

Staff Report

TO: Water Resources Commission
FROM: Laura Hartt, Water Policy Analyst
DATE: June 11, 2026
SUBJECT: Agenda Item C

RULE UPDATES FOR HYDROELECTRIC, PROOF OF APPROPRIATION, AND MISCELLANEOUS WATER RIGHTS PROVISIONS

I. Introduction

During this agenda item, staff will provide a brief update on the second phase of the water rights-related rulemaking effort, pertaining to hydroelectric (Oregon Administrative Rule (OAR) 690-052, -053, -054), proof of appropriation (OAR 690-330), and miscellaneous water rights (OAR 690-320) provisions. *This is an informational report.*

II. Integrated Water Resources Strategy Recommended Action

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

III. Background

In September 2025, the Department initiated a rulemaking effort and proposed rule changes across 18 Divisions within OAR 690. In response to Rules Advisory Committee (RAC) and Commission input, the Department bifurcated the rulemaking into two phases. Phase 1 covered rule changes across 13 Divisions. The Phase 1 rules were adopted by the Water Resources Commission on March 19, 2026, and those rules went into effect April 1, 2026. See the Commission staff report for [March 19, 2026, Item A](#) for a summary of the Phase 1 rulemaking effort.

Phase 2 includes proposed rule changes for the five remaining Divisions and one minor update to Division 305 rules adopted during Phase 1 to conform to the Phase 2 updates:

- OAR 690-052: Decommissioning Rules for Non-FERC Projects
- OAR 690-053: Hydroelectric License, Power Claim and Certificate Amendments
- OAR 690-054: Conversion of a Hydroelectric Water Right to an Instream Water Right
- OAR 690-305: General Map Criteria
- OAR 690-320: Miscellaneous Water Right Provisions (formerly Water Right Permits)

- OAR 690-330: Proof of Appropriation to Perfect a Water Right (formerly Water Right Certificates)

The purposes of the Phase 2 Water Rights Transaction related rulemaking are to (1) provide standardization related to issuance of orders and notices pertaining to select hydroelectric power generation processes, and (2) reorganize, repeal, clarify, and align with statute and rule, rules pertaining to proof of appropriation/ claims of beneficial use and miscellaneous provisions.

IV. Rules Advisory Committee Process

To support the rulemaking effort, the Department assembled a RAC representing a wide array of interests relating to the water rights program (Attachment 1). From September 17 through November 21, 2025, the Department convened ten RAC meetings. All rulemaking materials, including RAC meeting materials, recordings, and summaries, are available [here](#).

RAC members provided input on proposed draft rule language as well as the statements that accompany the Notice of Proposed Rulemaking: Statement of Need, Statement of Racial Equity Impacts, and Statement of Economic and Fiscal Impacts. Input and revisions made in response to input have been tracked and summarized. Feedback and Phase 2 rule revision trackers can be accessed from this table [online](#).

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

V. Notice and Comment Period

The Department published the Notice of Proposed Rulemaking (Attachment 2) in the Secretary of State's May 1, 2026, Oregon Bulletin and provided notice to the Department's GovDelivery Rulemaking, Water Rights, Certified Water Rights Examiners, Legislative and Budget, and Well Said listservs, as well as providing to the RAC, Tribes, legislators, and other interested parties.

The public comment period closes at 5:00 p.m. on June 12, 2026. OWRD hosted a virtual public hearing on May 26. A summary of public comments received will be provided at a later date.

VI. Tribal Engagement

Consistent with Government-to-Government (G2G) coordination and consultation responsibilities, on September 5, 2025, the Department notified all nine federally recognized Tribes in Oregon of the rulemaking effort, inviting participation informally during the RAC process and formally through G2G consultation. Between September 19, 2025 and January 2, 2026, Tribal engagement pertained to all 18 Divisions originally proposed for rulemaking; Tribes did not have any comments specific to the Divisions included in Phase 2. See Attachment 2, pages 6-7, for a detailed summary of Tribal engagement efforts.

The Notice of Proposed Rulemaking for Phase 2 was shared with the Tribes on May 1, 2026, with a renewed invitation to engage.

VII. Next Steps

The Department is currently collating, reviewing and, as appropriate, incorporating feedback received during the public comment period. During the September 2026 Commission meeting, the Department will present the proposed rule changes to the Commission for adoption consideration, targeting an effective date of October 1.

Attachments:

1. Rules Advisory Committee Roster
2. Notice of Proposed Rulemaking

Laura Hartt
971-720-0963



2025-26 Water Rights Rulemaking Rules Advisory Council Roster

RAC 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

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DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690

WATER RESOURCES DEPARTMENT

FILED: 04/27/2026 11:06 AM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Rule updates for hydroelectric, proof of appropriation, and miscellaneous water rights provisions

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/12/2026 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT:

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Salem, OR 97301

Filed By:

Laura Hartt
Rules Coordinator

HEARING(S)

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

DATE: 05/26/2026

TIME: 5:00 PM - 6:00 PM

OFFICER: Laura Hartt/OWRD Staff

REMOTE HEARING DETAILS

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

PHONE NUMBER: 346-248-7799

CONFERENCE ID: 92560172266

SPECIAL INSTRUCTIONS:

To attend the remote hearing via Zoom, click on the URL link provided above and complete the registration steps. Alternatively, you may email WRD_DL_rule-coordinator@water.oregon.gov no later than 9:00 a.m. on May 26, 2026, for assistance in registering. Automated captioning will be enabled for participants joining via Zoom.

To attend the remote hearing by phone, please email WRD_DL_rule-coordinator@water.oregon.gov no later than 9:00 a.m. on May 26, 2026, to receive the conference call passcode for the hearing.

Auxiliary aids are available upon advance request. Please email WRD_DL_rule-coordinator@water.oregon.gov or call (971) 720-0963 as soon as possible, but no later than noon (12:00 p.m.) on May 22, 2026.

At beginning of the hearing, each person attending who wishes to comment will be asked to identify themselves so their names may be added to the virtual sign-up sheet. The hearing will begin no earlier than 5:00 p.m. and close no later than 6:00 p.m. Based on the number of people who have signed up to provide oral comments, the hearing officer may set reasonable time limits for each commenter. If no one has signed up to comment by 5:15 p.m., the hearing officer will close the hearing.

Prior to the hearing, Department staff will offer an information presentation, during which time members of the public may ask questions. The informational session will be held from 4:30 p.m. to 4:50 p.m. The Department will not accept public comments on the proposed rulemaking during the informational presentation. Attendees are encouraged to attend the subsequent public hearing beginning at 5:00 p.m. to provide comments.

In addition to presenting oral comments at the hearings, anyone may submit written comments until 5 p.m. on June 12, 2026, which is the close of the public comment period. Written comments should be sent to "Laura Hartt" at Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301 or by email to WRD_DL_rule-coordinator@water.oregon.gov.

Comments received after 5 p.m. on June 12, 2026, will not be reviewed or considered by the agency unless the agency decides to extend the public comment period for everyone.

NEED FOR THE RULE(S):

The purpose of this rulemaking is to (1) update rules for consistency with existing statutes and 2025 legislation; (2) update rules for consistency with other recent rule updates made relating to electronic standardization, contested case management, and certified water rights examiners; (3) repeal outdated rules and reorganize rules for clarity and consistency; and (4) make minor corrections to statutory and rule references.

To implement these and other process improvements, in September 2025, the Department initiated a rulemaking effort and initially proposed rule changes across 18 Divisions. In response to RAC input, the Department decided to bifurcate the rulemaking into two phases (Office of the Secretary of State 2026). Phase 1 covered rulemaking across 13 Divisions. The new rules were adopted by the Water Resources Commission on March 19, 2026, and those rules are effective as of April 1, 2026.

Phase 2 as described in this notice includes the five remaining OAR 690 Divisions. The Department is proposing rules changes for the following Chapter 690 Divisions: 52 (Decommissioning Rules for Non-FERC Projects), 53 (Hydroelectric License, Power Claim and Certificate Amendments), 54 (Conversion of a Hydroelectric Water Right to an Instream Water Right), 320 (Water Right Permits), and 330 (Water Right Certificates). The Department also proposes one update to Division 305 (General Map Criteria). Updating these rule divisions is necessary to improve clarity, consistency, and efficiency across the Department's water rights programs. Doing so will best serve Oregonians while continuing to steward Oregon's water resources for instream and out to stream uses now and for future generations.

