

H - Updates to Water Rights Transactions, Contested Cases, and Forfeiture Rules

Water Resources Commission Meeting

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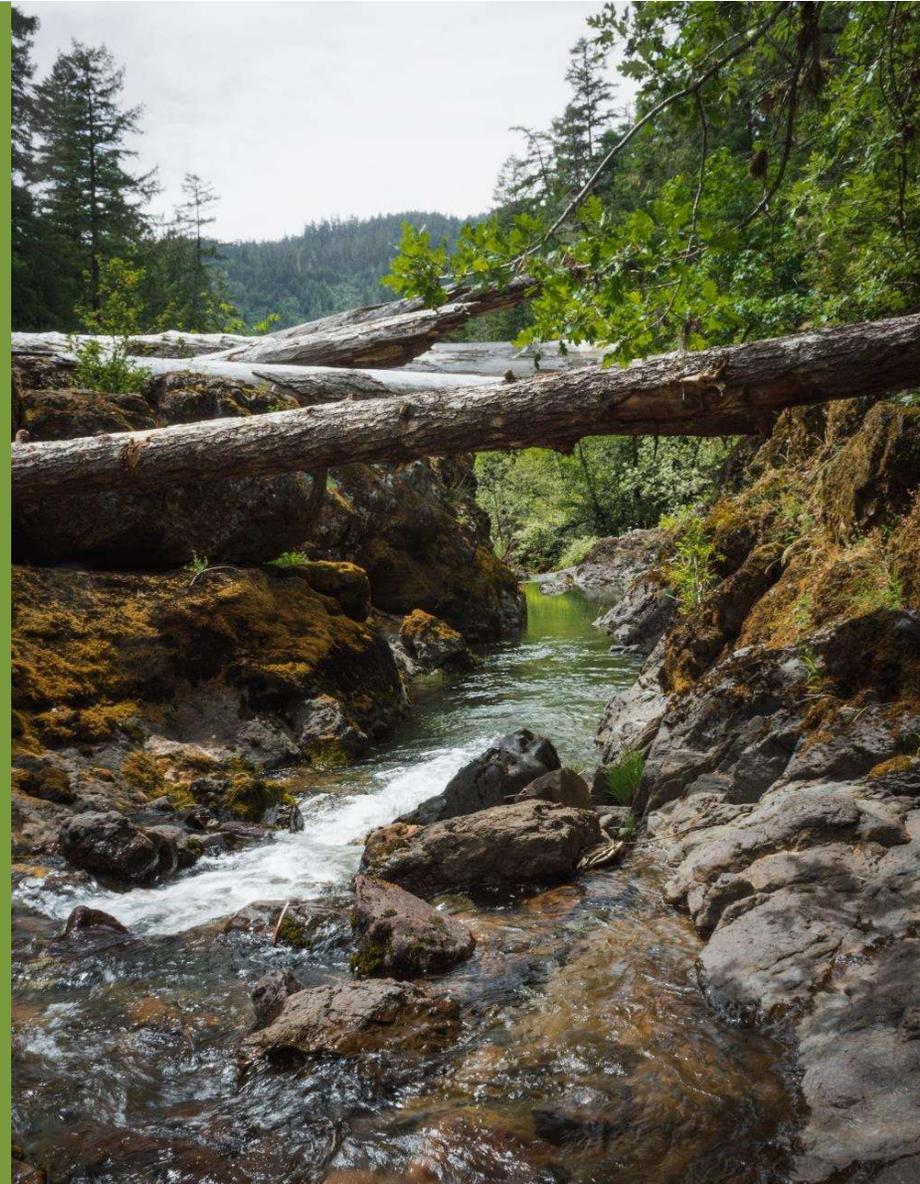
Katie Ratcliffe

