



Staff Report

TO: Water Resources Commission

FROM: Ivan Gall, Director

DATE: September 10, 2026

SUBJECT: Agenda Item B

RULEMAKING FOR HYDROELECTRIC, PROOF OF APPROPRIATION, AND MISCELLANEOUS WATER RIGHTS PROVISIONS

I. Introduction

During this agenda item, the Commission will be asked to adopt the Department's proposed rule changes to Divisions 52, 53, 54, 305, 320, and 330. *This is an action item.*

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 and Revised Notice

At the June meeting, the Department updated the Commission on Phase 2 of the rulemaking effort relating to water rights transactions. See the Commission staff report for [June 11, 2026, Item H](#) for details on the rulemaking process including information about Tribal coordination and consultation, the Rules Advisory Committee, public notice, public hearings, and other information related to this rulemaking. Additional materials are posted on the [rulemaking webpage](#).

The initial public comment ran May 1 through June 12, 2026; the Department received one set of written public comments (Attachment 1), raising a concern regarding statutory misalignment of protest fees, which was addressed with two rule revisions. The Department revised the Notice of Proposed Rulemaking and extended the public comment period through July 24, 2026, to address the protest fee issue (Attachment 2.) The Department also made some minor corrections and clarified language in the Notice. The revised Notice included the following changes:

- Modified OAR 690-052-0110(4)(f) and 690-053-0040(1)(f) to clarify that operators/applicants and third parties are required to pay the protest fees outlined in ORS 536.050 to align rules with statute and existing Department practice; update the Statement of Need to reference these proposed rule modifications.
- Clarified the rule summaries relating to Final Orders on Default for OAR 690-052-

0170, 690-053-0050, and 690-054-0075 to make it clear that the default to a final order occurs 33 days after the deadline for filing a protest if no protest is filed by the protest filing deadline and the order is not withdrawn.

- Corrected the rule title for OAR 690-053-0049 to refer to the Administrative Law Judge’s “Proposed Order” rather than “Proposed Final Order.”
- Corrected effective date in OAR 690-330-0070 to reflect the anticipated effective date of October 1.
- Updated the racial equity impact and fiscal and economic impact statements to acknowledge the protest fee revision and explain that the revisions will have neutral effects on both analyses.
- Made statutory minor corrections (punctuation).

IV. Extended Comment Period

The Department published the Revised Notice of Proposed Rulemaking (Attachment 2) in the Secretary of State’s July 1, 2026, Oregon Bulletin. The Department provided notice on June 26 to the Department’s GovDelivery Rulemaking, Water Rights, Certified Water Rights Examiners, Legislative and Budget, and Well Said listservs as well as to the RAC, legislators, and other interested parties. No additional comments were received during the extended public comment period.

V. Tribal Engagement

The Department shared the Revised Notice of Proposed Rulemaking with Oregon’s nine federally recognized Tribes on June 26, with a renewed invitation to engage both formally and informally. The Department did not receive any requests for formal engagement but did receive one inquiry regarding OAR 690-054-0010(7) from a representative of the Confederated Tribes of Grand Ronde (Attachment 3.) For more information concerning Tribal engagement throughout the rulemaking process, see the Commission staff report for [June 11, 2026, Item H](#).

VI. Response to Comments and Changes to Rules

Attachment 3 contains a table of comments received by Division, Department response, and whether a change was made to the final draft rules.

Attachment 4 contains the draft proposed rules in track changes which are marked up from the existing adopted rules. These documents include yellow highlighting to indicate changes made to the rules after the close of the public comment period on July 24, 2026.

Attachment 5 represents the same rules without track changes, as proposed for Commission consideration and adoption.

VII. Alternatives

The Commission may consider the following alternatives:

1. Adopt final proposed rules in Attachment 5.
2. Adopt final proposed rules as modified by the Commission.
3. Do not adopt final proposed rules and request the Department to further evaluate the issues.

VIII. Recommendation

The Director recommends Alternative 1, that the Commission adopt the proposed rules as reflected in Attachment 5.

Attachments:

1. Written Comments
2. Revised Notice of Proposed Rulemaking
3. Comments Received and Department Response
4. Draft Proposed Rules – Track Changes Version
5. Draft Proposed Rules – Without Track Changes

Laura Hartt
971-720-0963



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

Item B - Attachment 1

June 12, 2026

Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
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Re: Comments, Phase Two Water Right Rulemaking, Div 52, 53 and 54

Dear Laura,

Thank you for the opportunity to provide comments on the hearings draft for the Div 52, 53 and 54 rules. These comments supplement WaterWatch comments provided in both written and verbal form during the RAC process.

I. Common Comments, Division 52, 53, 54:

- Petitions for Party Status, protests, contested case hearings, exceptions: To the extent the OWRD is attempting to create efficiencies, we would urge the OWRD to ensure that all processes across all water right transactions are uniform, unless otherwise directed by statute. While we understand that HB 3544 and HB 3342 didn't directly apply to all the hydro statutes (e.g. conversions), OWRD is proposing to align some sections (e.g. contested cases and exceptions), but not others (petitions for party status). Having disparate processes for different transactions will only create confusion and inefficiencies, which is counter to the intent behind both bills.
- Agency discretion not to go to contested case hearing if significant issues are not raised: To the extent the rules retain the existing discretion of the Director to assess significant issues in relation to third party protests, this same discretion should apply to water right holder/operator protests. Absent that, a water right holder/operator could file a frivolous protest that raises no legal or factual arguments to refute the OWRD decision, which would result in a waste of state agency time/resources.
- Protest Fees: All rule provisions related to protest fees should be aligned with existing statute. For example, Div 52 and Div 53 only have a third-party protestant paying a protest fee. While the original rules were adopted before the state started requiring protest fees for applicants; since that time the state has updated Oregon's statutes to require fees for applicant protests (albeit only ½ of a third-party protestant). The rules should reflect this.

II. Cleaning up the rules to align with statute: We strongly support the agency's work to try to expunge rule sections that are not supported by statute; that said, we think there is quite a bit more work to be done here. We will note specifics by section.

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A. Div 53 rule specific comment (not captured by common comments above)

- Application form, 690-053-0010(10), Evidence of Use: The rules propose to alter language related to the proof of use requirement. The proposed rule language qualifies the current requirement for “proof of use” with the language “or the right is not subject to forfeiture under ORS 540.610” (emphasis added). We have significant concerns with this addition given the interplay with other statutes.

It is important to note that ORS 540.610(2), which represents the bulk of the forfeiture statute, allows a water right holder that is presumed to have forfeited their water right due to non-use a process to “rebut” the presumption, it does not stipulate that the right is not subject to forfeiture. This section of statute only comes into play upon a showing of a failure to use water beneficially for five years. So in other words, ORS 540.610(2) cannot be used to assert that the use is not subject to forfeiture; rather, it only allows a rebuttal to the presumption that comes about from non-use. This makes the proof of use language very important. The only section of statute that allows an assertion of “the right is not subject to forfeiture” is Subsection (3), but even here some use is required, just not full use. In other words, in order employ Subsection (3), the applicant still needs to show proof of use. All of this makes the proposed rule language not only unnecessary, but also contrary to statute. Remedy: Strike the new proposed language from rule.

B. Div 54 rule specific comments (not captured by common comments above): Part of the stated purpose of this rulemaking is to clean up old rules to ensure that rules align with statute. To this end, the Div 54 rules need significant updating. Despite concerns raised by conservation groups, tribes and sister agencies in the previous Division 54 rulemaking, the Commission adopted rules that veer significantly from statute and undermine the very purposes of the law. Concerns include, but are not limited to, the following:

- 690-054-0010, Definitions
 - Subsection (7), Injury: The Div 54 definition of injury adds new considerations that apply only to instream conversions. The new considerations are found in OAR 690-054-0040(6) and include provisions such as the possibility of future regulation. This is not directed by statute and does not align with the OWRD’s determination of injury in any other process. This rule language places instream conversions at a distinct disadvantage as compared to consumptive use transfers. Remedy: Remove reference to OAR 690-054-0040(6).
- 690-054-0020, Notice of Consideration for Conversion, Eligibility Determinations and Preliminary Findings of Fact
 - Subsections (1)(c) and (d): The Div 54 rule do not allow for the conversion of a hydro right issued in conjunction with another right that is part of a larger distribution system, or storage. This is a gross misinterpretation of statute. ORS 543A.305(6) states: If hydroelectric production is not the sole beneficial use authorized by a water right, this section shall apply only to that portion that is used exclusively for hydroelectric purposes. Rules cannot narrow statutory language or intent. Remedy: Sections (c) and (d) should be struck and replaced with the statutory language.