More specifically, the Department proposes changes to Divisions 52, 53, and 54 to either implement or create programmatic consistency with 2025 legislative provisions regarding electronic standardization and contested case management. These changes are similar to those made in Phase 1 and include the following:

- replace newspaper notice requirements with inclusion of notice in the Department's weekly public notices (Division 52);
- allow electronic notice in lieu of mail notice unless mail notice is requested (Division 53);
- require operators to request a hearing during the protest period rather than separately after the protest period ends (Division 52);
- clarify that the Director may opt not to hold a hearing if the Director finds there are no significant issues, unless the protestant is the operator (for Division 52), applicant (for Division 53), or holder (for Division 54); and
- provide for automatic default to a final order if no protest is filed within a 33-day period (Divisions 52, 53, and 54).

The Department also proposes the following additional changes to Divisions 52, 53, and 54, relating to contested case management in order to provide more consistency and clarity across Departmental processes:

- remove redundant language concerning filing exceptions to the administrative law judge's (ALJ) final order (Divisions 52 and 53);
- clarify action the Director takes if exceptions are/are not filed to the ALJ proposed order (Divisions 52 and 53);
- clarify that the notice of opportunity to protest and request a hearing is governed by the Administrative Procedures Act (Division 53);
- clarify that individuals must follow process outlined in the model rules of procedure (OAR Chapter 137) to petition for party status (Division 54); and
- clarify that failure to raise an issue with sufficient specificity in a protest precludes consideration of the issue in a contested case (Division 54).

Additional changes proposed for Divisions 52, 53, and 54 include the following:

- clarify that an applicant may demonstrate the water right is not subject to forfeiture when filing amendments under ORS 540.610 (Division 53); and
- clarify when new rules would be applicable.

The Department proposes changes to Divisions 320 and 330 to better align rule content within each Division; repeal outdated and duplicative rules; clarify rule applicability; and align rules with recent rule changes made during Phase 1 of the rulemaking.

For Division 320, the Department proposes to update the Division title to "Miscellaneous Water Right Provisions" to accurately reflect the nature of the two rules proposed to remain within the Division, OAR 320-0060 (Assignment or Change of Ownership of a Permit or Groundwater Registration) and OAR 320-0070 (Primary and Supplemental Rights). The Department proposes to repeal OAR 690-320-0010 because it lapsed in 2001 and to repeal OAR 690-320-0050 (Temperature Control) because it is duplicative of OAR 690-330-0030 (Temperature Control). As further described below, the Department also proposes to repeal three Division 320 rules relating to proof of appropriation/claims of

beneficial use, which then will be moved into Division 330, and updated prior to re-adoption in Division 330, because Division 330 is more appropriate than Division 320 for housing rules relating to proof of appropriation/claims of beneficial use.

For Division 330, the Department proposes to update the Division title to “Proof of Appropriation to Perfect a Water Right” to accurately reflect that this Division governs the proving up of water rights rather than water right certificates generally. The Department proposes to repeal OAR 690-330-0040 (Primary and Supplemental Rights) because it’s duplicative of OAR 690-320-0070 (Primary and Supplemental Rights). The Department also proposes to move, update and re-adopt in Division 330, former Division 320, rules relating to proof of appropriation/claims of beneficial use as follows:

--Move and update current OAR 690-320-0020 rule language to OAR 690-330-0050, pointing to the correct statutory authority for the Department to initiate permit cancellation.

--Move and update language from OAR 690-320-0030 to OAR 690-330-0060, clarifying existing requirements that proof surveys and claims of beneficial use filed after July 9, 1987, shall be performed by CWREs in accordance with Division 14 (Certified Water Rights Examiners and Preparation of Claims of Beneficial Use).

--Move and update OAR 690-320-0040 to OAR 690-330-0070. Add an applicability statement for clarity and clarifying that partial perfection of municipal water rights must meet standards for claims of beneficial use in OAR 690-014 (Certified Water Rights Examiners and Preparation of Claims of Beneficial Use).

For Division 305 (General Map Criteria), the Department proposes updating OAR 690-305-000 to remove reference to Division 320 because Division 305 no longer applies to Division 320 as proposed for revision.

Other proposed changes include minor corrections to statutory and rule references. Please see individual “Rule Summaries” throughout this Notice for more details.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

This is an abbreviated list of the principal documents relied upon for the proposed rulemaking. Please contact the Oregon Water Resources Department for a complete list of documents relied upon and the location(s) of those documents.

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

Office of the Secretary of State 2026, Notice of Proposed Rulemaking, Chapter 690, available online at <https://secure.sos.state.or.us/oard/viewRedlineTRIM.action?trackChgPtId=13741616>.

Oregon Administrative Rules (OAR) 137, available online at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=93>.

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

OED 2026, Businesses by Industry, available online at <https://qualityinfo.org/blist>.

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

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

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

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

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

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

OWRD 2025a, Comments Received Nov 12 – Dec 5, RAC 9 Meeting Materials, available at <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Documents/Comments%20Received%20Nov%2012%20thru%20Dec%202025.pdf>.

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

Pilz, D. et al. 2023, The Business Case for Investing in Water in Oregon, available at https://www.oregon.gov/owrd/WRDPublications1/230721_FINAL_Business_Case_for_Water_in_OR.pdf.

Rosenberger, R.S. 2018, Total Net Economic Value from Residents' Outdoor Recreation Participation in Oregon, Final Report prepared for Oregon State University, available at <https://www.oregon.gov/oprd/PRP/Documents/SCORP-2018-Total-Net-Economic-Value.pdf>.

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

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

Water is a shared, vital, and finite resource. The Oregon Water Resources Department strives for meaningful engagement, transparent decision-making, and accessible services. The Department also recognizes the environmental and systemic challenges that impact water accessibility. While water scarcity affects all communities, some racially diverse communities may face disproportionate risks and burdens. The Department further acknowledges the prior appropriations system, which is common among many western states, has excluded some communities from securing water rights as it was tied to property ownership. While this system is set in law and it is the Department's responsibility

to follow the law, the agency also has a responsibility to analyze and inform on how policies impact racial equity around the state. (See OWRD 2025b).

In developing this racial equity impact statement, the Department consulted the Rules Advisory Committee (RAC). The Department attempted to solicit a broad array of participants, including invitations to organizations working on racial justice and environmental equity. The final RAC composition included members from Oregon's Tribal communities, as well as representatives of environmental organizations, power companies, local governments, farmers, ranchers, consultants, water rights attorneys, and certified water rights examiners, and some RAC members noted that they might not be in the best position to provide analysis on racial equity.

The proposed rule changes are intended to update, streamline and modernize processes with respect to hydroelectric, proof of appropriation, and miscellaneous water rights provisions outlined in Divisions 52, 53, 54, 320, and 330. To the extent that economics and racial inequity are correlated, improved consistency and efficiency should help lower long-term costs associated with processing transactions, benefiting applicants as well as interested parties participating in the process. In the near term, however, some parties may experience higher costs due to the need to secure professional advice (e.g., certified water right examiners, water law attorneys, technical consultants) in order to interpret and navigate the updated rules. Consequently, there may be some racial inequity with respect to expenses associated with participating in processes covered by these rules. However, during rule development the Department has sought to create clearer, more consistent language in the rules and to increase transparency by incorporating existing Department policies and practices into the rules. This should mitigate some of the near-term costs for applicants and interested parties participating in the process.

Tribal Engagement: Consistent with Government-to-Government coordination and consultation responsibilities, on September 5, 2025, the Department notified (in writing and by email) all nine federally recognized Tribes in Oregon of the water rights transactions process improvements rulemaking effort pertaining to 18 Divisions. The Department invited participation informally during the Rules Advisory Committee (RAC) process and formally through government-to-government consultation. Representatives of the Confederated Tribes of Grand Ronde and the Confederated Tribes of the Umatilla Indian Reservation accepted the invitation to serve on the RAC. The RAC process covered proposed rules as well as racial equity and fiscal/economic impacts associated with proposed rules across 18 Divisions; RAC input, including that of Tribal members, was considered and incorporated as appropriate into subsequent rule revisions.

During the October 29, 2025, RAC meeting, a Tribal representative of the Confederated Tribes of the Grand Ronde, who served on the RAC, stated that no one has suffered greater impacts historically as a result of prior appropriation than Tribes. She noted that lands, trees, water, fish, and other resources have been stolen over time. However, she views issuance of instream water rights as a mechanism for addressing some of the harm caused by overallocation of water. She noted the recent challenges faced by the Klamath Tribes seeking restoration of historic fisheries and streamflows. She also lamented the lack of care in honoring Tribal sovereign rights over time.

The Department also provided a requested briefing to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians on September 19, 2025, and engaged in formal government-to-government consultation with the Klamath Tribes on October 21, 2025; both requests covered all 18 Divisions. Neither Tribe had comments or expressed concerns specific to the Phase 2 set of rules, i.e., those for Divisions 52, 53, 54, 305, 320, or 330.