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Water Right Services

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February 27, 2026



Integrated Water Resources Strategy – Recommended Actions

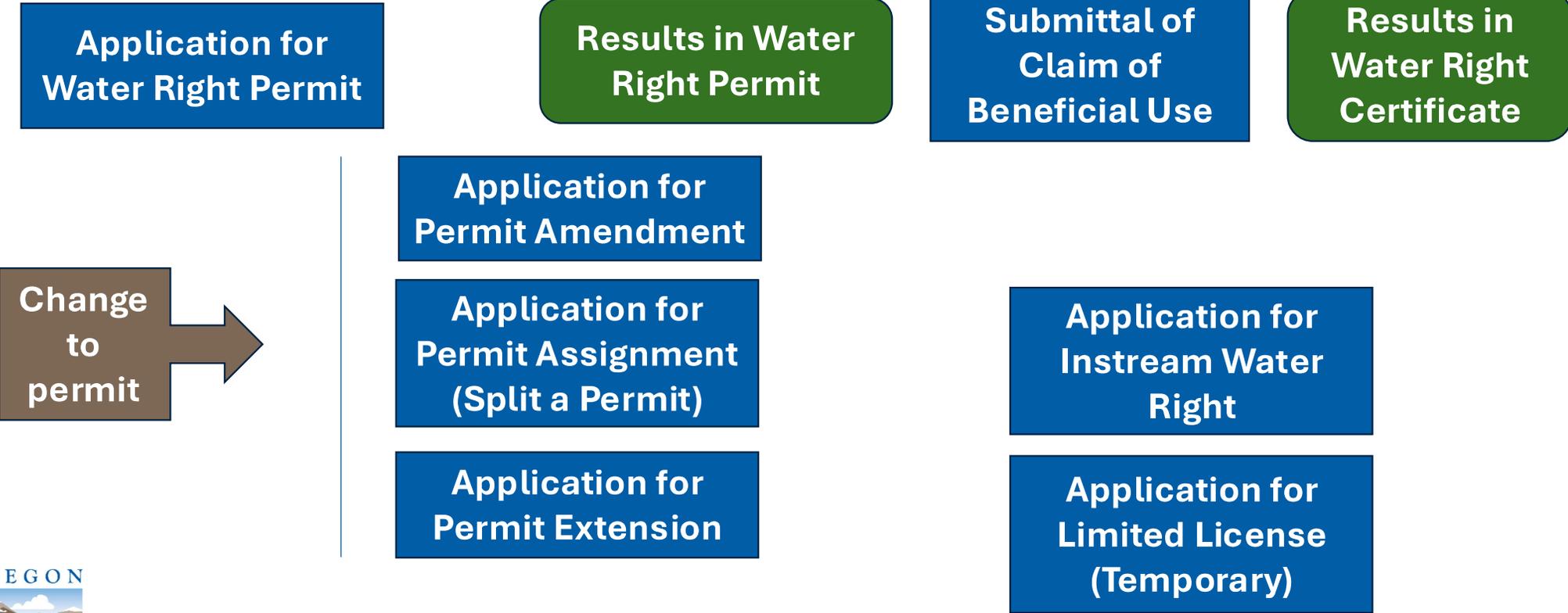
- 10F – Strengthen and Improve Water Quantity and Water Quality Permitting Programs
- 11B – Develop Additional Instream Protections