- Subsection (3)(b)(B), Director’s preliminary finding on injury: This section expands the definition of injury to require consideration of whether the proposed conversion would result in new regulation. In no other instance (transfers, permit amendments, new water rights, etc) does the OWRD look at this in determining injury. This provision of the rules is not supported by statute, and strays significantly from the historical understanding of injury. Remedy: This section of rule should be struck.
- 690-054-0040 Proposed Final Order; Final Determinations and Finding of Fact
 - Subsection 0020(8): This section automatically subordinates the instream right resulting from the conversion to authorized water uses by other existing water rights as of October 23, 1999. This section not only makes all processes related to mitigation in the previous sections moot but does not follow the statutory structure that only protects “actual use” of authorized water uses by other existing water rights as of October 23, 1999. This is a significant departure from statute and significantly undercuts the purposes of the conversion statute. Remedy: To bring the rules into alignment with statute, this section should be struck, or, at the very least, insert the words “actual use”.

There are similar problems with Subsections (9) and (10).

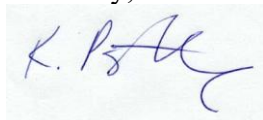
- 690-054-0080, Issuance of Instream Water Right: This section restricts the instream right associated with the conversion so that it “is not additive” to other instream rights. There is nothing in the Hydro Conversion statutes (ORS 543A.305) or the Instream Water Rights Act (ORS 537.332 et al) that directs or allows this. Remedy: Delete language from the rules.

In closing, while we appreciate the OWRD’s hard work to align rules with statute we would urge further consideration of the Div 54 draft rules to better align them with existing law, and/or schedule an additional rulemaking to address longstanding concerns raised in past rulemakings on these rules and their deviation from statute.

Additionally, going forward, we would also urge the OWRD to update the Div 51 rules, which are also related to hydroelectric use. There are provisions in the Div 51 rules that have no statutory basis (e.g. subordinating all new hydro rights to all other uses) and implicate other hydro processes.

Thank you for your consideration of our comments.

Sincerely,



Kimberley Priestley
Senior Policy Analyst



NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690

WATER RESOURCES DEPARTMENT

FILED: 06/23/2026 11:55 AM

ARCHIVES DIVISION SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/24/2026 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later.

If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Filed By:

Laura Hartt

Rules Coordinator

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 and 53);
- 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.

Note: The Notice of Proposed Rulemaking has been revised to add the following proposed change for Divisions 52 and 53:

- clarify that operators/applicants and third parties must pay the protest fees outlined in ORS 536.050 to align rules with statute and existing Department practice.

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/>.<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%2025.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:

Although this Notice of Proposed Rulemaking has been revised to clarify that operators/applicants and third parties must pay the protest fees outlined in ORS 536.050, the Department does not anticipate racial equity impacts to differ appreciably from those that were discussed in the original, May 1, 2026, Notice of Proposed Rulemaking (included below). Current statute requires protest fees for third parties as well as operators (Division 52) and applicants (Division 52). However, the current rules do not align with statute, because they do not require either operators or applicants to submit a protest fee. Nonetheless, the Department's standard practice has been including fee requirements for third parties as well as operators/applicants on the forms individuals fill out to file a protest accompanied by collection of the statutory fees, consistent with statute. Therefore, the new change is expected to have a neutral effect on racial equity.

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.

FISCAL AND ECONOMIC IMPACT:

Although this Notice of Proposed Rulemaking has been revised to clarify that operators/applicants and third parties must pay the protest fees outlined in ORS 536.050, the Department does not anticipate economic or fiscal impacts to differ appreciably from those that were discussed in the original, May 1, 2026, Notice of Proposed Rulemaking (included below). Current statute requires protest fees for third parties as well as operators (Division 52) and applicants (Division 52). However, the current rules do not align with statute, because they do not require either operators or applicants to submit a protest fee. Nonetheless, the Department's standard practice has been including fee requirements for third parties as well as operators/applicants on the forms individuals fill out to file a protest accompanied by collection of the statutory fees. Therefore, the new change is expected to be neutral with respect to economic or fiscal impacts.

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 proports it will lead to increased efficiency for water dependent businesses. This would be accurate if the rulemaking was properly focused on implementing only the required provisions 2025 Legislation. The RAC has been rushed to provide feedback and even under the most optimistic view it is highly likely there are going to be errors, unclear or conflicting rule language, and unintended consequences for both the Department and all of the water interests who rely on timely and efficient transactions. Overall, we feel the rushed process for this rulemaking will inevitably lead to unintended impacts and higher fiscal burden to a range of stakeholders. We are particularly concerned about impacts to water users, municipal and agricultural water suppliers, and other entities. It is likely there be increased expenses from hiring consultants or attorneys to determine what some of these proposed rule changes mean. We are also concerned that it will be difficult for WRD to implement some of the proposed changes, leading to further delays in transaction processing rather than increased efficiency and improved timing.”

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) 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, 543A.300(2) ~~& OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, 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, 543A.300(2) ~~& OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, 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, 543A.300(2) ~~& OL 1999, Ch. 873, Sec. 26~~

Statutes/Other Implemented: ~~ORS 543.092,~~ 543, 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, 543A.300(2) ~~& OR 1999, Ch. 873, Sec. 26~~

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

AMEND: 690-052-0110

RULE SUMMARY: This rule has been amended to (1) remove the current inefficient process requiring applicants to request a hearing after the close of the protest period and instead requires, applicants 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. Finally, the proposed rules have been updated to align with statute and agency practice regarding collection of protest fees from both project operators as well as third parties.

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, the~~ 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, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Statutes/Other Implemented: ORS ~~543.092~~, 543, 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, 543A.300(2) & OL 1999, Ch. 873, Sec. 26, ORS 183

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

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's 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, 543A.300(2) ~~& OL 1999, Ch. 873, Sec. 26, ORS 183~~

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

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 33 days after the end of the time for filing protests if no protest is timely filed and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. 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, 543A.300(2)

Statutes/Other Implemented: ORS 543, 543A, 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, 536.027

Statutes/Other Implemented: ORS 543.092, 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, 536.027

Statutes/Other Implemented: ORS 543.092, 543A, 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 align by ORS 543.220 related to the 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)~~ (2) 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)~~ (3) The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian ~~tribes~~ 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 the notice.

Statutory/Other Authority: ORS 543.092, 536.027

Statutes/Other Implemented: ORS 543.092, 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 II

- (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, 536.027

Statutes/Other Implemented: ORS 543.092, 543A, 526.045

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, 536.027

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

AMEND: 690-053-0040

RULE SUMMARY: Language changes made for consistency purposes related to orders. The proposed rules have been updated to align with statute and agency practice regarding collection of protest fees from both project operators as well as third parties.

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, 536.027
- Statutes/Other Implemented: ORS 543.092, 543A, 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. 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 of whether to conduct a contested case hearing will be made~~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 water; or ¶~~

~~(b) Schedule according to the provisions of OAR 690-310-0170~~Contested case hearing. ¶

~~(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, 536.027

Statutes/Other Implemented: ORS 543.092, 543A, 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 is also amended to conform to OAR 137-003-0655.

CHANGES TO RULE:

690-053-0049

Exceptions to the Administrative Law Judges Proposed 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, 536.027, ORS 183

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

AMEND: 690-053-0050

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 33 days after the end of the time for filing protests if no protest is timely filed and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. 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 a protest, the Director determines that the proposed amend 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, is consistent with the amendment criteria set ff the matter has not been referred to the Office of Administrative Hearings, or th in OAR 690-053-0020, the Director assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue a finaln order approv 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, 536.027

Statutes/Other Implemented: ORS 543.092, ORS 193, 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 owner 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)A) Evaluate the protest to determine whether~~Issue a final order if the holder has not filed a protest and the director finds that there are no significant issues are raised and if so, shall~~lated 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 33 days after the end of the time for filing protests if no protest is timely filed and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. 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, 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 ch 690, div 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 536.027, ORS 536.025

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, ORS 537.798, ORS 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 October 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, ORS 537.260, ORS 540

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Attachment 3 – Comments Received by Division, Department Response, and Whether Changes Were Made

Table of comments received on Divisions 52, 53, and 54, with Department's response and whether changes were made as a result of comment. No comments were received on proposed rule changes for Divisions 305, 320, or 330.