Department staff have provided regular staff-to-staff updates during Legislative Commission on Indian Services meetings. Staff updates were provided during the LCIS Cultural Resources Cluster on August 27, 2025, October 9, 2025, and January 28, 2026, and to the LCIS Natural Resources Work Group on October 9, 2025, and April 9, 2026. The Department will continue to engage with the Tribes upon request throughout the public comment period.

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

FISCAL AND ECONOMIC IMPACT:

This fiscal and economic impact statement applies to Phase 2 of the rulemaking relating to proposed changes for Divisions 52 (Decommissioning Rules for Non-FERC Projects), 53 (Hydroelectric License, Power Claim and Certificate Amendments), 54 (Conversion of a Hydroelectric Water Right to an Instream Water Right), 320 (Water Right Permits), and 330 (Water Right Certificates).

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

-- Industry (which includes manufacturing, health care/hospitals, colleges/universities, hotels/motels, restaurants/food service, car washes, dry-cleaning/laundry, landscaping/horticulture, breweries/wineries, waste remediation) contributes \$221 billion annually (see Figure ES-7 and accompanying narrative).

--Irrigated agriculture contributes \$7.3 billion annually.

--In 2022, salmon fishing and related seafood processing contributed \$23.5 billion (see Table 18, citing ECONorthwest 2019).

--In 2017, freshwater-related outdoor recreation contributed \$5.5 billion (see Table 11, citing Rosenberger 2018).

--Approximately half of Oregon's electrical generation comes from more than 100 hydroelectric facilities; the hydropower industry employs approximately 1,500 people in Oregon (citing Oregon Department of Energy 2022).

Economic contributions for the categories use different valuation methods, depending on the data source. While the categories are not directly comparable to each other, they each show that water-dependent businesses in Oregon provide substantial economic value. The proposed rule changes will protect the substantial investment Oregon has made in these and other water-dependent businesses by improving efficiency and standardizing processes, potentially saving the Department and public time and money while providing greater certainty for those who rely on water rights transactions and related processes.

The Department appointed a Rulemaking Advisory Committee (RAC) to assist in development of the rules and provide input on potential fiscal and economic impacts. Some RAC members found the scope of the rulemaking, when it was 18 rule divisions, overly ambitious and too broad. The rulemaking scope for this phase is now 6 divisions. As one member of the Committee representing irrigation districts stated (OWRD 2025a):

"The [Divisions] impacted by this rulemaking have potential impacts to numerous industries, including potential negative economic impacts. The current statement is misleading as it reports it will lead to increased efficiency for water dependent businesses. This would be accurate if the rulemaking was properly focused on implementing only the required provisions 2025 Legislation. The RAC has been rushed to provide feedback and even under the most optimistic view it is

highly likely there are going to be errors, unclear or conflicting rule language, and unintended consequences for both the Department and all of the water interests who rely on timely and efficient transactions. Overall, we feel the rushed process for this rulemaking will inevitably lead to unintended impacts and higher fiscal burden to a range of stakeholders. We are particularly concerned about impacts to water users, municipal and agricultural water suppliers, and other entities. It is likely there be increased expenses from hiring consultants or attorneys to determine what some of these proposed rule changes mean. We are also concerned that it will be difficult for WRD to implement some of the proposed changes, leading to further delays in transaction processing rather than increased efficiency and improved timing.”

In order to address concerns regarding the size and pace of the rulemaking and to enhance the ability of the public to provide meaningful input, the Department bifurcated the rulemaking into two phases. This is the second phase, which has a substantially smaller scope.

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

The longer it takes to process an application, the higher the discrepancy between the fees paid at the time an application is submitted and the actual cost of the staff time to process that application over the years. This delay also results in increased costs to applicants and other interested parties who continue to pay for consultants and attorneys that help navigate the water right and contested case processes over what may be a lengthy period of time.

Rules contained in this phase 2 rulemaking are primarily focused on clarity, consistency, reducing duplication, and removing outdated rules. Although changes are expected to be minor, the Department believes that even small savings of time for the Department, applicants, and the public may contribute to reduced workloads and shorter processing times. A lack of clarity in rules contributes to confusion and sometimes litigation over the Department’s analyses and authorities, further prolonging processing times and increasing costs for both the Department and the applicants and protestants during the contested case process. The Department estimates that for the 2021-2024 fiscal period, the average cost in Department of Justice (DOJ) and Office of Administrative Hearings (OAH) fees alone for the Department averaged \$51,600 for a single protest, with the most expensive protest costing over \$500,000. Over the last several biennia, the Department has exceeded its legal expenditures budget, resulting in several emergency appropriations from the Legislature, and in some cases, administrative management of costs by holding vacant positions open for longer.

The Department estimates that approximately 80 projects could be eligible for decommissioning under Division 52 (Decommissioning Rules for Non-FERC Projects) rules but only anticipates five or six applications over the next few years. With respect to Division 53 (Hydroelectric License, Power Claim and Certificate Amendments) and Division 54 (Conversion of a Hydroelectric Water Right to an Instream Water Right), the Department estimates that approximately 152 projects could be eligible to request an amendment or decommission. Although the Department has not received any amendment applications over the past three years and does not foresee any in the immediate future, conversions have been occurring. Over the past year, the Department has converted 11 hydroelectric water rights and currently is reviewing seven for conversion. Processing these applications can take three to nine months, or longer if a protest has been filed on a proposed final order for an amendment (per Division 53) or conversion (per Division 54) application. Nonetheless, because the number of applications associated with the proposed rule revisions for Divisions 52, 53, and 54 are relatively few and far between, and because the rule changes are relatively minor, the Department does not expect significant economic impacts as a result of the rulemaking.

As proposed, Division 320 will pertain to “Miscellaneous Water Right Provisions”; the only changes proposed for Division 320 are a title change, repeal of language then moved, modified, and readopted in Division 330, and repeal of outdated and duplicative rules. Therefore, the Department does not anticipate any economic impacts stemming from updated rules for Division 320. Most of these changes provide clarity over existing processes and reduce duplicative rule language.

The Department cannot predict how many new claims it will receive going forward. However, the Division 330 proposed rules primarily focus on clarifying that the existing proof of appropriation process ties to Division 14 (Certified Water Rights Examiners and Preparation of Claims of Beneficial Use) rules pertaining to the filing of claims of beneficial use; therefore, the proposed rule changes are not likely to significantly impact processing times. Proposed revisions include specifying that final proof surveys and claims of beneficial use filed after July 9, 1987, shall be performed by a CWRE in accordance with Division 14, which is already required.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Any state agency, unit of local government, or member of the public with an interest in water appropriation or hydroelectric power generation processes may be impacted by this rulemaking; however, the Department expects the cost of compliance to be relatively minor. In addition to the Oregon Water Resources Department, state agencies with a potential interest in this rulemaking include the following: Employment Department, Office of Administrative Hearings, Administrative Services, Corrections, Environmental Quality, Fish and Wildlife, Forestry, Oregon State Hospital, Oregon Military Department, Oregon Youth Authority, Public Safety Standards and Training, State Lands, State Parks, Transportation, Veterans Affairs, and possibly others. Oregon higher education and universities also may seek new water rights. Local government units include, but are not limited to, cities, counties and districts. Members of the public include water rights applicants, hydroelectric power water right holders, business entities, conservation groups, and others. Tribes also may have an interest in this rulemaking, particularly the conversion of hydroelectric power rights to instream water rights (Division 54).

Rule implementation relating to electronic sending of documents and public notices (Divisions 52 and 53) will save Department resources in terms of preparing, printing, and mailing documents as well as submitting newspaper notices, where applicable. Other entities should benefit from these modernization efforts and not experience fiscal impacts.

For rule implementation relating to contested case management, the Department currently administers procedures for protested water rights processes, including those outlined in Division 52, 53, 54, and 330, and coordinates with the Office of Administrative Hearings for hearing support. The rules do not make significant changes to how the Department would implement these responsibilities, so there is not an expected impact; where there are changes, they are similar to existing processes for other application types or procedures.

Currently, the state has more than 100 hydroelectric water rights holders for projects relating to hydroelectric use. More than half of these holders are within the private sector; other water rights holders include Oregon Department of Fish and Wildlife, city and county governments, water districts, irrigation districts, and power providers. The proposed rules for Divisions 52, 53, and 54 only apply to existing hydroelectric projects. Nonetheless, some hydroelectric power water rights holders and members of the general public with an interest in these types of project changes (i.e.,

decommissioning, amendment, or conversion) may rely on water law attorneys and/or technical consultants to assist in preparing, reviewing, or protesting applications and/or projects. To the extent that there is an increased need for these services and costs as a result of the rules, it would be to understand and familiarize oneself with the new rules.

