

# A - Water Rights, Contested Cases, and Forfeiture Rules

## Water Resources Commission Meeting

**Racquel Rancier**

Deputy Director  
Strategy & Administration

**Lisa Jaramillo**

Manager Transfer &  
Conservation Section

**Katie Ratcliffe**

Administrator  
Water Right Services

**Laura Hartt**

Water Policy Analyst, Rule  
Coordinator, & Tribal  
Liaison

**March 19, 2026**



# Background

## Prior Commission Briefings

- Agenda Item H – December 2025
- Agenda Item H – February 2025

## Integrated Water Resources Strategy

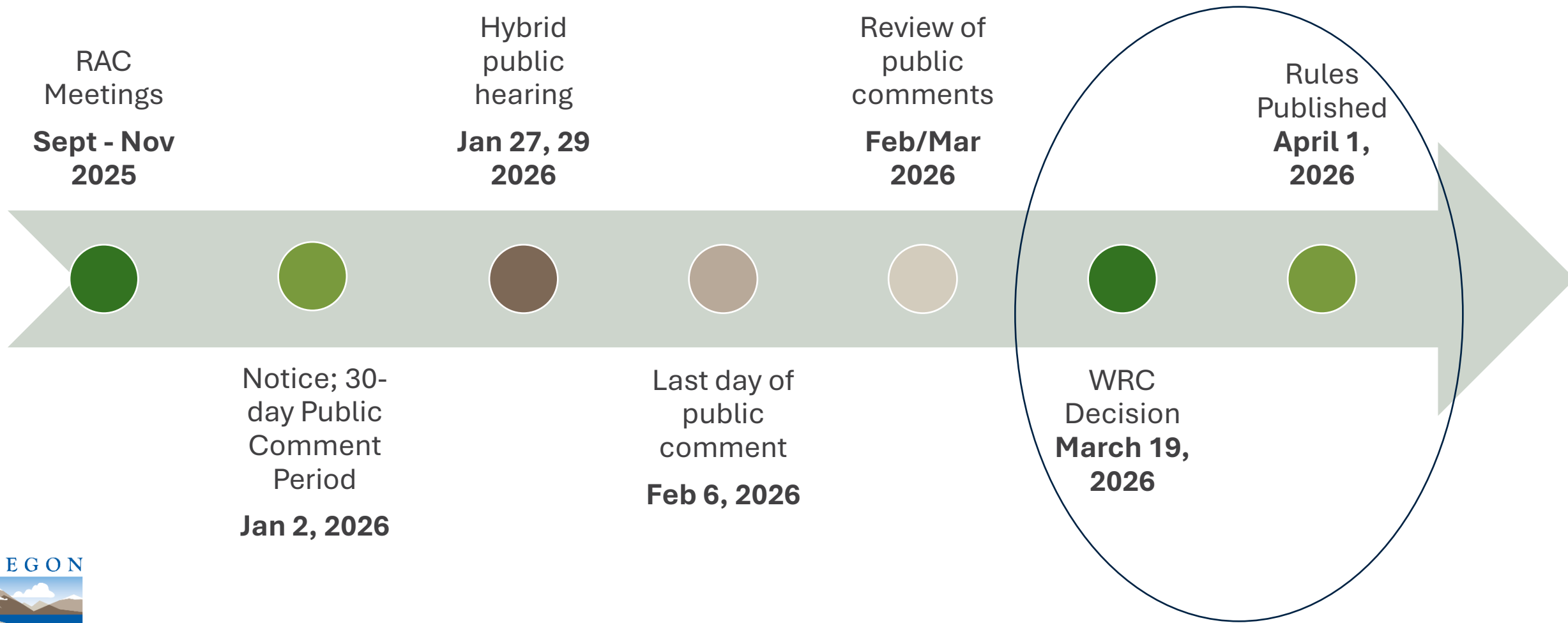
- 10F – Strengthen and Improve Water Quantity and Water Quality Permitting Programs
- 11B – Develop Additional Instream Protections

# 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”

# Rulemaking Timeline - Phase 1



# Tribal Engagement

## Rules Advisory Committee (RAC)

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

## Briefings and Consultation

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

## Meeting with Tribal Staff\*

- Confederated Tribes of the Umatilla Indian Reservation

## Tribal Staff Written Comment

- Confederated Tribes of the Umatilla Indian Reservation

# Comment Review

**Tribal Written** (1 Tribe/RAC) – Attachment 1

## Comments Received

- Individual Written (18 total/12 RAC) – Attachment 2a
- Group/Form (122 total) – Attachment 2b
- Oral (4 total/2 RAC) – Attachment 2c