Rule(s)	Commenter (date)/Comment	OWRD Response	Change Made?
General	WaterWatch (WW) (6/12/26) - We strongly support the agency's work to try to expunge rule sections that are not supported by statute; that said, we think there is quite a bit more work to be done here. We will note specifics by section.	Noted.	N/A
Petitions for Party Status, protests, contested case hearings, exceptions OAR 690-052, -053, -054	WW (6/12/26) - To the extent the OWRD is attempting to create efficiencies, we would urge the OWRD to ensure that all processes across all water right transactions are uniform, unless otherwise directed by statute. While we understand that HB 3544 and HB 3342 didn't directly apply to all the hydro statutes (e.g. conversions), OWRD is proposing to align some sections (e.g. contested cases and exceptions), but not others (petitions for party status). Having disparate processes for different transactions will only create confusion and inefficiencies, which is counter to the intent behind both bills.	Out of Scope - HB 3544 sections 2 and 3, which address contested case hearing processes, protests, and requests for party status, only applies to transactions governed by ORS 537, 540, or 541, not those governed by ORS 543 or 543A. See HB 3544 section 2(2)(a) and (2)(b). Absent statutory authority or an exemption from the Attorney General providing otherwise, ORS 183.630(1) requires OWRD contested case hearings to be governed by the Attorney General's Model Rules of Procedure for Contested Case Hearings at OAR 137-003-0501 to -0700. Requests for party status in Division 52, 53, and 54 contested case hearings are governed by OAR 137-003-0535, which are similar to those adopted for HB 3544 in OAR 690-002-0225. Revision of protest requirements for hydro was beyond the scope of this rulemaking and would require further analysis.	No
Agency discretion not to go to	WW (6/12/26) - To the extent the rules retain the existing discretion of the Director to assess	The proposed rule language (included below) retains agency discretion, is consistent with changes made	No

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contested case hearing if significant issues are not raised OAR 690-052-0110(6); OAR 690-053-0045(1); OAR 690-054-0060(5)(b)	significant issues in relation to third party protests, this same discretion should apply to water right holder/operator protests. Absent that, a water right holder/operator could file a frivolous protest that raises no legal or factual arguments to refute the OWRD decision, which would result in a waste of state agency time/resources.	during Phase 1 of this rulemaking effort, increases contested case management efficiency, and allows for required due process by providing the holder/operator/ applicant the opportunity for a hearing.	
Protest Fees OAR 690-052-0110(4)(f); OAR 690-053-0040(1)(f)	WW (6/12/26) - All rule provisions related to protest fees should be aligned with existing statute. For example, Div 52 and Div 53 only have a third-party protestant paying a protest fee. While the original rules were adopted before the state started requiring protest fees for applicants; since that time the state has updated Oregon's statutes to require fees for applicant protests (albeit only ½ of a third-party protestant). The rules should reflect this.	Agreed. ORS 536.050(1)(j)(A) and (B) authorize protest fees for both third party protestants and project operators and holders. Rule language was updated and re-noticed July 1, 2026.	Yes

Division 53 - Hydroelectric License, Power Claim and Certificate Amendments

Evidence of Use OAR 690-053-0010(10)	WW (6/12/26) - The rules propose to alter language related to the proof of use requirement. The proposed rule language qualifies the current requirement for "proof of use" with the language "or the right is not subject to forfeiture under ORS 540.610" (emphasis added). We have significant concerns with this addition given the interplay with other statutes. It is important to note that ORS 540.610(2), which represents the bulk of the forfeiture statute, allows a water right holder that is	Depending on the specific facts, conversion or forfeiture may apply. Further refinement of this issue is beyond the scope of this rulemaking and requires further policy discussion. OWRD has stricken the proposed forfeiture language but has inserted "beneficially" to clarify that use must be beneficial: (10) Evidence that the water has been used <u>beneficially</u> within the past five years in accordance with the terms and conditions of the permit,	Yes
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	presumed to have forfeited their water right due to non-use a process to “rebut” the presumption, it does not stipulate that the right is not subject to forfeiture. This section of statute only comes into play upon a showing of a failure to use water beneficially for five years. So in other words, ORS 540.610(2) cannot be used to assert that the use is not subject to forfeiture; rather, it only allows a rebuttal to the presumption that comes about from non-use. This makes the proof of use language very important. The only section of statute that allows an assertion of “the right is not subject to forfeiture” is Subsection (3), but even here some use is required, just not full use. In other words, in order employ Subsection (3), the applicant still needs to show proof of use. All of this makes the proposed rule language not only unnecessary, but also contrary to statute. WW Recommendation - Strike the new proposed language from rule.	certificate or license, or the right is not subject to forfeiture under ORS 540.610. The evidence may include:	
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Division 54 - Conversion of a Hydroelectric Water Right to an Instream Water Right

Rule(s)	Commenter (date)/Comment	OWRD Response	Change Made?
Note	See below	The referenced rules were not proposed for revisions during this rulemaking and therefore, not noticed for public comment or scoped as part of this rulemaking effort. Since the sections were not included in the notice for this rulemaking, changes cannot be considered for these sections. Note also that the Division 54 rules were first adopted in 2022 with the support of a Rule Advisory Committee (RAC). Due to the complexity of the statutory authorities and the issues, that effort involved a significant time investment from the RAC and OWRD. Many of the comments received are similar to comments made during the 2022 adoption of these rules, which were considered by the Commission during adoption. See Commission Staff Report from March 2022, Item J. Response to	No

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		comments were addressed in Attachment 7.	
General	WW (6/12/26) - Part of the stated purpose of this rulemaking is to clean up old rules to ensure that rules align with statute. To this end, the Div 54 rules need significant updating. Despite concerns raised by conservation groups, [T]ribes and sister agencies in the previous Division 54 rulemaking, the Commission adopted rules that veer significantly from statute and undermine the very purposes of the law. WW (6/12/26) - In closing, while we appreciate the OWRD's hard work to align rules with statute we would urge further consideration of the Div 54 draft rules to better align them with existing law, and/or schedule an additional rulemaking to address longstanding concerns raised in past rulemakings on these rules and their deviation from statute.	See response above.	No
Definitions - Injury OAR 690-054-0010(7)	WW (6/12/26) - The Div 54 definition of injury adds new considerations that apply only to instream conversions. The new considerations are found in OAR 690-054-0040(6) and include provisions such as the possibility of future regulation. This is not directed by statute and does not align with the OWRD's determination of injury in any other process. This rule language places instream conversions at a distinct disadvantage as compared to consumptive use transfers. WW Recommendation – Remove reference to OAR 690-054-0040(6). Confederated Tribes of Grand Ronde (7/8/26 email inquiry) - Water Watch's comment about Section 54 Injury and having to prove that an instream right doesn't cause an injury if it takes water from an unused hydro use and that standard is not used for any other situation...I'm trying to understand the reasoning for why that is and from the perspective of what they wrote, I'd say the Tribe would agree with WW.	See response above.	No
Notice of Consideration for Conversion,	WW (6/12/26) - The Div 54 rules do not allow for the conversion of a hydro right issued in conjunction with another right that is part of a larger distribution system, or storage. This is a gross misinterpretation	See response above.	No

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Eligibility Determinations and Preliminary Findings of Fact OAR 690-054-0020(1)(c), (d)	of statute. ORS 543A.305(6) states: If hydroelectric production is not the sole beneficial use authorized by a water right, this section shall apply only to that portion that is used exclusively for hydroelectric purposes. Rules cannot narrow statutory language or intent. WW Recommendation - Sections (c) and (d) should be struck and replaced with statutory language.		
Notice of Consideration for Conversion, Eligibility Determinations and Preliminary Findings of Fact - Director's preliminary finding on injury OAR 690-054-0020(3)(b)(B)	WW (6/12/26) - This section expands the definition of injury to require consideration of whether the proposed conversion would result in new regulation. In no other instance (transfers, permit amendments, new water rights, etc.) does the OWRD look at this in determining injury. This provision of the rules is not supported by statute, and strays significantly from the historical understanding of injury. WW Recommendation - This section of rule should be struck.	See response above.	No
Proposed Final Order; Final Determinations and Findings of Fact OAR 690-054-0040(8), (9), (10) Note, OWRD staff assume “-0020(8)” means “-0040(8).”	WW (6/12/26) - Subsection 0020(8): This section automatically subordinates the instream right resulting from the conversion to authorized water uses by other existing water rights as of October 23, 1999. This section not only makes all processes related to mitigation in the previous sections moot but does not follow the statutory structure that only protects “actual use” of authorized water uses by other existing water rights as of October 23, 1999. This is a significant departure from statute and significantly undercuts the purposes of the conversion statute. There are similar problems with Subsections (9) and (10). WW Recommendation - To bring the rules into alignment with statute, this section should be struck, or, at the very least, insert the words “actual use”.	See response above.	No

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Issuance of Instream Water Right OAR 690-054-0080	WW (6/12/26) - This section restricts the instream right associated with the conversion so that it “is not additive” to other instream rights. There is nothing in the Hydro Conversion statutes (ORS 543A.305) or the Instream Water Rights Act (ORS 537.332 et al) that directs or allows this. WW Recommendation - Delete language from the rules.	See response above.	No
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Other

Rule(s)	Commenter (date)/Comment	OWRD Response	Change Made?
General OAR 690-051	WW (6/12/26) - “...we would also urge the OWRD to update the Div 51 rules, which are also related to hydroelectric use. There are provisions in the Div 51 rules that have no statutory basis (e.g. subordinating all new hydro rights to all other uses) and implicate other hydro processes.”	Out of Scope – Division 51 was not part of the original rulemaking effort and was not included in the notice of proposed rulemaking	No

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Division 52**DECOMMISSIONING RULES FOR NON-FERC PROJECTS****Amend****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 apply to projects that voluntarily requested license cancellation prior to June 30, 1997, the effective date of Oregon Laws 1997, Chapter 449. These rules shall apply to 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**History:**

WRD 4-2001, f. & cert. ef. 5-7-01

Amend**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 ~~690-015-0005(5)~~ 690-380-0100.