Substantive changes made to Division 320 are the repeal of three rules (OAR 690-320-0020, -0030, -0040), that are being updated and moved to Division 330 (OAR 690-330-0050, -0060, -0070). The only other proposed changes for Division 320 are the repeal of one lapsed and one duplicative rule. Therefore, proposed rules for Division 320 should have no fiscal impacts.

Regarding Division 330, the primary costs of the rules will be for water right permit holders, the public, CWREs, water law attorneys or other technical consultants to familiarize themselves with the rule language and where the rules are located. The rules provide clearer specification of the requirements for partial perfection and claims of beneficial use and how they tie to existing rules, but these are not changes to existing procedures; claims of beneficial use consistent with Division 14 are already required.

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

With respect to hydroelectric power generation (registered under the North American Industry Classification System (NAICS) as 221111), OED (2026) estimates there are 18 registered entities; however, several of these entities represent multiple locations for larger companies (i.e., >50 employees). OED is prohibited by law from providing a list of employers by employee totals or an employer’s size category. The Department queried the database of all employers with hydroelectric power generation (NAICS 221111) business establishments, which resulted in 20 registered entities. The Department has researched the registered entities independently and estimates there are approximately four such entities with 50 or fewer employees. These are best estimates but there is no way for the Department to know exactly how many hydroelectric entities are small businesses that may be affected by these rules.

That said, not all business entities that generate hydroelectric power necessarily register as NAICS 221111 entities, because hydropower generation may not be the business’ primary purpose. For example, consider a farming operation that uses in-conduit hydroelectric power, but agriculture is its primary business. Therefore, the Department cannot estimate exactly how many small businesses may be impacted by proposed changes to the Division 52, 53, and 54 rules, though the range is likely four entities up to the total number of hydroelectric power authorizations that may become subject to these rules (i.e., 152).

Regarding proposed rule changes for Divisions 320 and 330, the Department cannot estimate how many small businesses rely on the ability to perfect new perfected water rights to conduct business as the Department is unaware of any data sources that provide that information. That said, these rule changes may impact anyone, including any small

business, that seeks to perfect a new water right or has an interest in how water is used in the state. Small private entities that may seek to perfect new water rights include, but are not limited to, farms, ranches, nurseries, industries, and manufacturers. Other small businesses may seek to perfect new water rights if their water use does not qualify for one of the exemptions under ORS 537.545 and they do not obtain water from a drinking water provider.

Small businesses that provide services to those seeking to perfect water rights also may be impacted by these rules, such as CWREs, engineers, hydrologists and hydrogeologists, attorneys, and other professionals and consultants. The Department cannot estimate how many businesses practice in this area, however, according to the Secretary of State's Office (2025), there are 870 registered geologists in Oregon; Oregon also has approximately 250 CWREs (per request to OSBEELS). Other fields are too broad for these statistics to provide a meaningful representation.

The Department does not anticipate that the cost of reporting, recordkeeping, or administrative services to increase appreciably as a result of the rulemaking, because the new rules do not add new requirements. The Department also does not anticipate the cost of professional services, equipment, supplies, labor, or administration to increase appreciably as a result of the rulemaking. Although small businesses may need to rely on professional experts (e.g., attorneys, CWREs, and consultants) familiar with the updated rules, the Department does not anticipate the rule changes to have a significant learning curve and therefore do not expect the cost of professional services to increase. Rule changes allowing for electronic notification and documentation are likely to decrease supply and administrative costs. In fact, because the new rules are designed to modernize, standardize and clarify processes, these costs may eventually decrease due to improved efficiency.

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

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

690-052-0000, 690-052-0010, 690-052-0030, 690-052-0100, 690-052-0110, 690-052-0120, 690-052-0130, 690-052-0170, 690-053-0001, 690-053-0010, 690-053-0015, 690-053-0030, 690-053-0035, 690-053-0040, 690-053-0045, 690-053-0049, 690-053-0050, 690-054-0000, 690-054-0050, 690-054-0060, 690-054-0070, 690-054-0075, 690-305-0000, 690-320-0010, 690-320-0020, 690-320-0030, 690-320-0040, 690-320-0050, 690-330-0040, 690-330-0050, 690-330-0060, 690-330-0070

AMEND: 690-052-0000

RULE SUMMARY: This rule has been amended to provide that the rule changes to Division 52 will apply to public notices of decommissioning filed on or after October 1, 2026 to remove an applicability provision that is no longer relevant.

CHANGES TO RULE:

690-052-0000

Purpose and Applicability ¶

(1) The purpose of this division is to establish a process, create definitions, standards, procedures, filing

requirements, and appeal rights for the decommissioning of hydroelectric projects operating solely under state authority and not under the authority of the Federal Energy Regulatory Commission.¶

(2) These rules apply to projects where the holder of a license, certificate, or claim, operating solely under state authority:¶

(a) Voluntarily requests to decommission; or¶

(b) Fails to advise the Department regarding project reauthorization, according to ORS 543A.300.¶

(3) These rules ~~do not shall~~ apply to ~~projects that voluntarily requested license cancellation prior to June 30, 1997, the effective date of Oregon Laws 1997, Chapter 449~~decommissioning processes where the public notice of decommissioning is filed on or after October 1, 2026. Decommissioning processes where the public notice of decommissioning was filed before this date shall be subject to the rules in effect at the time of the public notice.¶

(4) Other rule divisions and statutory chapters may also apply to the decommissioning of a hydroelectric project subject to these rules.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ~~ORS 543.092, 543,~~ ORS 543A

AMEND: 690-052-0010

RULE SUMMARY: Updates referenced rule which was renumbered in 2003 to 690-380-0100 but never corrected in this rule.

CHANGES TO RULE:

690-052-0010
Definitions ¶¶

As used in OAR 690-052-0020 to 690-052-0160:¶¶

(1) "Dam" means an artificial barrier constructed above ground to impound or divert the natural flow of water in a river, stream or intermittent drainage, or to otherwise create by artificial barrier constructed above ground a pool for storage of water regardless of purpose or intent in creating the artificial barrier.¶¶

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

(3) "Injury" has the meaning given in OAR ~~690-015380-01005(5)~~.¶¶

(4) "Instream water right" has the meaning given that term in ORS 537.332.¶¶

(5) "Operator" means a person who owns or operates a hydroelectric project under the authority of a time-limited water right or a certified water right, including a registered claim for hydroelectric purposes that has a pre-1909 priority date.¶¶

(6) "Project" has the meaning given that term in ORS 543.010(2).

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092, 543,~~ ORS 543A

AMEND: 690-052-0030

RULE SUMMARY: The rule has been amended to create consistency across processes to align with changes made to other programs by Or Laws 2025, chapter 282, related to default to weekly public notices and removal of newspaper notice.

CHANGES TO RULE:

690-052-0030

Public Notice and Comment ¶¶

(1) After contacting the operator pursuant to OAR 690-052-0020 above, or if the Department is unable to contact the operator, the Department shall ~~cause to be issued~~ issue, in its weekly public notice, a public notice of the decommissioning of the project.¶¶

(a) The public notice shall include:¶¶

(A) The name of the operator;¶¶

(B) The county, basin and stream, and the township, range and section, within which the project is located;¶¶

(C) The license number of the project;¶¶

(D) A brief description of the project and the action prompting the decommissioning; and¶¶

(E) Information on submitting comments and on receiving notices in the future.¶¶

(b) The public notice shall be provided to:¶¶

(A) The operator, ~~who will cause it to be published in a newspaper having general circulation in the community where the project is located;~~¶¶

(B) The Department's weekly ~~bulletin~~ public notice;¶¶

(C) The watermaster's office in the district where the project is located; and¶¶

(D) Natural resource and other appropriate agencies.¶¶

~~(2) Publication of the notice, according to subsection (b)(A) of this section, shall be in a newspaper of general circulation in the area of the project, and shall be for a period of three consecutive weeks. A copy of the notice along with an affidavit of publication must be filed with the Department following completion of the notice period. The operator is responsible for the cost of publishing the notice in an appropriate newspaper.¶¶~~

~~(3) Within 60 days of the issuance of the public notice, any person interested in the decommissioning of the project may submit written comments to the Department and may request future notices about the project.~~

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ~~ORS 543.092, 543,~~ ORS 543A

AMEND: 690-052-0100

RULE SUMMARY: The rule has been amended to standardize language across rules to refer to the weekly public notice.