Rule Context

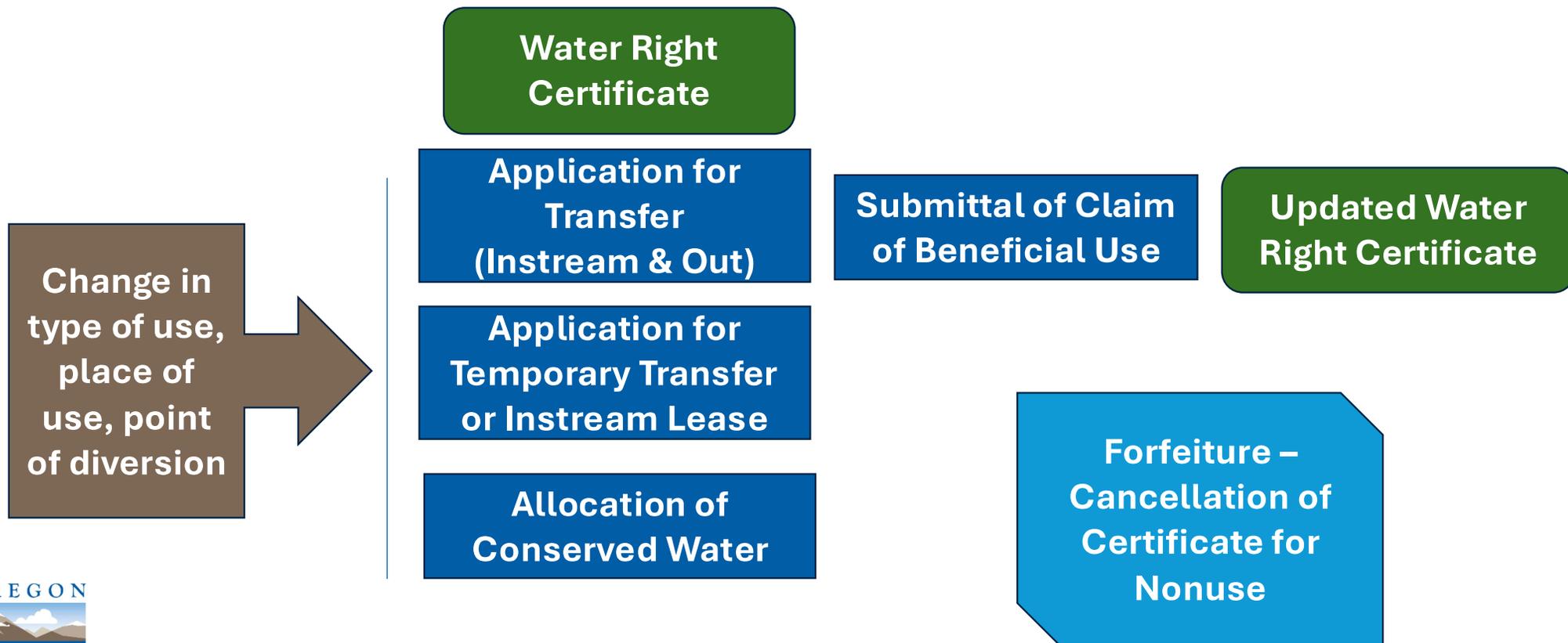
Rule Snapshot

- Clear, efficient, and consistent to better serve the public
 - Modernize and streamline to maximize limited staff time for more timely decisions
-
- (1) Implement 2025 and other legislation
 - (2) Implement process and policy improvements
 - (3) “Housekeeping”

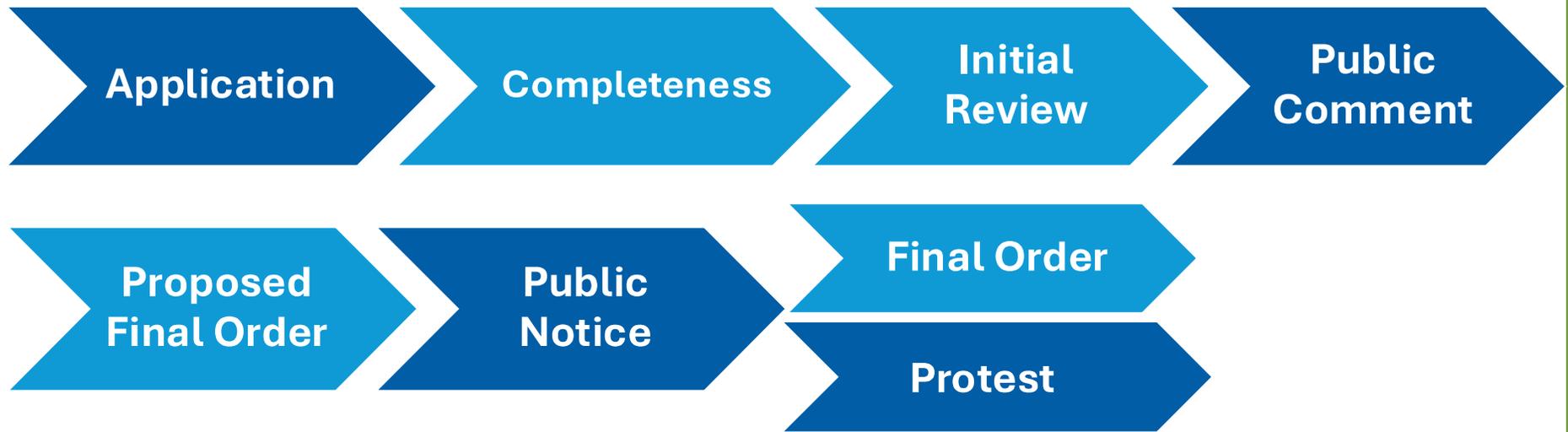
What are water right transactions, forfeiture, and contested cases?