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- (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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0020

Initiation of Decommissioning Process

- (1) If an operator does not submit a notice of intent to reauthorize under ORS 543A.030, the Department shall within 60 days after the deadline for filing the Notice of Intent, request from the operator information regarding the decommissioning of the project pursuant to 543A.030(2), if the information has not already been filed. If the Department is unable to contact the operator, the Department may proceed with the decommissioning process, complying with the provisions of this chapter, as practical, in the absence of the operator.
- (2) The Department does not have to initiate the decommissioning process upon receipt of the information requested in subsection (1) of this section. However, the Department shall initiate the decommissioning process at least one year prior to the expiration of the project's license.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

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

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(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,~~ ORS 543, ~~& ORS -543A~~

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0040

Process Determination

(1) After the close of the comment period in OAR 690-052-0030, the Department shall determine whether the decommissioning plan will be developed through a standard or expedited process. In making the determination, the Department shall consider any information received from the operator, comments received from agencies and the public pursuant to 690-052-0030, and the following guidelines:

(a) The expedited process shall be used for projects without dams or other permanent structures in the stream, projects which use pipes or other easily removable works to divert or withdraw water from the stream.

(b) The standard process shall be used for projects using dams or other large permanent structures in the stream to create a reservoir or divert water.

(2) Notwithstanding subsection (1) of this section, upon good cause, the Department may deviate from the guidelines in subsection (1) of this section when determining which decommissioning process to use.

(3) The Department shall promptly notify the operator and any person who provided comments, of its process decision.

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Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)**Statutes/Other Implemented:** ORS 543, ORS 543A**History:**

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0050**Expedited Process**

If the Department decides to conduct the decommissioning using the expedited process, within 120 days of making that decision, the Department shall develop an initial draft plan considering available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)**Statutes/Other Implemented:** ORS 543, ORS 543A**History:**

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0060**Standard Process; Decommissioning Application Review Team**

(1)(a) If the Department decides to conduct the decommissioning using the standard process, the Department shall establish a Decommissioning Application Review Team (DART). The Department shall participate in and invite to the DART, representatives of the Departments of Environmental Quality, Fish and Wildlife, and any other agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the project.

(b) Within 60 days of establishing the DART, the Department shall enter into an initial consultation with the operator and the DART to gain information about the project, evaluate possible decommissioning methods, and identify potential environmental impacts of a project decommissioning.

(2) Following the consultation, the Department shall develop an initial draft plan considering the information gathered during the consultation and any available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)**Statutes/Other Implemented:** ORS 543, ORS 543A**History:**

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0070**Decommissioning Plan; Standard for Review**

(1) When developing an initial draft plan under OAR 690-052-0050 or 690-052-0060, or a draft decommissioning plan under 690-052-0090, the Department shall include terms and conditions in the plan to protect the public health and safety and the environment.

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(2) In developing the terms and conditions of the decommissioning plan, the Department shall consider impacts to the items listed below if they are identified by comments or otherwise identified in the Department's record for the project:

- (a) Fish and wildlife during and after decommissioning;
 - (b) Water quality;
 - (c) Water use and the disposition of the water right for the project;
 - (d) Wetlands;
 - (e) Geohazards;
 - (f) Dam safety, including the protection of the public health and safety from the failure of any hydraulic works during and after decommissioning;
 - (g) Other resources including recreation; scenic and aesthetic values; historic, cultural, and archaeological sites; and botanical resources; and
 - (h) Instream water rights.
 - (i) Federal and local plans, including the plans of local watershed councils;
 - (j) Economic costs to the operator;
 - (k) Local and community economics;
 - (l) Tribal issues; and
 - (m) Overall environmental impact.
- (3) The Department shall consider all other relevant issues raised by comments received.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0080

Agency Comments

(1) Upon development of an initial draft plan under either OAR 690-052-0050 or 690-052-0060, the Department shall distribute the plan to the DART, if created, appropriate natural resource agencies, and any other agencies that provided comments under 690-052-0030, for a 60-day review and comment period.

(2) The Department shall consider all comments received under subsection (1) of this section and determine if the initial draft plan needs to be revised.

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

Statutes/Other Implemented: ORS 543, ORS 543A

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History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0090**Draft Decommissioning Plan**

Upon completion of the agency review process and any revisions, the Department shall issue the plan, as a draft decommissioning plan, for public notice and comment according to OAR 690-052-0100. The terms and conditions of the plan shall satisfy the standard set forth in 690-052-0070.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend**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

History:

WRD 4-2001, f. & cert. ef. 5-7-01.

Amend**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:

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- (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~~ The protest fee required under ORS 536.050(1)(~~i~~).
- (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 ~~public notice~~bulletin 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) 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 issues related to the decommissioning; or
 - (b) Schedule a contested case hearing. 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, the director finds that there are significant disputes related to the proposed decommissioning of the project; or~~

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~~(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.~~

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0120

Contested Case Hearings

Contested case hearings will be conducted according to OAR chapter 137, division 3 and OAR chapter 690, division 2. ~~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.~~

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

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

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 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.~~

~~(12)~~ WhereIf exceptions are timely filed to the proposed order of the administrative law judge, the Director shall ~~either grant or deny~~ consider the exceptions and issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

~~(23)~~ WhereIf 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.~~

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

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0140

Final Order Needed to Decommission

An operator of a hydroelectric project operating solely under the authority of the State of Oregon may not make physical changes to decommission the project except in accordance with a final order issued by the Water Resources Director under OAR 690-052-0130, and shall decommission the project according to such order. This section does not prohibit the operator from complying with the requirements of other state agencies.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0150

Disposition of the Water Right

The hydroelectric water right for a project is subject to the provisions of ORS 543A.305 regarding the conversion of a hydroelectric water right to an instream right. Nothing in these rules or in 543A.305 prevents the operator from transferring a hydroelectric water right to an instream right according to 540.505 through 540.530, prior to conversion.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0160

Modification of Time Limits

The Department, for good cause, may extend the time limits set forth in this division for a reasonable period of time.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Adopt

690-052-0170

Final Orders on Default

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(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, 543A.300(2)

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

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Division 53**HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS**

Yellow highlights indicate changes made to the proposed rules following the close of public comment on July 24, 2026.

Amend**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 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0005**Definitions**

10/1/26

The following definitions apply to the rules in this division:

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the director of the Water Resources Department.
- (4) "Augmentation of a hydroelectric water right" means diverting more water beyond the volume provided in the applicable hydroelectric water right over a calendar year. Augmentation does not include rescheduling or redistributing water use within a calendar year or installing more efficient generation equipment that allows the use of the same amount of water to produce more power.
- (5) "Final Unified State Position" means the formal state comments described in ORS Chapter 543A.115 that are forwarded to the Federal Energy Regulatory Commission (FERC) by the Hydroelectric Application Review Team (HART) in response to an applicant's final license application with FERC.
- (6) "Applicable hydroelectric water right" means a license issued under ORS Chapter 543, a power claim or certificate issued under Chapters 537 or 543A for the generation of hydroelectric power, a decreed right issued according to Chapter 539 or pre-1909 uncertificated claim.
- (7) "Injury to an existing water right" means a situation where the holder of a valid water right is prevented from receiving the water to which he/she is legally entitled.
- (8) "Redistribution" means varying the amount of water over the seasons of a calendar year but not exceeding the total amount allowed for the year. The total yearly amount is computed by multiplying the daily rate by 365 days.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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.

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- (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 **beneficially** 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 & 536.027

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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.~~

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~~(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.~~

(23) 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.

(34) 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 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 the notice.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092, & 543A, 536.045, 543.220

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0020

Amendment Criteria

Under ORS 543.092, upon the request of the hydroelectric water right, and the approval of the Department, a hydroelectric water right or certificate may be amended, provided that the amendment:

- (1) Is consistent with the final unified state position for the project, if one exists;
- (2) Is consistent with the requirements of ORS Chapter 543A;

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(3) Causes no injury to other water rights that cannot be adequately mitigated as determined by the Water Resources Department; and

(4) Allows for public participation in the amendment process.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0025

Types of Amendments that Will Be Considered Under These Rules

All amendments allowed in this section must be consistent with the standards in 690-053-0020.