CHANGES TO RULE:

690-052-0100

Public Notice and Comment for Draft Decommissioning Plan ¶

(1) Department shall give public notice of the draft decommissioning plan in ~~the its weekly bulletin~~ public notice, and shall notify any person who requested notice under OAR 690-052-0030(~~32~~). The public notice shall include information on obtaining a copy of the draft decommissioning plan, on commenting on the draft plan, and on receiving notices in the future. The Department shall supply the operator, each member of the DART, and any agency supplying comments under 690-052-0080, with a copy of the draft decommissioning plan.¶

(2) Within 60 days after the public notice given under subsection (1) of this section, any person may submit written comments to the Department and may request future notices about the project.¶

(3) The Department shall consider any comments received under subsection (2) of this section and may revise the draft decommissioning plan.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ~~ORS 543.092, 543,~~ ORS 543A

AMEND: 690-052-0110

RULE SUMMARY: This rule has been amended to (1) remove the current inefficient process requiring operators to request a hearing after the close of the protest period and instead requires operators to request a hearing during the protest period; (2) remove provisions related to time periods pertaining to scheduling contested case hearings that are impractical; and (3) modify the rule with respect to assessing significant disputes as it pertains to final order issuance and contested cases by acknowledging that an operator is entitled to a hearing. In addition, the proposed rule changes will improve efficiency by removing the requirement for issuance of a final order without a protest; the proposed final order now will become final automatically unless protested. The rule amendments also standardize language by referring to weekly public notice and replaces applicant with operator for rule consistency.

CHANGES TO RULE:

690-052-0110

Proposed Final Order: Findings and Criteria; Protests ¶

- (1) Within 90 days of the close of the comment period in OAR 690-052-0100, a proposed final order, containing the draft decommissioning plan, shall be prepared by the Director. The plan shall comply with the standard set out in 690-052-0070.¶
- (2) The proposed final order shall:¶
- (a) Cite findings of fact and conclusions of law;¶
 - (b) Include a brief statement that explains the issues considered relevant to the development of the decommissioning plan; and¶
 - (c) Contain the date by which protests to the proposed final order must be received by the Department.¶
- (3) The Department shall mail copies of the proposed final order to the operator, the DART if established, agencies providing comments, and to persons who have requested copies and paid the fee required under ORS 536.050(1)(e). The Department shall also give public notice of the proposed final order in the Department's weekly ~~bulletin~~ public notice.¶
- (4) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:¶
- (a) The name, address and telephone number of the protestant;¶
 - (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;¶
 - (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;¶
 - (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;¶
 - (e) Any citation of legal authority supporting the protest, if known; and¶
 - (f) For persons other than the ~~applicant~~ operator, the protest fee required under ORS 536.050(1)(j).¶
- (5) Protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly ~~bulletin~~ public notice published by the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050(1)(e), unless the person has previously requested copies and paid the required fee.¶
- ~~(6) Within 120 days after the close of the period for receiving protests, the director shall:¶~~
- ~~(a) Issue a final order as provided under OAR 690-052-0130; or¶~~
 - ~~(b) Schedule a contested case hearing if a protest has been submitted and if:¶~~
- ~~(A) Upon review of the issues, if a protest was timely submitted, the Water Resources Director shall:¶~~
- ~~(a) Issue a final order if the operator has not filed a protest and the director finds that there are no significant disputes related to the proposed decommissioning of the project; or¶~~
 - ~~(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.¶~~
- ~~(7) At the request of the applicant, the Department may extend the time periods set forth in subsection (6) of this section for a reasonable period of time.~~ Schedule a contested case hearing.
- Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & OL 1999, Ch. 873, Sec. 26
 Statutes/Other Implemented: ORS 543.092, 543, ORS 543A

AMEND: 690-052-0120

RULE SUMMARY: The rule has been amended to update references to rules pertaining to Protests and Contested Cases (OAR chapter 690, division 2) and Oregon Department of Justice Model Rules of Procedure for Contested Cases (OAR chapter 137, division 3).

CHANGES TO RULE:

690-052-0120

Contested Case Hearings **II**

Contested case hearings will be conducted according to ~~the terms and conditions set forth in Oregon Laws 1999, Chapter 849 (House Bill 2525), the rules adopted pursuant to that chapter, and any applicable Department rules~~ OAR chapter 137, division 3 and OAR chapter 690, division 2.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & OL 1999, Ch. 873, Sec. 26, ORS 183

Statutes/Other Implemented: ~~ORS 543.092, ORS 543A, 543A~~ ORS 183

AMEND: 690-052-0130

RULE SUMMARY: This rule is amended to remove redundant language concerning the procedure for filing exceptions to the administrative law judge's final order. The procedure for filing exceptions is addressed in OAR 690-002-0175. This rule clarifies what occurs after the Administrative Law Judge issues a proposed order. This rule is also amended to conform its language with OAR 137-003-0655 and to reflect the repeal of OAR 690-052-0110(6).

CHANGES TO RULE:

690-052-0130

Exceptions to the Administrative Law Judge Proposed Final Order; Director's Final Order ¶

~~(1) Any party may file exceptions and arguments with the Department within 20 days following the date of service of~~ If exceptions are timely filed to the proposed order on the parties to the contested case proceeding, Exceptions and arguments must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission statutes, rules, and policies to which modifications are sought in the exceptions.¶

~~(2) Where exceptions are timely filed to the proposed order, the Director shall either grant or deny~~ administrative law judge, the Director shall consider the exceptions and issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.¶

~~(3) Where~~ if no exceptions are filed within the time period allowed in the proposed order of the administrative law judge, the Director shall issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.¶

~~(4) If a contested case hearing is not held, the Director shall issue an order either affirming or modifying the proposed order.~~

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & OL 1999, Ch. 873, Sec. 26, ORS 183

Statutes/Other Implemented: ORS 543.092, ORS 543A, 543A, ORS 183

ADOPT: 690-052-0170

RULE SUMMARY: This rule implements ORS 183, which allows the agency to define when a proposed final order will become final. The rule states that the order will become final as a result of (1) no protest being filed, (2) the withdrawal of protests, (3) or default of protestants. The rule specifies that proposed final orders become final if no protest is filed within 33 days and that the Department may withdraw the final order for reconsideration and issuance of a superseding proposed final order before 33 days elapse. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

CHANGES TO RULE:

690-052-0170

Final Orders on Default

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

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

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

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

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A, ORS 183

AMEND: 690-053-0001

RULE SUMMARY: This rule has been amended to provide that the rule changes to Division 53 will apply to amendment applications filed on or after October 1, 2026.

CHANGES TO RULE:

690-053-0001

Purpose and Applicability ¶¶

(1) The purpose of this division is to establish procedures to be used by the Water Resources Department in evaluating applications for amendments to hydroelectric licenses, power claims or certificates. These rules do not apply to new project proposals. These rules describe the type of amendments that may be considered; the process that must be followed to approve amendments; and what steps must be taken to avoid injury to other water users, prevent undesirable impacts to natural resources, and to appeal Department decisions. ¶¶

(2) These rules do not apply to: ¶¶

(a) A change in point of diversion. ¶¶

(b) A change in point of appropriation. ¶¶

(c) New uses unrelated to the hydroelectric generation use. ¶¶

(d) The construction of a new dam in a location where there is no existing dam or diversion. ¶¶

(e) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the surface area or elevation of an existing impoundment. ¶¶

(f) Any modification to an existing hydroelectric project (including the replacement of existing turbines) which would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more or would result in an increase in the project's nameplate capacity of 2 megawatts or more as defined in regulations of the Federal Energy Regulatory Commission (FERC), 18 CFR 11.1(i). ¶¶

(3) Meeting the terms and conditions of a hydroelectric license, water right permit or certificate is considered a beneficial use of water. ¶¶

(4) These rules apply to amendment applications filed on or after October 1, 2026. Applications submitted before this date shall be subject to the rules in effect at the time of submittal.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS 543A

AMEND: 690-053-0010

RULE SUMMARY: This rule has been amended to point to the option of demonstrating that it is not subject to forfeiture under ORS 540.610.

CHANGES TO RULE:

690-053-0010

Amendment Application Form ¶

An amendment application shall be prepared in ink or typewritten on forms provided by the Department.