What are water right transactions, forfeiture, and contested cases?



Typical Processing Steps for Permanent Transactions (not all types)



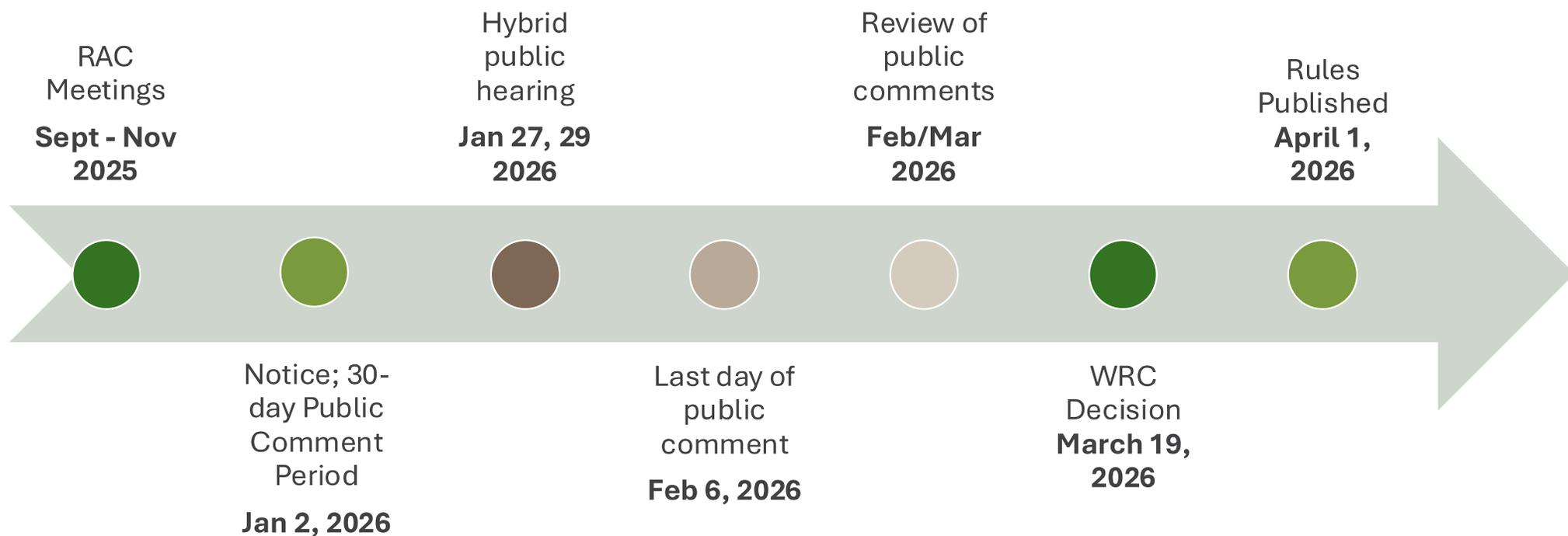
Contested Case Hearing

Note: Not all contested case changes are limited to water right transactions.



Process/Scope

Rulemaking Timeline - Phase 1



RAC Roster (22 Members)