(1) Hydroelectric water right holders as defined in ORS 543.075(2) may submit amendment applications that allow augmentations or redistribution of the volume of water allowed for diversion in the applicable hydroelectric water right only if the proposed amendments meet management goals of state wildlife or environmental quality agencies and are shown to restore, enhance or improve fish populations and/or water quality within the river systems. This includes:

(a) The rescheduling or redistributing of the total amount of water used over the year so that more water may be diverted during certain times of the year in exchange for reductions of water use during other times.

(b) Augmenting or increasing the total yearly amount of water provided that:

(A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.

(B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025; and

(C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.

(D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application.

(2) Hydroelectric water right holders may submit application amendments for the following:

(a) Adding fish protection and/or water quality as a beneficial use.

(b) Changing one or more items in the "water right conditions" section of the applicable hydroelectric water right provided that, after the application has been submitted, the affected state agencies have been consulted by the project owner and agree in writing that the amendment is needed.

(c) Hydroelectric water right holders may submit application amendments altering the date of expiration in the applicable hydroelectric water right to match the period granted by FERC.

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(d) Clarifying language or correcting administrative errors.

(3) Other proposed amendments not identified in these rules may be considered by the Department provided that the proposed amendment meets the criteria in 690-053-0020.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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 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.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092, & 543A; 536.045

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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.

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(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 the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415. ~~by regular mail, or with the consent of the recipient, by electronic means.~~ The Department shall send copies of the proposed final order ~~to the applicant~~ and to persons who have requested copies by electronic means unless the recipient has requested 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 & 536.027

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

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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, t~~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.

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(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 & 536.027

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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 of whether to conduct a contested case hearing will be made according to the provisions of OAR 690-310-0170. (1) 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 water; or~~

~~(b) Schedule a contested case hearing.~~

~~(32) 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 & 536.027

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Adopt

690-053-0049

Exceptions to the Administrative Law Judge Proposed Order; Director's 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, 536.027, 183

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

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Amend**690-053-0050****Final Order on Default**

~~(1) If after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed amendment is consistent with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order approving 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.~~

(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 543.092 & 536.027,

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

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Division 54**CONVERSION OF A HYDROELECTRIC WATER RIGHT TO AN INSTREAM WATER RIGHT****Amend****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**History:**

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0010**Definitions**

Unless the context requires otherwise, the following definitions apply in OAR Chapter 690, Division 54:

(1) “Actual Use” means:

(a) For a Project, the maximum amount of water, expressed in cubic feet per second (cfs), legally diverted through the hydroelectric turbine to produce electricity for each month of the year, including those months in which no water was used, pursuant to a Hydroelectric Water Right, based on documents available to the Department; or

(b) For Other Existing Water Right(s) as of October 23, 1999, the amount of water, expressed in cfs, legally diverted and beneficially used, based on documents available to the Department;

(2) “Continuation of Authorized Water Uses” means that Other Existing Water Right(s) as of October 23, 1999, shall not be required to curtail Actual Use under their existing water rights as a result of the conversion of a Hydroelectric Water Right to an Instream Water Right;

(3) “Department” means the Oregon Water Resources Department;

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- (4) “Director” means the Department Director or staff authorized by the Director to administer these rules;
- (5) “Holder” has the meaning given that term in ORS 543.075;
- (6) “Hydroelectric Water Right” is a water right issued and used for hydroelectric purposes including: hydroelectric licenses containing time-limited water rights issued under ORS 543; water right certificates issued under ORS 543A; water right permits or certificates issued under ORS 537; and power claimants under ORS 543.705 to 543.730 whether certificated or uncertificated;
- (7) “Injury” means the proposed conversion of up to the full amount of a Hydroelectric Water Right associated with a Project to an Instream Water Right would result in Other Existing Water Rights as of October 23, 1999 not receiving previously available water, based on the Actual Use of both the Project and the Other Existing Water Right(s) as of October 23, 1999, to which the Other Existing Water Right(s) as of October 23, 1999 are legally entitled, pursuant to the considerations of OAR 690-054-0040(6);
- (8) “Instream Water Right” means a water right held in trust by the Department for the benefit of the people of the State of Oregon to maintain water in stream for public use. An instream water right does not require a diversion or any other means of physical control over the water;
- (9) “Mitigation Measures” means conditions to the Instream Water Right that avoid, abate, minimize, rectify, reduce, or compensate for impacts of the conversion in order to avoid Injury and to ensure the Continuation of Authorized Water Uses;
- (10) “Other Existing Water Right(s) as of October 23, 1999” means a decreed, certificated, or permitted water right(s) issued on or before October 23, 1999, or a determined claim established on or before October 23, 1999, using water from the same water source or tributary as the Hydroelectric Water Right proposed for conversion;
- (11) “Project” means any hydroelectric power project;
- (12) “Reauthorized” has the meaning given the term “reauthorize” in ORS 543.075; and
- (13) “Subordinated” means a condition of a water right that expressly makes it inferior in right and subsequent in time to any appropriation of water upstream for beneficial use.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0020

Notice of Consideration for Conversion: Eligibility Determinations and Preliminary Findings of Fact

For the purposes of a notice of consideration for conversion to an Instream Water Right, the Director shall make the following eligibility determinations and preliminary findings of fact:

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(1) The Director shall determine whether a Hydroelectric Water Right associated with a Project is eligible for conversion to an Instream Water Right. A Hydroelectric Water Right is eligible for conversion if one of the following criteria is met:

- (a) Use of water under the Hydroelectric Water Right has ceased for a period of five years;
- (b) A time-limited Hydroelectric Water Right has expired and has not been extended or Reauthorized;
- (c) The Hydroelectric Water Right was transferred under ORS 540.520 and 540.530 and has expired; or
- (d) The Director has received written consent of the Holder;

(2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right associated with the Project that is eligible for conversion to an Instream Water Right. The amount of a Hydroelectric Water Right eligible for conversion is subject to the following limitations:

- (a) Any portion of a Hydroelectric Water Right transferred under ORS 540.520 and 540.530 is not eligible for conversion to an Instream Water Right, except upon expiration of that time-limited water right;
- (b) Any portion of a Hydroelectric Water Right for which hydroelectric production is not the sole beneficial use authorized by the right is not eligible for conversion to an Instream Water Right;
- (c) Any portion of a Hydroelectric Water Right authorized in conjunction with another water right pursuant to ORS 543.765, or that is part of a larger distribution system for municipal, irrigation, or other beneficial purposes is not eligible for conversion to an Instream Water Right; and
- (d) Any portion of a Hydroelectric Water Right authorized in conjunction with multi-purpose dam releases including flood control, irrigation, municipal, or other beneficial uses, is not eligible for conversion to an Instream Water Right. Conversion to an Instream Water Right may not require release of water stored for other beneficial purposes. An Instream Water Right resulting from conversion under these rules shall not have priority over waters legally stored or legally released from storage;

(3) The Director shall make a preliminary finding on Injury. In making such finding, the Director shall consider:

- (a) The Actual Use of the Project. To make a preliminary finding on the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project.
- (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To make a preliminary finding on the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999; or

(D) Any other available evidence that may assist the Director to make a preliminary finding on Injury.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0030

Notice of Consideration for Conversion: Requirements and Comment Period

(1) The Director shall prepare a notice of consideration for conversion with a 30 calendar day comment period. The notice shall include the following information:

(a) The eligibility determinations and preliminary findings of fact identified in OAR 690-054-0020;

(b) The county or counties in which the Project is located;

(c) The Project file number, permit, certificate, or decree volume and page;

(d) The name of the surface water source(s);

(e) The location of the point of diversion used for the Project; and

(f) A request for comments on the proposed conversion, including the date by which comments must be received.

(2) The Department shall provide a copy of the notice to the Holder and publish the notice in the Department's weekly notice publication with information about how interested persons may comment, obtain future notices about the proposed conversion, or obtain a copy of the final proposed order.

(3) If the Hydroelectric Water Right is not Subordinated to Other Existing Water Rights as of October 23, 1999, then the notice shall provide a 30 calendar day opportunity for any interested person to propose Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses.