Applications shall contain the following information:¶

- (1) Applicant's name, mailing address, and telephone number.¶
- (2) Name appearing on permit, certificate or license, if different.¶
- (3) Type of change proposed.¶
- (4) Number of the permit, certificate or license.¶
- (5) Source of water.¶
- (6) Date of priority.¶
- (7) The existing points of diversion and points of use located accurately on a map in reference to a public land survey corner.¶
- (8) A general description of the current facilities, including capacity.¶
- (9) A statement explaining the reason for the proposed amendment consistent with 690-053-0020 through 0030.¶
- (10) Evidence that the water has been used within the past five years in accordance with the terms and conditions of the permit, certificate or license, or the right is not subject to forfeiture under ORS 540.610. The evidence may include:¶
 - (a) Affidavits from knowledgeable persons, such as the owner or operator, a neighbor, power purchaser.¶
 - (b) Receipts or expenditures related to the use of water.¶
 - (c) Other records such as dated photographs.¶
- (11) If for a redistribution or augmentation of water use a letter from the affected wildlife and/or environmental quality agency endorsing the change.¶
- (12) A listing of all affected local governments, including county, city, municipal corporations, and tribal governments.¶
- (13) An oath that the information contained in the application is true and accurate.¶
- (14) The signature of the applicant, and if an entity, the title of the authorized representative signing the form.¶
- (15) The appropriate fee as required under ORS 536.050(1)(h).

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~543A~~ ORS 543A, ORS 540.610

AMEND: 690-053-0015

RULE SUMMARY: The rule has been amended to (a) implement ORS 536.045 provisions concerning allowance for electronic documentation, and (b) create consistency across processes to more closely align with changes made to other programs by ORS 543.220 related to weekly public notices and removal of newspaper notice.. The rule amendment also adjusts reference to "agency" to reduce confusion, reorders sentences for clarity, and reorganizes the rule.

CHANGES TO RULE:

690-053-0015

Notice Requirements ¶

(1) The Department shall give notice of amendment applications received by publication in the Department's weekly notice "Public Notice of Water Use Requests." Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail. Any person interested in an amendment application shall submit written comments to the Department within 30 days of the weekly notice ~~or the last day of the newspaper notice in 690-053-0015(2), whichever is later.~~ ¶

~~(2) After notice is published by the Department, the applicant shall arrange for publication of a notice provided by the Department in an appropriate newspaper having general circulation in the area in which the hydroelectric facility is located for a period of at least two weeks and not less than one publication each week. The applicant shall provide the Department with a certificate of publication.~~ ¶

~~(3)~~ The notice must include the following information about the application: ¶

(a) The application and project file number. ¶

(b) The county of use. ¶

(c) The type of amendment proposed. ¶

(d) The applicants name and address. ¶

(e) The date by which comments on the amendment application must be received by the Department. ¶

(f) A statement that upon issuance of a ~~draft~~ proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality. ¶

~~(4)~~ The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project. ~~Agency comments must be received within 30 days after the last date of publication shown on the notice to file comments. Notice shall~~ Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail, or with the consent of the recipient, by electronic means. Comments from these governmental entities must be received within 30 days of issuance of notice.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~543A~~ ORS 543A, ORS 536.045

AMEND: 690-053-0030

RULE SUMMARY: This rule amendment implements ORS 536.045, by allowing electronic notice in lieu of mail, unless mailed notice has been requested.

CHANGES TO RULE:

690-053-0030
Public Hearing ¶

- (1) Based on review of the application, public comments received, the size of the project and other pertinent information, the Director will determine whether a public meeting and a request for additional studies or consultation will be required.¶
- (2) The public meeting may be omitted under one or more of the following circumstances:¶
 - (a) The project generates less than 100 theoretical horsepower of electricity;¶
 - (b) The proposed amendment does not involve a change in the annual amount of water used; or¶
 - (c) The proposed amendment is one agreed upon by the Department and the affected resource agencies; or¶
 - (d) No public comments were received raising substantial issues.¶
- (3) If the Director determines a public meeting is required, notice will be sent two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment process. Notice shall be sent by ~~regular mail, or with the consent of the recipient, electronic means unless the recipient has requested that the notice be sent, by electronic means~~ regular mail.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS 543A

AMEND: 690-053-0035

RULE SUMMARY: This rule amendment implements ORS 536.045 by allowing electronic notice in lieu of mail, unless mailed notice has been requested. The amendment also requires mailed notice to the applicant pursuant to the Oregon Administrative Procedure Act (ORS 183). Additional language changes have been made for consistency purposes related to orders.

CHANGES TO RULE:

690-053-0035

Issuance of ~~Amendment~~ Proposed Final Order ¶

After the close of the public comment periods, or the public hearing if one is held, and upon a finding that the proposed amendment meets standards in OAR 690-053-0020, the Department shall issue a proposed final order within 120 days.¶

(1) In developing the proposed final order, the Department shall consider all comments received under OAR-690-053-0015 and 0030, but the proposed final order need not separately address each comment received.¶

(2) The proposed final order shall include findings of fact and conclusions of law that show the standards in OAR 690-053-0020 and 0025 are met.¶

(3) The Department shall send ~~by regular mail, or with the consent of the recipient, by electronic means, the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415. The Department shall send~~ copies of the proposed final order to ~~the applicant and to persons who~~ persons who have requested copies by electronic means unless the recipient has requested copies that notice be sent by regular mail. Within 15 days after issuing the proposed final order, the Department shall publish notice of the order in the weekly notice published by the Department.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~543A~~ ORS 543A, ORS 183.415, ORS 536.045

AMEND: 690-053-0040

RULE SUMMARY: Language changes made for consistency purposes related to orders.

CHANGES TO RULE:

690-053-0040

Protests ¶

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

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

(b) A description of the protestant's interest in the amendment and, if the protestant claims to represent the public interest, a precise statement of the public interest represented.¶

(c) A detailed description of how the action proposed in the amendment will be detrimental to the protestant's interest.¶

(d) A detailed description of how the amendment is in error or deficient and how to correct the alleged error or deficiency.¶

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

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

(2) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.¶

(3) Protests shall be submitted within 45 days after publication of the notice of the amendment in the weekly notice published by the Department.¶

(4) Within 10 days after the close of the filing period established under Section 3 of this rule, the Department shall send a copy of all protests to the applicant, and the protestant(s), if any.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~543A~~ORS 543A, ORS 536.050

AMEND: 690-053-0045

RULE SUMMARY: This rule is amended to remove the reference to OAR 690-310-0170, which has been repealed to align Or. Laws 2025, ch 575 amendments to ORS 537.153 and 537.621. Rule language is updated to outline next steps following a protest (i.e., issuance of order or contested case). This rule also is amended to recognize that division 53 contested case hearings are governed by OAR chapter 690, division 2 as well as OAR chapter 137, division 3.

CHANGES TO RULE:

690-053-0045

Contested Case Hearings ¶

~~(1) Within 30 days after the close of the period for receiving protests, the Director shall determine whether to issue a final order or schedule a contested case hearing.¶~~

~~(2) The determination, if a protest was timely submitted, the Water Resources Director shall:¶~~

~~(a) Issue a final order if the applicant has not filed a protest and the director finds that there are no significant issues related to the use of whether to conduct a; or¶~~

~~(b) Schedule a contested case hearing will be made according to the provisions of OAR 690-310-0170.¶~~

~~(3) The contested case hearing will be conducted according to OAR chapter 690, division 2, and OAR chapter 137, division-3.~~

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~543A~~ ORS 543A, ORS 183

ADOPT: 690-053-0049

RULE SUMMARY: The procedure for filing exceptions is addressed in OAR 690-002-0175. This new rule clarifies what occurs after the Administrative Law Judge issues a proposed order. This rule also is amended to conform to OAR 137-003-0655.

CHANGES TO RULE:

690-053-0049

Exceptions to the Administrative Law Judge Proposed Final Order; Directors Final Order

(1) If exceptions are timely filed to the proposed order of the administrative law judge, the Director shall consider the exceptions and issue a final order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.¶

(2) If no exceptions are filed within the time period allowed in the proposed order of the administrative law judge, the Director shall issue a final order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

Statutory/Other Authority: ORS 543.092, ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543.092, ORS 183, ORS 543A

AMEND: 690-053-0050

RULE SUMMARY: This amended rule implements ORS 183, which allows the agency to define when a proposed final order will become final. The new rule states that the order will become final as a result of (1) no protest being filed, (2) the withdrawal of protests, (3) or default of protestants. The rule specifies that proposed final orders become final if no protest is filed within 33 days and that the Department may withdraw the final order for reconsideration and issuance of a superseding proposed final order before 33 days elapse. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

CHANGES TO RULE:

690-053-0050

Final Order on Default ¶

~~(1) If after the contested case hearing or, if a hearing is not held, no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period allowed to file for submitting a protest, the Director determines that the proposed amendment is consistent with the amendment criteria set forth in OAR 690-053-0020, the Director with no further action required by the Department. ¶~~

~~(2) If all timely filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to the proposed final order, the Department, if the matter has not been referred to the Office of Administrative Hearings, or the assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue a final order approving dismissing the amendment. The approval shall be on such terms and conditions as are necessary to ensure compliance with the amendment criteria in OAR 690-053-0020. ¶~~

~~(2) If the Director finds the proposed amendment does not comply with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order rejecting the application request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal. ¶~~

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

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

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS 183, ORS 543A

AMEND: 690-054-0000

RULE SUMMARY: This rule is amended to state that the rule changes in Division 54 apply to instream conversion processes where a proposed final order is issued on or after October 1, 2026.