Jeremy Austin, Central Oregon LandWatch

Glenn Barrett, Water for Life

Anton Chiono, Confederated Tribes of the Umatilla Indian Reservation

Leah Cogan, GSI Water Solutions

J.R. Cook, Northeast Oregon Water Association

Genevieve Hubert, Deschutes River Conservancy

James Fraser, Trout Unlimited

Chris Hall, Water League

Keri Morin Handaly, Confederated Tribes of Grand Ronde

Ryan Krabill, Oregon Farm Bureau

Greg Kupillas, Oregon Groundwater Association

Mark Landauer, Special Districts Association

Karen Lewotsky, Oregon Environmental Council

Sarah Liljefelt, Oregon Cattlemen Association

Michael Martin, League of Oregon Cities

Austin Patch, Summit Water Resources

Lauren Poor, Portland General Electric

Kimberley Priestley, WaterWatch of Oregon

Branden Pursinger, Association of Oregon Counties

April Snell, Oregon Water Resources Congress

Jeff Stone, Oregon Association of Nurseries

Jessi Talbott, Central Oregon Irrigation District



Phase 1 - OAR 690

002	Protests and Contested Cases
014	Certified Water Right Examiners and Claims of Beneficial Use
017	Cancellation of Perfected Water Rights
018	Allocation of Conserved Water
077	Instream Water Rights
300	Definitions
305	General Map Criteria
310	Water Right Application Processing
315	Water Right Permit Extensions
325	Assignment of a Water Right Permit and Request for Issuance of Replacement Permits
340	Water Use Authorizations
380	Water Right Transfers
382	Groundwater Registration Modifications

Phase 2 – OAR 690

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

Tribal Engagement

Invitation to Engage

- Sept 5 - Formal G2G consultation, RAC participation, informal engagement
- Jan 2 – Notice with renewed invitation to engage

RAC Meetings

- Confederated Tribes of the Grand Ronde
- Confederated Tribes of the Umatilla Indian Reservation

Briefing

- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Consultation

- Klamath Tribe

Staff-to-Staff Updates

- LCIS Natural Resources Work Group & Cultural Resources Cluster quarterly meetings

Notice and Public Comment

- **Notice of Proposed Rulemaking**

- Tribes, cities, counties, CWREs, Interested Parties List, Rulemaking List, Water Rights List, well drillers, legislators

- **Notice of Proposed Change to Land Use Program**

- Department of Land Conservation and Development, Oregon cities and counties

- **Public Comments**

- 4 commenters at public hearings
- 18 individual written comments received
- 122 form letter written comments received

Proposed Rule Changes

Making the Most of Our Time

- **Items in blue will be discussed as part of presentation**
- Cannot cover every rule detail
 - Tools for you for next meeting will be discussed later in this presentation

Division 2 – Protests & Contested Cases

2025 Legislation	
HB 3342	Electronic documentation
HB 3544	<ul style="list-style-type: none">• Uniform (protests, requests for party status, contested cases)• Automatic final orders (33 days)• Default hearing schedule (180 days)• Oral testimony• Remote hearings

Division 2 – Protests & Contested Cases

Process/Policy	
Add	Consolidation/bifurcation of hearing(s) prior to referral
Add	Discovery limits, including admissions, interrogatories, staff time, subpoena deadlines, site visits; file in advance
Add	Pre-referral to encourage settlement
Add	Accurate contact information
Add	Default to electronic service upon referral
Clarify	Information needed for exceptions
Housekeeping	
Clarify	Interface with Administrative Procedures Act (APA)

Division 305 (New) – General Map Criteria

General standardized map criteria for water right transactions

Division 14 - Certified Water Right Examiners (CWRE) and Preparation of Claims of Beneficial Use

Recent Legislation	
HB 3342	Electronic documentation
Process/Policy	
Add	Pump test submission with claims of beneficial use
Align	Standardized mapping criteria (Div 305) with supplemental
Clarify	Rule applicability

Division 300 – Definitions

2025 Legislation	
HB 3544	Align definitions with statute and across rule divisions (protest, contested case, etc.)
Housekeeping	
Add	Applicability to Div 380 (Water Right Transfers); Div 385 (District Water Right Transfers)
Remove (Unused or Expired)	“Planned Uses”, “Water is Available”
Clarify	“Proposed Certificate”, “Stockwater Use”
Align	“Water right subject to transfer” to “Water use subject to transfer”

Division 310 – Water Right Application Processing

2025 Legislation	
HB 3342	<ul style="list-style-type: none">• Electronic documentation• Phased processing, fee payment
HB 3544	<ul style="list-style-type: none">• Uniform (protests, requests for party status, contested cases)• Automatic final orders (33 days)
SB 1154	Groundwater Quality Management Areas – allow issuance of groundwater permit if certain exempt wells consolidated (drinking)

Division 310 – Water Right Application Processing

Process/Policy	
Require	Notice to landowner if someone applies for water right on their property
Require	Proof of signatory authority
Remove	Required information already available to OWRD
Clarify	Administrative holds
Remove	For some, posting OWRD weekly public notice
Align	Standardized mapping criteria (Div 305) with supplemental
Housekeeping	
Align	Div 5 (land use compatibility); remove ability to accept land use receipts and to approve without land use information
Clarify	APA notice requirements
Remove	Authorities no longer in statute