## Grouped Comments & Responses

- Proposed Revision Trackers by Division – Attachments 4a, 4b
- General Comments and Responses – Attachment 4c

# Discussion of Comment

---

# Comment Review

**Attachments** – See for complete catalogue of comments and changes

## Focus of Presentation

- Multiple comments
- Substantive, need further discussion
- Comments resulting in rule changes
- Staff-initiated rule changes

Blue font = changes made in response to Tribes, public comments, or staff-initiated

Black font = no change made in response to comments

# 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  |
| <b>300</b> | <b>Definitions *</b>   |
| 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 |
| <b>340</b> | <b>Water Use Authorizations *</b>  |
| 380        | Water Right Transfers  |
| 382        | Groundwater Registration Modifications   |

# General Comments

## Process

- Organized, well-documented, & responsive
- Rushed & dense

## Scope

- Proposed Rules Within / Outside Scope (2025 legislation)

## Land Use

- Support / oppose scaling back rules re: consistency with comprehensive plans, land use regulations

# Division 305 (New) – General Map Criteria

**Geospatial data accuracy (-0010)** – Allow for commonly available tools

**Privacy (-0010)** – Concern about information shared

**Waivers (-0010)** – Make waivers available

**Staff (new - not included in staff report)** – Error in including "equal to or greater than"

- See next slide

# Division 305 (New) – General Map Criteria

## Scale (-0010)(2))

(a) The map shall be drawn to a standard, even-numbered scale and one-inch shall not ~~be equal to or greater than~~ exceed 1320 feet.

(b) The map scale may exceed 1320 feet per inch if the Department grants, by mail or electronic means, advance approval of the requested scale.

(c) Notwithstanding subsection (a) and (b), for maps identifying the location of a municipal use place of use, one-inch can ~~be equal to or~~ greater than exceed 1320 feet...

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

**Claims of Beneficial Use (COBU)** – Invalidate if CWRE makes material misstatement of fact (-0080)

# Division 310 – Water Right Application Processing

## Administrative Holds

- **Land Use** – Too short for completing land use appeal process (-0270(2)(d))
- **Groundwater** – Too long for groundwater data collection (-0270(2)(e))

# Division 315 – Water Right Permit Extensions

**Staff - House Bill 4004 (2026)** – New legislation could make rules almost immediately obsolete (-0020)

**Checkpoints** – Oppose removal; some permit extensions may exceed 5 years (checkpoint duration) (-0050)

# Division 77 – Instream Water Rights (ISWR)

**Estimated Average Natural Flow (EANF)** – Existing EANF restrictions on state-agency ISWRs should be removed

**Notice of intent to file ISWR, ODFW should/should not be required to:**

- Provide Special Districts with notice (-0020(3))
- Send local governments notice (-0020(5)(j))

# Division 77 – Instream Water Rights (ISWR)

**State Borders** – Proposed rule may restrict efforts to protect flows across state borders, e.g., Walla Walla (-0000)

**Living Certificate Definition** – will discuss in Division 18

**Transfers – Injury & Enlargement Assessment** - Align Div 77 and Div 380; Div 77 more detailed (-0075, -0077)

**Minimum Perennial Stream Flow (MPSF) Conversion** – New rule goes against statute; required to convert MPSFs (-0054)

# **Division 325 – Assignment of a Water Right Permit and Request for Issuance of Replacement Permits**

**Extended permit completion date** – Concern about allowing split-a-permit if extension of time extended the permit completion date

**Staff - Acceptance of Expired Permits** – Make clear won't accept expired permit

# Division 18 – Allocation of Conserved Water (ACW)

**Living Certificates** – Support/oppose inclusion (-0020)

**Staff - Certificate Issuance** – Do not require immediate issuance (e.g., irrigation districts) (-0050, -0062, -0065)

**Groundwater** - Support/oppose groundwater eligibility for ACW program (-0050, -0065)

**Staff - ORS 537.470(3)** – Include statutory provision related to water allocated to state (instream vs reversion)

# Division 380 – Water Right Transfers

**Enlargement Sub-Irrigation** – Tribal / other request narrowing to “under the same source under the same water right” for place of use change (-0100)

**Injury/Enlargement** – Already discussed on Division 77

**Groundwater Point of Appropriation (POA)** – May deny per HB 3342 (2025) (also applies to Division 382)

# Division 380– Water Right Transfers

**Substitution** – Does not agree with requirement substitution must terminate prior to approval of transfer application (-2330(8))

**Consent to Injury** – Various comments. Statute does not apply to groundwater (-4000(8)); Statute is limited to POA and POD changes; Consent is not required (-5050)