CHANGES TO RULE:

690-054-0000

Purpose and Applicability

These rules establish definitions and procedures for the conversion of a Hydroelectric Water Right to an Instream Water Right in accordance with ORS 543A.305. The conversion process is for Hydroelectric Water Rights beneficially used and which ceased beneficial use within 5 years of October 23, 1999, or later. Conversion of a Hydroelectric Water Right to an Instream Water Right is not a new allocation of water within a stream basin. A Hydroelectric Water Right subject to these rules shall be considered for conversion to an Instream Water Right prior to any forfeiture proceeding under ORS 540.610. These rules do not apply to Projects on boundary waters that operate with water rights issued by the State of Oregon and by any other state, except upon the written request of the water right holder. These rules apply to instream conversion processes where a proposed final order is issued on or after October 1, 2026. The rules in effect prior to October 1, 2026, apply to instream conversion processes where a proposed final order was issued prior to October 1, 2026.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

AMEND: 690-054-0050

RULE SUMMARY: This rule is amended to clarify that the notice of opportunity to protest and request a hearing is governed by ORS 183.415.

CHANGES TO RULE:

690-054-0050

Notice of Proposed Final Order

(1) The proposed final order shall be:¶

(a) Distributed to the Holder, in accordance with ORS 183.415, and to all individuals, including all governmental entities, who have filed timely comments with the Department; and-¶

(b) Published in the Department's weekly notice publication.-¶

(2) The proposed final order shall specify that all protestants have 60 calendar days from the date of the notice to file a protest.

Statutory/Other Authority: ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543A.305, ORS 183.415

AMEND: 690-054-0060

RULE SUMMARY: This rule is amended to conform the Department's rules to the Department's authority. There is no authority for the agency to require requests for standing and collect fees for such requests for this type of transaction. Instead, individuals interested in participating must follow the process under the model rules of procedure to petition for party status. Retains consideration of "significant issues" but requires referral if the holder of the project protests. Finally, while the rule already requires reasonably ascertainable issues to be raised in a protest, the rule lacks specificity about what a failure to do so means; this rule is amended to clarify that failure to raise an issue with sufficient specificity in a protest precludes consideration of the issue in the contested case.

CHANGES TO RULE:

690-054-0060

Filing of Protests

(1) ~~All protests and comments must be received by the Director within the time specified in the notice of proposed final order. To become a party to protest a contested case hearing the fees required under ORS 536.050 must also be submitted by the date specified in the notice.~~¶

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

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

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;¶

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

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;¶

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

(f) Statements of facts which support the allegation that the proposed conversion instream should not be acted upon as proposed by the proposed final order.¶

(3) ~~Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. The request for standing must be in writing, signed by the requester, and include the following:~~ may file a petition for party status in any contested case hearing subsequently held on the protested matter, in the manner described in OAR 137-003-0535.¶

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

~~(b) If the requester is representing a group, association or other organization, the name, address, and telephone number of the represented group;~~¶

~~(c) A statement that the requester~~ Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the proposed final order as issued;¶

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

~~(e) The fee established under ORS 536.050.~~¶

~~(4) Any person who has filed a timely request for standing may later file a petition for party status in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 137-003-0535.~~¶

~~(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period.~~ erson's position by the close of the protest period. A failure to raise a reasonably ascertainable issue in a protest with sufficient specificity to afford the department an opportunity to respond to the issue precludes consideration of the issue in the contested case proceeding.¶

~~(6) Upon receiving a protest, the Director shall:~~¶

~~(a) Send a copy of all protests and requests for standing timely filed to the protestant(s), if any, and to each person who requested standing;~~¶

~~(b) If a protest was timely submitted, the Water Resources Director shall:~~¶

~~(b) Evaluate the protest to determine whether significant issues are raised and if so, shall issue a final order if the holder has not filed a protest and the director finds that there are no significant issues related to the conversion;~~ or¶

~~(B) Schedule a contested case hearing by referring the proposed final order, with accompanying protest, to the~~

Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing consistent with OAR 690-054-0070. ~~If the Director determines the protests do not raise significant issues, the Director shall issue a final order. A final order issued pursuant to this section is a final order in other than a contested case subject to judicial review under ORS 183.484. A final order shall be transmitted to all parties who have filed a protest, unless all protests have been withdrawn or resolved prior to referral.~~

Statutory/Other Authority: ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543A.305

AMEND: 690-054-0070

RULE SUMMARY: The rule is amended to reference to OWRD rules pertaining to Protests and Contested Cases (OAR chapter 690, division 2).

CHANGES TO RULE:

690-054-0070

Time and Place of Hearings, Exceptions, Final Order

(1) The conduct of contested hearings shall be as provided in OAR chapter 690, division 002, and OAR 137-003-0501 to 137-003-0700.¶

(2) If the proposed conversion is referred for a contested case hearing, a proposed order shall be issued by the Administrative Law Judge (ALJ) after the hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 calendar days of the order. If no exceptions are filed to the ALJ's proposed order within 30 calendar days, the Director shall issue a final order consistent with section (4).¶

(3) If exceptions are filed to the ALJ's proposed order, the Director may review or hear argument, either written or oral, and make the final determination for the final order.¶

(4) If, after the contested case hearing or, if a hearing is not held, after the close of the protest period as defined in OAR 690-054-0050, the Director determines the proposed conversion would not comply with ORS 543A.305 and OAR Chapter 690, Division 54, the Director shall:¶

(a) Issue a final order denying the conversion to an Instream Water Right; or¶

(b) Modify the proposed order to comply with ORS 543A.305 and OAR Chapter 690, Division 54, and issue a final order approving the conversion to an Instream Water Right.¶

(5) If, after the contested case hearing or, if a hearing is not held, after the close of the protest period as defined in OAR 690-054-0050, the Director determines the proposed conversion would comply with ORS 543A.305 and OAR Chapter 690, Division 54, the Director shall issue a final order approving the conversion to an Instream Water Right.¶

(6) A final order may set forth any of the provisions or restrictions to be included in the Instream Water Right.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

ADOPT: 690-054-0075

RULE SUMMARY: This rule implements ORS 183, which allows the agency to define when a proposed final order will become final. The rule states that the order will become final as a result of (1) no protest being filed, (2) the withdrawal of protests, (3) or default of protestants. The rule specifies that proposed final orders become final if no protest is filed within 33 days and that the Department may withdraw the final order for reconsideration and issuance of a superseding proposed final order before 33 days elapse. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

CHANGES TO RULE:

690-054-0075

Final Orders on Default

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

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

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

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

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305, ORS 183

AMEND: 690-305-0000

RULE SUMMARY: This rule is amended to clarify that OAR 690-305 no longer applies to OAR 690-320 as proposed for revision.

CHANGES TO RULE:

690-305-0000

Purpose and Applicability

The purpose of this rule is to establish general criteria for maps submitted to the Department on or after April 1, 2026. Unless otherwise specified in rule, these rules apply to applications submitted under OAR chapter 690, divisions 14, 18, 310, ~~320~~, 325, 340, 380, and 382. These rules also apply to maps submitted as part of an application for a reservoir under ORS 537.409. Additional specific mapping criteria may apply as specified in application specific rule divisions.

Statutory/Other Authority: ORS 536.027, ORS 537.409

Statutes/Other Implemented: ORS 537.140, ORS 537.144, ORS 537.211(4), ORS 537.225, ORS 537.230, ORS 537.252, ORS 537.400, ORS 537.610, ORS 537.615, ORS 537.780, ORS 540.520, ORS 540.523, ORS 540.524, ORS 540.531, ORS 540.532, ORS 540.533, ORS 540.585, ORS 537, ORS 540

REPEAL: 690-320-0010

RULE SUMMARY: This rule is repealed because it was only effective until July 1, 2001, which predates current extension laws governed by OAR chapter 690, division 315.