(4) At the discretion of the Director, if the Hydroelectric Water Right was Subordinated to Other Existing Water Rights as of October 23, 1999, then the first public notice may be given at the

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time of the proposed final order describing the conversion to an Instream Water Right under OAR 690-054-0040 to 690-054-0050.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0040

Proposed Final Order: Final Determinations and Findings of Fact

Following the close of the comment period under OAR 690-054-0030, the Director shall prepare a proposed final order. The proposed final order shall recommend either to approve or to deny the conversion of the Hydroelectric Water Right to an Instream Water Right. The Director shall make the following determinations and findings of fact for inclusion in the proposed final order:

- (1) The Director shall determine whether the Hydroelectric Water Right is eligible for conversion to an Instream Water Right pursuant to the preliminary eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right that is eligible for conversion to an Instream Water Right pursuant to the eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (3) If the full amount of the Hydroelectric Water Right is not proposed for conversion to an Instream Water Right, the Director shall include an explanation of how the amount proposed for conversion was determined;
- (4) The Director shall determine the priority date of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (5) The Director shall determine the point of diversion of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (6) The Director shall determine whether conversion of a Hydroelectric Water Right to an Instream Water Right will result in Injury. In making this determination, the Director shall consider:
 - (a) The Actual Use of the Project. To determine the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project;
 - (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To determine the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999. If Subordinated, there is a rebuttable presumption that no Injury will occur and that no Mitigation Measures are required to ensure the Continuation of Authorized Water Uses; or

(D) Any other available evidence that may assist the Director to make a finding on Injury;

(7) In order to avoid Injury and to ensure the Continuation of Authorized Water Uses the Director may include Mitigation Measures as a condition to the Instream Water Right. In determining whether to include Mitigation Measures the Director may consider:

(a) Whether Mitigation Measures were proposed during the comment period pursuant to OAR 690-054-0030, and if so, may:

(A) Share Mitigation Measures proposed by interested persons during the comment period of OAR 690-054-0030 with other interested persons who responded during the comment period;

(B) Meet and confer with those interested persons who proposed Mitigation Measures during the comment period;

(C) Extend the comment period of OAR 690-054-0030, via notice in the Department's weekly notice publication, to allow discussion of Mitigation Measures, if interested persons demonstrate reasonable progress towards agreement on Mitigation Measures; or

(D) Obtain affidavits consenting to the relevant Mitigation Measure from each holder of an Other Existing Water Right as of October 23, 1999 that is potentially subject to new regulation under Chapter 690, Division 250; and

(b) Whether the conversion of a Hydroelectric Water Right to an Instream Water Right would result in Injury pursuant to the findings in section (6);

(8) If the Director determines Mitigation Measures are necessary to avoid Injury and to ensure the Continuation of Authorized Water Uses, the Director shall condition the Instream Water Right to state: "Authorized water uses by Other Existing Water Rights as of October 23, 1999, shall not be subject to regulation under Chapter 690, Division 250 to satisfy this Instream Water Right." If the Director chooses to include other Mitigation Measures as a condition to an Instream Water Right, the Director shall condition the Instream Water Right according to the Mitigation Measures agreed-upon pursuant to section (7);

(9) No Mitigation Measures other than in section (8) above shall be included as conditions of the Instream Water Right without an affidavit consenting to the relevant Mitigation Measure from

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each holder of a water right that is potentially subject to new regulation under Chapter 690, Division 250; and

(10) The Director shall determine whether the conversion, together with any recommended Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses, is consistent with ORS 543A.305 and shall either approve or deny the conversion. If the Director approves the conversion to an Instream Water Right, then the proposed final order shall include a draft certificate, including any proposed Mitigation Measures.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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;

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- (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:~~

- ~~(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 supports the proposed final order as issued;~~
- ~~(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and~~
- ~~(e) The fee established under ORS 536.050.~~

~~(34) 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 protested matter ~~for which standing was requested~~, in the manner described in OAR 137-003-0535.

~~(45) 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. 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.~~

~~(56) 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:~~

~~(Aa) 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~~

~~(Bb) Schedule a contested case hearing Evaluate the protest to determine whether significant issues are raised and if so, shall r~~ by R refering the proposed final order, with accompanying

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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, unless all protests have been withdrawn or resolved prior to referral. ~~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.~~

Statutory/Other Authority: ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

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History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Adopt**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/Others Implemented: ORS 543A.305, ORS 183

690-054-0080**Issuance of Instream Water Right Certificate**

After the Director issues a final order approving the conversion of a Hydroelectric Water Right to an Instream Water Right, the Department shall issue a certificate for an Instream Water Right. Each Instream Water Right is allocated individually and shall not be additive to other Instream Water Rights. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon. A certificate for an Instream Water Right supplied by stored water shall describe the reservoir.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

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Division 305

GENERAL MAP CRITERIA

Amend

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

History:

WRD 3-2026, adopt filed 03/20/2026, effective 04/01/2026

690-305-0010

General Map Criteria

Each map submitted to the Department shall meet the following general criteria in addition to any specific criteria identified in the rules for the relevant water right transaction:

(1) Drawing

(a) The map shall be drafted on paper or polyester film with ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced or scanned. Maps may be submitted electronically in portable document format (pdf) and must be prepared consistent with, and include the same information as, a paper map.

(b) The preferred paper size is 8.5 inches by 11 inches and should be no larger than 30 inches by 30 inches. A map greater than 30 inches by 30 inches may be submitted if the Department grants, by mail or electronic means, advance approval of the larger size.

(c) Beginning April 1, 2029, regardless of whether the map is submitted electronically, on paper, or on polyester film, for any map that OAR chapter 690 requires be prepared by a Certified Water Right Examiner, a digital file containing the coordinate system and geospatial features of the map as specified by the Department shall be submitted in addition to the map, unless the Department provides a waiver. The digital file shall be submitted as a shapefile or other approved format in a manner required by the Department.

(d) A platted and recorded subdivision map, deed description survey map, or county assessor map may be submitted as the application map if all of the required information included in sections (2) and (3) of this rule is clearly shown.

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(e) An aerial image may be provided in addition to the map to aid the Department in understanding the proposal.

(f) The map submitted under subsection (a) shall be the official record of the water right. An aerial image or digital file shall not be the official record of the water right.

(2) Scale

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

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

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

(3) Features: Features shall be clearly identified and labeled. Unless otherwise indicated in rule, the following features must be included in each map submitted to the Department:

(a) Mapping scale.

(b) North directional symbol.

(c) Legend.

(d) General location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features used to transport water from the point(s) of diversion or appropriation to the place use and to include the delivery features at the place of use.

(e) Other topographical features such as rivers, creeks, streams, lakes, reservoirs, ponds, roads, or railroads that may be helpful to clarify and identify the location of points of diversion, wells, dams, and places of use.

(f) Location and flow direction of the water way if the source is surface water. If multiple water ways exist in the area of the proposed diversion and use, the map must identify the location and flow direction of the additional water ways.

(g) Township, range, section, quarter-quarter, and tax lot(s), donation land claims, or government lots where water will be or has been diverted, conveyed, and used. If the map is for municipal use the map:

(A) Must identify but does not need to label the quarter-quarters,

(B) Does not need to identify or label tax lots, donation land claims, or government lots.

(h) Location of each proposed or developed diversion point, well (point of appropriation), or dam by reference to a recognized public land survey corner. For a reservoir without a dam, the center of the reservoir shall be referenced to a recognized public land survey corner.

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(A) The locations shall be shown by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall also include latitude and longitude as established by a global positioning system.

(B) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764°). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84.

(i) Location of the proposed or developed place of use by township, range, section, and nearest quarter-quarter section.

(A) For irrigation or nursery use, the map shall additionally indicate the place of use in each quarter-quarter of a section by shading or hatchuring and indicate the number of acres in each quarter-quarter section, donation land claim, government lot, or other recognized public land survey lines.

(B) For places of use that are limited to a point, such as a stock watering tank, the location may also be identified by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall include latitude and longitude as established by a global positioning system.

(C) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764°). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84.

(D) Where more than one point of diversion or well is included, the map must clearly identify the place(s) of use served by each point of diversion or well.

(j) If for a supplemental irrigation application or claim of beneficial use, the location and water right reference number of the underlying primary right, registration or claim.

(k) Any other information the Department requests and considers necessary to evaluate the water right transaction.

Statutory/Other Authority: ORS 536.027 & ORS 537.409

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

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Division 320

MISCELLANEOUS WATER RIGHT PROVISIONS

Repeal

~~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 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~~

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~~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

~~History:~~

~~WRD 4-1998, f. & cert. ef. 11-2-98~~

~~WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0205~~

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~~WRD 9 1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0095~~~~WRD 16 1990, f. & cert. ef. 8-23-90~~**Repeal**~~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~~**History:**~~WRD 1 1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0210~~~~WRD 9 1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0100~~~~WRD 16 1990, f. & cert. ef. 8-23-90~~~~WRD 6 1987, f. & ef. 6-11-87~~**Repeal**~~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~~**History:**~~WRD 1 1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0215~~~~WRD 5 1994, f. & cert. ef. 4-13-94~~~~WRD 9 1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0103~~~~WRD 3 1988, f. 2-26-88, cert. ef. 2-28-88~~**Repeal**~~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;~~

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~~(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~~

~~History:~~

~~WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0235~~

~~WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0130~~

~~WRD 19-1990, f. & cert. ef. 12-14-90~~

Repeal

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~~

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~~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~~

~~History:~~

~~WRD 1-1996, f. & cert. ef. 1-31-96~~

690-320-0060

Assignment or Change of Ownership of a Permit or Groundwater Registration

(1) When a change of interest or ownership occurs in lands covered by a permit or groundwater registration, the record holder may request, in writing, the Director to record the assignment of a new owner.