Division 315 – Water Right Permit Extensions

2025 Legislation	
HB 3342	<ul style="list-style-type: none"> • Extension allowances • Electronic documentation
HB 3544	<ul style="list-style-type: none"> • Uniform (protests, requests for party status, contested cases) • Automatic final orders (33 days)
Process/Policy	
Remove	Checkpoint conditions
Clarify	Proposed final order on extension may initiate cancellation
Align	Policy requiring compliance with fish-related permit conditions
Housekeeping	
Align	Storage project extensions for counties, municipalities, and districts with internal guidance and statute
Align	“undeveloped portion” definition, reference to federal statutes

Division 340 – Water Use Authorizations

2025 Legislation	
HB 3342	Electronic documentation
Process/Policy	
Clarify	When a public comment has raised a public interest issue that merits the standard process
Align	Standardized mapping criteria (Div 305) with supplemental
Housekeeping	
Remove	Circular rules references
Align	Limited licenses with statutory language

Division 77– Instream Water Rights

Recent Legislation	
HB 3164 (2023)	Split season leases permanent authority
HB 3342	<ul style="list-style-type: none">• Electronic documentation• Phased application processing• Applications returned for sources closed to further appropriation
HB 3544	<ul style="list-style-type: none">• Uniform protests, requests for party status, contested cases• Automatic final orders (33 days)• Orders issued without hearing that modify proposed final orders• Standardize terminology

Division 77 – Instream Water Rights

Process/Policy	
Clarify	When withdrawal applies to new instream water right applications
Remove	Forfeiture of instream water rights
Clarify	Allowed timelines for administrative holds
Align	“enlargement” and “injury” determination
Remove	Requirements to post notice in certain offices
Housekeeping	
Remove	“estimated average natural flow” for limits on transfers, leases, and allocations of conserved water
Align	“minimum perennial streamflow” conversion
Align	APA – mailing of notices
Clarify	Measuring, reporting



Division 77 – Instream Water Rights

Process/Policy	
Clarify	Instream water rights issued within Oregon's borders
Clarify	Rights that can be transferred, including storage rights
Align, Add, Update and Remove	Various definitions

Division 77 – Instream Water Rights

Instream Leases	
Add	District – keep written authorization on file; Streamline lease renewals
Clarify	Storage rights lease requirements
Add	Federal Gov't Consent – keep copies of contracts
Remove	Watermaster office - post lease application notice
Precedence of Future Uses	
Align	With statute and follow water right processing, including public comment instead of hearing, incorporate into proposed final order

Division 325 - Assignment of a Water Right Permit and Request for Issuance of Replacement Permits

2025 Legislation	
HB 3342	Electronic documentation
HB 3544	<ul style="list-style-type: none"> • Uniform protests, requests for party status, contested cases • Automatic final orders (33 days)
Process/Policy	
Align	Initial review step consistent with other processes
Align	Standardized mapping criteria (Div 305) with supplemental
Clarify	Application Requirements
Housekeeping	
Align	Does not require completion date be unexpired, per statute
Align	Mailing notice with APA
Clarify	To align with other rules and statute, including injury applicability

Division 18 – Allocation of Conserved Water

Legislation	
HB 3342	<ul style="list-style-type: none"> • Electronic documentation • Weekly notice • Phased application processing, public comment timing
HB 3544	<ul style="list-style-type: none"> • Uniform (protests, requests for party status, contested cases) • Automatic final orders (33 days)
Policy/Process	
Align	With other processes, including same source criteria for injury
Clarify	Measuring, reporting requirements
Align	Standardized mapping criteria (Div 305) with supplemental
Housekeeping	
Clarify	Steps for approval, completion, testing phase, and finalization

Division 380 – Water Right Transfers

Legislation	
HB 3342	<ul style="list-style-type: none">• Electronic documentation• Weekly public notice• Phased application processing
HB 3544	<ul style="list-style-type: none">• Uniform (protests, requests for party status, contested cases)• Automatic final orders (33 days)• Standardize terminology