CHANGES TO RULE:

~~690-320-0010~~

~~Extension of Time Limits~~

~~(1) Effective until July 1, 2001, this rule establishes the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:~~

~~(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law; or~~

~~(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.~~

~~(2) This rule does not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.~~

~~(3) After July 1, 2001, the permit extension application process rules shall be contained in OAR 690, division 315.~~

~~(4) A holder of a permit for municipal water use, as defined in OAR 690-300-0010, may apply for an extension under the rules in this division. However, the Department will convene a work group to address issues relating to water rights for municipal water uses. The work group will be asked to make recommendations for rules and/or legislation to address issues specific to water rights for municipal water uses, including extensions of such water rights. Until July 1, 2001, holders of municipal water use permits are not required to apply for a permit extension. During this time, the Department will not require submission of proof of completion for, attempt to cancel, or compel an application for an extension for a water right permit for municipal water uses. This time period is offered to allow the work group to develop recommendations. The Department may shorten the time limit if the working group develops recommendations and new rules are adopted before July 1, 2001.~~

~~(5) The time limit to begin construction of water use facilities shall not be extended except for municipal use of surface water by a municipality, permits involving Federal Energy Regulatory Commission projects, permits issued to irrigation districts for reclamation purposes, or county, municipality or district permits for new storage projects.~~

~~(6) The time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230, 537.248, 537.630, and 539.010(5).~~

~~(7) Time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.~~

~~(8) Before taking final action on any request for an extension of time, the Director shall issue a proposed final order including any conditions necessary for approval of the extension. The Director shall provide public notice of the Department's proposed final order by means of publication in the Department's weekly notice. A period of 45 days shall be provided for the submission of a written comment or a written protest against a proposed final order. Protests shall include the fee as required under ORS 536.050. Each person submitting a protest shall raise all reasonably ascertainable issues and raise all reasonably available arguments supporting the person's position by the close of the comment period.~~

~~(9) If the Director determines that some progress has been made to complete the construction or use, but if diligence is questionable, the Director may issue a proposed final order to:~~

~~(a) Deny the request for more time;~~

~~(b) Grant the request for more time and notify the applicant that future requests for more time will not be granted; or~~

~~(c) Grant the request for more time by an order amending the permit to include any condition or provisions needed for determining future diligence. Such new provisions or conditions shall not apply to any portion of the right developed under the time limits previously granted.~~

~~(10) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.~~

~~(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings for the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof~~

~~survey pursuant to ORS 537.250.~~

~~(b) The Department shall provide notice of receipt of progress reports described in subsection (10)(a) of this rule in its weekly notice and shall allow a 30-day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.~~

~~(11) After the 45-day comment and protest period, the Director shall determine whether to:~~

~~(a) Issue a final order; or~~

~~(b) Schedule a contested case hearing if the Director finds that there are significant disputes related to the use of water.~~

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

~~Statutes/Other Implemented: ORS 536.050, 537.230, 537.248, 537.630, 539.010~~

REPEAL: 690-320-0020

RULE SUMMARY: This rule is repealed, readopted and amended as OAR 690-330-0050, as this rule and division 330 relates to proving up on a water right.

CHANGES TO RULE:

~~690-320-0020~~

~~Cancellation of Permit~~

~~When it appears from an onsite examination by the Water Resources Department that no appropriation has been made under the terms of the permit, or that use once made has undergone a period of five successive years of nonuse, a certified letter of intent to cancel the permit shall be sent to the permittee, allowing 60 days from the date of the letter for response. Failure to respond during the 60 day period shall result in cancellation of the permit.~~

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

~~Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.260, 537.410 - 537.450, 540, 543~~

REPEAL: 690-320-0030

RULE SUMMARY: This rule is repealed, readopted and amended as OAR 690-330-0060, as this rule and division 330 relates to proving up on a water right.

CHANGES TO RULE:

~~690-320-0030~~

~~Claims of Beneficial Use for Applications Filed After June 30, 1987-~~

~~Except for applications filed under the provisions of OAR 690-340-0220, all final proof surveys and claims of beneficial use for applications filed after July 9, 1987 shall be performed by Certified Water Right Examiners. Applicants prior to July 10, 1987, may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.797, 537.798, 537.799~~

REPEAL: 690-320-0040

RULE SUMMARY: This rule is repealed, readopted and amended as OAR 690-330-0070, as this rule and division 330 relates to proving up on a water right.

CHANGES TO RULE:

~~690-320-0040~~

~~Incremental Perfection of a Municipal Water Right~~

~~(1) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:~~

- ~~(a) Any incorporated city, village, or town;~~
- ~~(b) A port formed under ORS 777.005 to 777.725 and 777.915 to 777.953;~~
- ~~(c) A domestic water supply district formed under ORS Chapter 264; or~~
- ~~(d) A water supply authority formed under ORS Chapter 450.~~

~~(2) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-330-0010.~~

~~(3) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.~~

~~(4) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:~~

- ~~(a) The quantity of water diverted from each point of diversion, by month, for the preceding three years;~~
- ~~(b) A plan of how the municipal supplier intends to develop successive increments of its water right; and~~
- ~~(c) Maps that show where water will be put to use. Maps accompanying notification of intent to perfect an increment of a water right shall be prepared to the specifications described in OAR 690-310-0050, except that a standard even scale less than 4" = one mile may be used if appropriate.~~

~~(5) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-320-0010 governing extension of time limits applies to unperfected municipal water rights.~~

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

~~Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.260, 540~~

REPEAL: 690-320-0050

RULE SUMMARY: This rule is repealed to eliminate duplication with the same rules in OAR 690-330-0030.

CHANGES TO RULE:

~~690-320-0050~~

~~Temperature Control~~

~~Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.~~

~~Statutory/Other Authority: ORS 536.027~~

~~Statutes/Other Implemented: ORS 537.170, 537.250, 537.525, 537.630~~

REPEAL: 690-330-0040

RULE SUMMARY: This rule is proposed to be repealed as it is duplicative of OAR 690-320-0070.

CHANGES TO RULE:

~~690-330-0040~~

~~Primary and Supplemental Rights~~

~~(1) Cancellation of primary rights:¶¶~~

~~(a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;¶¶~~

~~(b) If the primary right is determined to have been forfeited by non-use and the supplemental right is not determined also to have been forfeited by non-use, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become the primary right.¶¶~~

~~(2) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to a supplemental status to allow for a new primary right application from a more dependable source of water.¶¶~~

~~(3) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at time when water is available from the surface water supply.~~

~~Statutory/Other Authority: ORS 536.025~~

~~Statutes/Other Implemented: ORS 540.610—540.650~~

ADOPT: 690-330-0050

RULE SUMMARY: This rule was formerly OAR 690-320-0020. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new updated rule points to the correct statutory authority for Department initiation of permit cancellation.

CHANGES TO RULE:

690-330-0050

Cancellation of Permit

The Department may initiate cancellation of a permit pursuant to ORS 537.260 or ORS 537.410 - 537.450.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.260, ORS 537.410 - 537.450, ORS 540, ORS 543

ADOPT: 690-330-0060

RULE SUMMARY: This rule was formerly OAR 690-320-0030. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new rule specifies proof survey requirements for applications filed through July 9, 1987, as well as those filed after July 9, 1987.

CHANGES TO RULE:

690-330-0060

Final Proof Survey: Claims of Beneficial Use for Applications Filed After July 9, 1987

(1) Except for applications filed under the provisions of OAR 690-340-0220, all final proof surveys and claims of beneficial use for water right permit applications filed after July 9, 1987, shall be performed by Certified Water Right Examiners in accordance with OAR 690-014.¶

(2) Applicants prior to July 10, 1987, may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.797 - 537.799

ADOPT: 690-330-0070

RULE SUMMARY: This rule was formerly OAR 690-320-0040. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new rule includes an applicability statement for clarity and refers to the submittal of the claim of beneficial use meeting the standards of OAR chapter 690, division 14 as part of the request for incremental perfection.

CHANGES TO RULE:

690-330-0070

Incremental Perfection of a Municipal Water Right

(1) These rules shall apply to requests submitted on or after July 1, 2026, for partial perfection of a municipal water right permit. Requests submitted before this date shall be subject to the rules in effect at the time of submittal.

(2) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:

(a) Any incorporated city, village, or town;

(b) A port formed under ORS 777.005 to 777.725 and 777.915 to 777.953;

(c) A domestic water supply district formed under ORS chapter 264; or

(d) A water supply authority formed under ORS chapter 450.

(3) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-330-0010.

(4) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

(5) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:

(a) A claim of beneficial use meeting the standards identified in OAR chapter 690, division 14;

(b) The quantity of water diverted from each point of diversion, by month, for the preceding three years and the maximum rate diverted under the permit to date, including the date; and

(c) A plan of how the municipal supplier intends to develop successive increments of its water right.

(6) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-315 extension of time limits applies to unperfected municipal water rights.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.220, ORS 536.300, ORS 536.310, ROS 537.260, ORS 540