(2) Should the record holder of the permit or groundwater registration be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit or registration. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (a) A copy of the deed to the land;
- (b) A copy of a land sales contract;
- (c) A court order or decree; or
- (d) Documentation of survivorship of property held jointly.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 537.220 & 537.635

History:

WRD 4-1998, f. & cert. ef. 11-2-98

WRD 1-1996, f. & cert. ef. 1-31-96

690-320-0070

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

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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 536.027

Statutes/Other Implemented: ORS 540.610 - 540.650

History:

WRD 1-1996, f. & cert. ef. 1-31-96

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Division 330**WATER RIGHT CERTIFICATES Proof of Appropriation to Perfect a Water Right****690-330-0010****Proof of Appropriation**

(1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be sent by first class mail to the permittee at the last known address, or with the consent of the recipient, by electronic means together with notice that the permittee or landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630(4).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630, 540 & 543

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0225

WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0110

WRD 16-1990, f. & cert. ef. 8-23-90

WRD 6-1987, f. & ef. 6-11-87

690-330-0020**Request for Reconsideration of the Contents of a Proposed Certificate**

(1) A request for reconsideration of the contents of a proposed certificate may be prepared by the permittee or landowner and submitted to the Department. The requests shall describe any disagreement with the contents of the proposed certificate.

(2) The request for reconsideration may be in the form of a phone call or personal contact, unless the disagreement proposes a change to any of the following:

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- (a) The source of water;
 - (b) The purpose for which the water is used;
 - (c) The quantity of water;
 - (d) The location of the points of diversion;
 - (e) The location of the use;
 - (f) The extent of the use; and
 - (g) Any conditions imposed upon the use.
- (3) If the disagreement results in a change to any item listed in subsections (2)(a) through (g) of this rule, the request for reconsideration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the final proof map, and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.
- (4) The Director may allow reasonable time beyond the time limit set under OAR 690-330-0010(2) for a permittee or landowner to complete and submit a written request for reconsideration.
- (5) Upon receipt of a request for reconsideration, the Director shall:
- (a) Approve the request without verification and issue a certificate with the changes included;
 - (b) Schedule field verification of the requested changes; or
 - (c) Deny the request by letter from Department staff to the requesting party.
- (6) If field verification is scheduled, a new proposed certificate shall be prepared and sent as prescribed by OAR 690-330-0010.
- (7) A request for reconsideration resulting from section (6) of this rule shall be approved or denied. If denied, the denial shall be in the form of an Order of the Director. The order shall provide for either issuance of a certificate of water right in conformance with the Director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 2.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630, 540 & 543

History:

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WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0230
 WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0120
 WRD 16-1990, f. & cert. ef. 8-23-90

690-330-0030**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

History:

WRD 1-1996, f. & cert. ef. 1-31-96

Repeal**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~~

~~**History:**~~

~~WRD 1-1996, f. & cert. ef. 1-31-96~~

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Adopt**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****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, ORS 537.798, ORS 537.799

Adopt**690-330-0070****Incremental Perfection of a Municipal Water Right**

(1) These rules shall apply to requests submitted on or after October 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

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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, ORS 537.260, ORS 540

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Division 52**DECOMMISSIONING RULES FOR NON-FERC PROJECTS****Amend****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 shall apply to 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)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend**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 690-380-0100.

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

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(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)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0020

Initiation of Decommissioning Process

(1) If an operator does not submit a notice of intent to reauthorize under ORS 543A.030, the Department shall within 60 days after the deadline for filing the Notice of Intent, request from the operator information regarding the decommissioning of the project pursuant to 543A.030(2), if the information has not already been filed. If the Department is unable to contact the operator, the Department may proceed with the decommissioning process, complying with the provisions of this chapter, as practical, in the absence of the operator.

(2) The Department does not have to initiate the decommissioning process upon receipt of the information requested in subsection (1) of this section. However, the Department shall initiate the decommissioning process at least one year prior to the expiration of the project's license.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

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 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.

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(b) The public notice shall be provided to:

(A) The operator;

(B) The Department's weekly public notice;

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

(D) Natural resource and other appropriate agencies.

(2) 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)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0040

Process Determination

(1) After the close of the comment period in OAR 690-052-0030, the Department shall determine whether the decommissioning plan will be developed through a standard or expedited process. In making the determination, the Department shall consider any information received from the operator, comments received from agencies and the public pursuant to 690-052-0030, and the following guidelines:

(a) The expedited process shall be used for projects without dams or other permanent structures in the stream, projects which use pipes or other easily removable works to divert or withdraw water from the stream.

(b) The standard process shall be used for projects using dams or other large permanent structures in the stream to create a reservoir or divert water.

(2) Notwithstanding subsection (1) of this section, upon good cause, the Department may deviate from the guidelines in subsection (1) of this section when determining which decommissioning process to use.

(3) The Department shall promptly notify the operator and any person who provided comments, of its process decision.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0050

Expedited Process

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If the Department decides to conduct the decommissioning using the expedited process, within 120 days of making that decision, the Department shall develop an initial draft plan considering available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0060

Standard Process; Decommissioning Application Review Team

(1)(a) If the Department decides to conduct the decommissioning using the standard process, the Department shall establish a Decommissioning Application Review Team (DART). The Department shall participate in and invite to the DART, representatives of the Departments of Environmental Quality, Fish and Wildlife, and any other agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the project.

(b) Within 60 days of establishing the DART, the Department shall enter into an initial consultation with the operator and the DART to gain information about the project, evaluate possible decommissioning methods, and identify potential environmental impacts of a project decommissioning.

(2) Following the consultation, the Department shall develop an initial draft plan considering the information gathered during the consultation and any available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0070

Decommissioning Plan; Standard for Review

(1) When developing an initial draft plan under OAR 690-052-0050 or 690-052-0060, or a draft decommissioning plan under 690-052-0090, the Department shall include terms and conditions in the plan to protect the public health and safety and the environment.

(2) In developing the terms and conditions of the decommissioning plan, the Department shall consider impacts to the items listed below if they are identified by comments or otherwise identified in the Department's record for the project:

(a) Fish and wildlife during and after decommissioning;

(b) Water quality;

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- (c) Water use and the disposition of the water right for the project;
 - (d) Wetlands;
 - (e) Geohazards;
 - (f) Dam safety, including the protection of the public health and safety from the failure of any hydraulic works during and after decommissioning;
 - (g) Other resources including recreation; scenic and aesthetic values; historic, cultural, and archaeological sites; and botanical resources; and
 - (h) Instream water rights.
 - (i) Federal and local plans, including the plans of local watershed councils;
 - (j) Economic costs to the operator;
 - (k) Local and community economics;
 - (l) Tribal issues; and
 - (m) Overall environmental impact.
- (3) The Department shall consider all other relevant issues raised by comments received.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0080

Agency Comments

- (1) Upon development of an initial draft plan under either OAR 690-052-0050 or 690-052-0060, the Department shall distribute the plan to the DART, if created, appropriate natural resource agencies, and any other agencies that provided comments under 690-052-0030, for a 60-day review and comment period.
- (2) The Department shall consider all comments received under subsection (1) of this section and determine if the initial draft plan needs to be revised.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0090

Draft Decommissioning Plan

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Upon completion of the agency review process and any revisions, the Department shall issue the plan, as a draft decommissioning plan, for public notice and comment according to OAR 690-052-0100. The terms and conditions of the plan shall satisfy the standard set forth in 690-052-0070.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0100

Public Notice and Comment for Draft Decommissioning Plan

(1) Department shall give public notice of the draft decommissioning plan in its weekly public notice, and shall notify any person who requested notice under OAR 690-052-0030(2). 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)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

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

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(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 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) The protest fee required under ORS 536.050.

(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 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) 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 issues related to the decommissioning; or

(b) Schedule a contested case hearing.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0120

Contested Case Hearings

Contested case hearings will be conducted according to OAR chapter 137, division 3 and OAR chapter 690, division 2.

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Statutory/Other Authority: ORS 536.027, ORS 543A.300(2), ORS 183

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0130

Exceptions to the Administrative Law Judge Proposed Order; Director's 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 an 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 an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

Statutory/Other Authority: ORS 536.027, 543A.300(2), ORS 183

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0140

Final Order Needed to Decommission

An operator of a hydroelectric project operating solely under the authority of the State of Oregon may not make physical changes to decommission the project except in accordance with a final order issued by the Water Resources Director under OAR 690-052-0130, and shall decommission the project according to such order. This section does not prohibit the operator from complying with the requirements of other state agencies.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0150

Disposition of the Water Right

The hydroelectric water right for a project is subject to the provisions of ORS 543A.305 regarding the conversion of a hydroelectric water right to an instream right. Nothing in these rules or in 543A.305 prevents the operator from transferring a hydroelectric water right to an instream right according to 540.505 through 540.530, prior to conversion.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

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690-052-0160**Modification of Time Limits**

The Department, for good cause, may extend the time limits set forth in this division for a reasonable period of time.

