While this division did have more RAC discussion than other rule	Comment partially in support and partially about process. OWRD acknowledges that this was an ambitious effort and staff did their best to provide clarity on changes throughout the process and document reasons in detail for proposed changes as shown and posted on the rulemaking page. We appreciate the feedback.	No change made.

	divisions, it is still concerning when there are so many changes without full explanation of why. That being said, we are supportive of several of the changes discussed in the previous RACs and other minor changes. We are supportive of several changes that will provide clarity and reduce unnecessary steps for districts to file instream leases.		
Minor			
Grammar/typo -0010(11)	**April Snell (RAC; OWRC) -** The definition of "district water user" is slightly different than previous versions and I believe has a typo. "(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." **Upstream should be instream**. There are probably more typos**.**	OWRD agrees - 0010(11) has been corrected to say "instream" not "upstream"	Change made.
Statutory Authority/ Implementation -0065	**OWRD Staff Proposed Change** – Correct typo 539.360 to 537.360. Remove 536.027 from statute implemented. It is statutory authority for rulemaking only.	corrected	Change made.
-0010(30) & (31)	**OWRD Staff proposed change** – Removed the word "existing" from in front of "water right" because it is unnecessary.	Deleted the word "existing" from in front of "water right."	Change made.
-0015(8)	**OWRD Staff proposed change** – missing colon	corrected	Change made.
-0020	**OWRD Staff proposed change** – Last word in subsection 7 is unnecessarily capitalized	Change to lowercase s in "Section"	Change made.