**Staff – Clarify requirements for Consent to Injury** – review for consent to injurious change in POD/POA (-5030)

# Division 380 – Water Right Transfers

**Applicability of Other Laws/Rules** – Expand to reference “any other applicable requirements” (-4000(3)(g), -4010(2)(g), -5000(1))

**Forfeiture** – Oppose notification and consolidation of cancellation proceedings if transfer protest asserts forfeiture (-4200(2))

# Division 380 – Water Right Transfers

**Staff (new - not included in staff report) – Error in description of extent of ready, willing, and able**

## **Initial Review (-4000)(3))**

(d) The water user is ready, willing and able to use the **full**  
**amount of water allowed under portion of** the right **to be**  
**transferred.**

# Division 382 – Groundwater Registration Modifications

**Evidence of Use** – Applicant should provide proof of use over past 5 years (-0400)

**Groundwater Point of Appropriation (POA)** – discussed in Div. 380

**Applicability of Other Laws/Rules** – discussed in Div. 380

# Division 17 – Cancellation of Perfected Water Rights

**Evidence** - Accuracy of aerial imagery, use of evapotranspiration (-0400(4))

**Evidence** – Should not be limited to affidavit (-0400(1))

**Affidavit Scope** - Add to affidavit option: use has not been beneficial within terms/conditions of water right (-0400(2)(g))

**Guardrails** - Need guardrails to prevent procedural defaults from creating unintended cancellation risk

# Division 17 – Cancellation of Perfected Water Rights

**Staff - Final Orders** – Based on Commission February 2026 input, removed rule stating Director considers exceptions; this will allow delegation order (-0700(3))

# Division 2 – Protests & Contested Cases

**Default Hearing Schedule** – Requested changes to schedule related to issues list, motions to compel, motions for summary determination (-0205)

**Discovery** – Concerned about limits on admissions, interrogatories, and site visits; production of documents(-0095)

**Staff - Agency File** – Provide upfront for all cases, since discovery applies to all

# Recap of Changes Proposed Post-Staff Report

---

# OAR 690-305-0010 Modification

## (2) Scale

(a) The map shall be drawn to a standard, even-numbered scale and one-inch shall not ~~be equal to or greater than~~ exceed 1320 feet.

(b) The map scale may exceed 1320 feet per inch if the Department grants, by mail or electronic means, advance approval of the requested scale.

(c) Notwithstanding subsection (a) and (b), for maps identifying the location of a municipal use place of use, one-inch can ~~be equal to or greater than~~ exceed 1320 feet; provided that the scale is sufficient to identify the quarter-quarters involved in the place of use.

# OAR 690-380-4000 - Modification

(3)(d) The water user is ready, willing and able to use the full  
~~amount of water allowed under~~ portion of the right to be  
transferred.

# Commission Decision

---

# Director's Recommendation

## The Commission may consider the following alternatives:

1. Adopt final proposed rules in Attachments 6a and 6b.
2. Adopt final proposed rules as modified by the Commission
3. Do not adopt final proposed rules and request the Department to further evaluate the issues.

**The Director recommends Alternative 2 - Adopt final proposed rules as modified by the Commission.**

# DRAFT MOTION

I move to adopt the proposed Division 2, 14, 17, 18, 77, 300, 305, 310, 315, 325, 340, 380, and 382 rules in Attachments 6a and 6b, with the following modifications:

- For OAR 690-305-0010 (2)(a) and (2)(c), replace “be equal to or greater than” with “exceed”; and
- For OAR 690-380-4000(3)(d), replace “full amount of water allowed under” with “portion of” and add “to be transferred” after “right.”

# Thank you!

OREGON



WATER RESOURCES  
DEPARTMENT

**Racquel Rancier**

[racquel.r.rancier@water.oregon.gov](mailto:racquel.r.rancier@water.oregon.gov) | 503-302-9235

**Katie Ratcliffe**

[katie.s.ratcliffe@water.oregon.gov](mailto:katie.s.ratcliffe@water.oregon.gov) | 971-338-8105

**Lisa Jaramillo**

[lisa.j.jaramillo@water.oregon.gov](mailto:lisa.j.jaramillo@water.oregon.gov) | 503-871-1889

**Laura Hartt**

[laura.a.hartt@water.oregon.gov](mailto:laura.a.hartt@water.oregon.gov) | 971-720-0963

# DRAFT MOTION

I move to adopt the proposed Division 2, 14, 17, 18, 77, 300, 305, 310, 315, 325, 340, 380, and 382 rules in Attachments 6a and 6b, with the following modifications:

- For OAR 690-305-0010 (2)(a) and (2)(c), replace “be equal to or greater than” with “exceed”; and
- For OAR 690-380-4000(3)(d), replace “full amount of water allowed under” with “portion of” and add “to be transferred” after “right.”