Division 380 – Water Right Transfers

Process/Policy	
Add	Conditioning - to prevent injury and enlargement
Add	Temporary Transfers – renewals
Add	Transfer Permit Amendments – new rules
Modify	Clarification of Water Rights – Director to consider exceptions to Administrative Law Judge’s proposed order instead of Commission
Align	Standardized mapping criteria (Div 305) with supplemental

Division 380 – Water Right Transfers

Process/Policy	
Clarify	Reversion Request - transfer holder/receiving landowner notifies OWRD that POD/POA change is incomplete
Clarify/ Align	POU changes - require physical change altering where water right is located
Clarify	Interface with Forfeiture - process when forfeiture raised as part of transfer protest (see also Division 17)
Clarify	Specific-to-General Industrial Use – information re: quantity of water diverted for original industrial use
Add/ Clarify	Application information to assist with evaluation of fish screens and passage, evidence of use and ownership

Division 380 – Water Right Transfers

Changes in Point of Diversion (POD) to Reflect Historical Use

Align	Applicant to provide proof of notification
Clarify	Criteria for approval, including enlargement
Clarify	Applies to surface water, not groundwater
Clarify	Does not apply to changing dam location
Clarify	Claim of injury process and other provisions

Housekeeping

Align	Similar to division 310
Remove	Redundant definitions
Remove	Temporary Transfers – character of use to store water
Clarify	Layering - notify applicant and how to resolve; Consent to Injury
Require	Substitution – must terminate prior to making change

Division 382 – Groundwater Registration Modifications

Consistency with Legislation	
HB 2803	Increases max fees; Rule language to align
HB 3342	<ul style="list-style-type: none"> • Electronic documentation • Weekly public notice
HB 3544	<ul style="list-style-type: none"> • Uniform protests, requests for party status, contested cases • Automatic final orders (33 days) • Standardize terminology
Process/Policy & Housekeeping	
Align	Standardized mapping criteria (Div 305) with supplemental
Clarify	Layering - notify applicant of layering issues and how to resolve
Remove	Redundant definitions
Align	“tentative priority date” and “certificate of registration” definitions



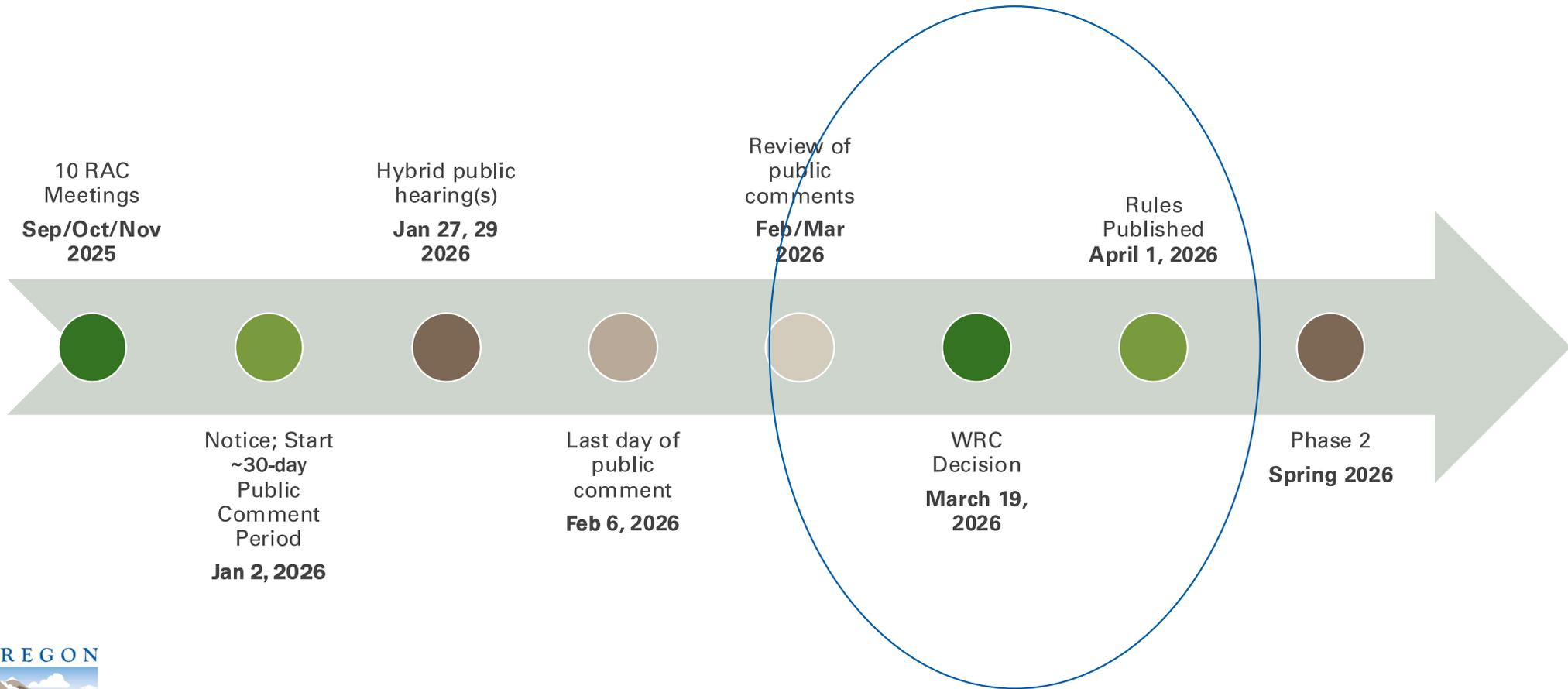
Division 17 – Cancellation of Perfected Water Rights

Legislation	
HB 3544	<ul style="list-style-type: none"> Uniform (protests, requests for party status, contested cases) Automatic final orders (33 days)
Process/Policy	
Modify	Director to consider exceptions and issue final order
Clarify	Process when forfeiture raised as part of transfer protest
Align	Information watermaster can use for 5 years of affidavits process
Remove	Rules-only requirement for OWRD staff to submit affidavits
Clarify	Information required in OWRD notices, public affidavits, used
Housekeeping	
Align	Process for initiation of cancellation
Align	Exceptions related to “ready/ willing/ able” and drought
Align	Reasons for rebuttals to forfeiture



Next Steps

Next Steps



What you will receive

Division	Rule Change/ Comment Tracker	Draft Proposed Rules (Track Changes)	Draft Proposed Rules (Clean)
2 - Protests and Contested Cases	Div 2 - Tracker	Div 2 - Track Changes	Div 2 - Clean
14 - Certified Water Right Examiners	Div 14 - Tracker	Div 14 - Track Changes	Div 14 - Clean
17 - Cancellation of Perfected Water Rights	Div 17 - Tracker	Div 17 - Track Changes	Div 17 - Clean
18 - Allocation of Conserved Water	Div 18 - Tracker	Div 18 - Track Changes	Div 18 - Clean

A few key considerations

- Is desired change in scope of notice AND the rulemaking?
- Time constraints
- Cannot address every issue with the rules

Preview of (some) Key Issues

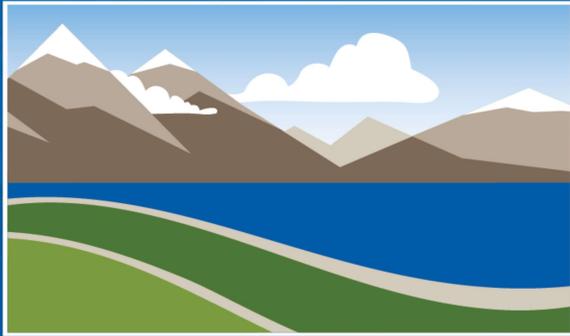
- Div. 2 – Discovery and Default Schedule
- Div. 17 – Evapotranspiration, aerial imagery, new defaults, affidavits
- Div. 18 – Groundwater - Allocation of Conserved Water
- Div. 310 – Administrative holds - new water right applications
- Land use
- Div. 315 – Checkpoint conditions
- Div. 325 – Completion date (extension vs permit) - Split a Permit

Preview of (some) Key Issues

- Div. 77 – Estimated Natural Average Flow, SDAO notice, specificity on injury and enlargement review vs 380, minimum perennial streamflows
- Div. 380 – Groundwater - Historical POD;
 - same source enlargement, substitutions, consent to injury, applicability of other rules and laws
 - Forfeiture
 - many other items (still under review)
- Div. 382 – Evidence of use

Thank you!

OREGON



WATER RESOURCES
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