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

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Adopt**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, 543A.300(2)

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

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Division 53**HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS**

Yellow highlights indicate changes made to the proposed rules following the close of public comment on July 24, 2026.

Amend**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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0005**Definitions**

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The following definitions apply to the rules in this division:

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the director of the Water Resources Department.
- (4) "Augmentation of a hydroelectric water right" means diverting more water beyond the volume provided in the applicable hydroelectric water right over a calendar year. Augmentation does not include rescheduling or redistributing water use within a calendar year or installing more efficient generation equipment that allows the use of the same amount of water to produce more power.
- (5) "Final Unified State Position" means the formal state comments described in ORS Chapter 543A.115 that are forwarded to the Federal Energy Regulatory Commission (FERC) by the Hydroelectric Application Review Team (HART) in response to an applicant's final license application with FERC.
- (6) "Applicable hydroelectric water right" means a license issued under ORS Chapter 543, a power claim or certificate issued under Chapters 537 or 543A for the generation of hydroelectric power, a decreed right issued according to Chapter 539 or pre-1909 uncertificated claim.
- (7) "Injury to an existing water right" means a situation where the holder of a valid water right is prevented from receiving the water to which he/she is legally entitled.
- (8) "Redistribution" means varying the amount of water over the seasons of a calendar year but not exceeding the total amount allowed for the year. The total yearly amount is computed by multiplying the daily rate by 365 days.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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.

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- (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 **beneficially** 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, ORS 543A, ORS 540.610, ORS 540.612, ORS 536.050

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

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.

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(2) 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 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.

(3) 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. Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail. Comments from these governmental entities must be received within 30 days of issuance of the notice.

Statutory/Other Authority: ORS 543.092, ORS 536.027

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

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0020

Amendment Criteria

Under ORS 543.092, upon the request of the hydroelectric water right, and the approval of the Department, a hydroelectric water right or certificate may be amended, provided that the amendment:

(1) Is consistent with the final unified state position for the project, if one exists;

(2) Is consistent with the requirements of ORS Chapter 543A;

(3) Causes no injury to other water rights that cannot be adequately mitigated as determined by the Water Resources Department; and

(4) Allows for public participation in the amendment process.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

10/1/26

History:

WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0025**Types of Amendments that Will Be Considered Under These Rules**

All amendments allowed in this section must be consistent with the standards in 690-053-0020.

(1) Hydroelectric water right holders as defined in ORS 543.075(2) may submit amendment applications that allow augmentations or redistribution of the volume of water allowed for diversion in the applicable hydroelectric water right only if the proposed amendments meet management goals of state wildlife or environmental quality agencies and are shown to restore, enhance or improve fish populations and/or water quality within the river systems. This includes:

(a) The rescheduling or redistributing of the total amount of water used over the year so that more water may be diverted during certain times of the year in exchange for reductions of water use during other times.

(b) Augmenting or increasing the total yearly amount of water provided that:

(A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.

(B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025; and

(C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.

(D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application.

(2) Hydroelectric water right holders may submit application amendments for the following:

(a) Adding fish protection and/or water quality as a beneficial use.

(b) Changing one or more items in the "water right conditions" section of the applicable hydroelectric water right provided that, after the application has been submitted, the affected state agencies have been consulted by the project owner and agree in writing that the amendment is needed.

(c) Hydroelectric water right holders may submit application amendments altering the date of expiration in the applicable hydroelectric water right to match the period granted by FERC.

(d) Clarifying language or correcting administrative errors.

(3) Other proposed amendments not identified in these rules may be considered by the Department provided that the proposed amendment meets the criteria in 690-053-0020.

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Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend**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 electronic means unless the recipient has requested that the notice be sent by regular mail.

Statutory/Other Authority: ORS 543.092, ORS 536.027

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

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

Amend**690-053-0035****Issuance of 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.

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(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 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 persons who have requested copies by electronic means unless the recipient has requested 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, ORS 543A, ORS 183.415, ORS 536.045

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

690-053-0040

Protests

(1) Any person may submit a protest against a proposed 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.

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Statutory/Other Authority: ORS 543.092, ORS 536.027

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Amend

690-053-0045

Contested Case Hearings

- (1) 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 water; or
 - (b) Schedule a contested case hearing.
- (2) 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, ORS 543A, ORS 183

History:

WRD 2-2001, f. & cert. ef. 3-30-01

Adopt

690-053-0049

Exceptions to the Administrative Law Judge Proposed Order; Director's 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 543A, ORS 183

Amend

690-053-0050

Final Order 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.

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(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 543.092, ORS 536.027,

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

History:

WRD 2-2001, f. & cert. ef. 3-30-01

10/1/26

Division 54**CONVERSION OF A HYDROELECTRIC WATER RIGHT TO AN INSTREAM WATER RIGHT****Amend****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**History:**

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0010**Definitions**

Unless the context requires otherwise, the following definitions apply in OAR Chapter 690, Division 54:

(1) “Actual Use” means:

(a) For a Project, the maximum amount of water, expressed in cubic feet per second (cfs), legally diverted through the hydroelectric turbine to produce electricity for each month of the year, including those months in which no water was used, pursuant to a Hydroelectric Water Right, based on documents available to the Department; or

(b) For Other Existing Water Right(s) as of October 23, 1999, the amount of water, expressed in cfs, legally diverted and beneficially used, based on documents available to the Department;

(2) “Continuation of Authorized Water Uses” means that Other Existing Water Right(s) as of October 23, 1999, shall not be required to curtail Actual Use under their existing water rights as a result of the conversion of a Hydroelectric Water Right to an Instream Water Right;

(3) “Department” means the Oregon Water Resources Department;

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- (4) “Director” means the Department Director or staff authorized by the Director to administer these rules;
- (5) “Holder” has the meaning given that term in ORS 543.075;
- (6) “Hydroelectric Water Right” is a water right issued and used for hydroelectric purposes including: hydroelectric licenses containing time-limited water rights issued under ORS 543; water right certificates issued under ORS 543A; water right permits or certificates issued under ORS 537; and power claimants under ORS 543.705 to 543.730 whether certificated or uncertificated;
- (7) “Injury” means the proposed conversion of up to the full amount of a Hydroelectric Water Right associated with a Project to an Instream Water Right would result in Other Existing Water Rights as of October 23, 1999 not receiving previously available water, based on the Actual Use of both the Project and the Other Existing Water Right(s) as of October 23, 1999, to which the Other Existing Water Right(s) as of October 23, 1999 are legally entitled, pursuant to the considerations of OAR 690-054-0040(6);
- (8) “Instream Water Right” means a water right held in trust by the Department for the benefit of the people of the State of Oregon to maintain water in stream for public use. An instream water right does not require a diversion or any other means of physical control over the water;
- (9) “Mitigation Measures” means conditions to the Instream Water Right that avoid, abate, minimize, rectify, reduce, or compensate for impacts of the conversion in order to avoid Injury and to ensure the Continuation of Authorized Water Uses;
- (10) “Other Existing Water Right(s) as of October 23, 1999” means a decreed, certificated, or permitted water right(s) issued on or before October 23, 1999, or a determined claim established on or before October 23, 1999, using water from the same water source or tributary as the Hydroelectric Water Right proposed for conversion;
- (11) “Project” means any hydroelectric power project;
- (12) “Reauthorized” has the meaning given the term “reauthorize” in ORS 543.075; and
- (13) “Subordinated” means a condition of a water right that expressly makes it inferior in right and subsequent in time to any appropriation of water upstream for beneficial use.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0020

Notice of Consideration for Conversion: Eligibility Determinations and Preliminary Findings of Fact

For the purposes of a notice of consideration for conversion to an Instream Water Right, the Director shall make the following eligibility determinations and preliminary findings of fact:

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(1) The Director shall determine whether a Hydroelectric Water Right associated with a Project is eligible for conversion to an Instream Water Right. A Hydroelectric Water Right is eligible for conversion if one of the following criteria is met:

- (a) Use of water under the Hydroelectric Water Right has ceased for a period of five years;
- (b) A time-limited Hydroelectric Water Right has expired and has not been extended or Reauthorized;
- (c) The Hydroelectric Water Right was transferred under ORS 540.520 and 540.530 and has expired; or
- (d) The Director has received written consent of the Holder;

(2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right associated with the Project that is eligible for conversion to an Instream Water Right. The amount of a Hydroelectric Water Right eligible for conversion is subject to the following limitations:

- (a) Any portion of a Hydroelectric Water Right transferred under ORS 540.520 and 540.530 is not eligible for conversion to an Instream Water Right, except upon expiration of that time-limited water right;
- (b) Any portion of a Hydroelectric Water Right for which hydroelectric production is not the sole beneficial use authorized by the right is not eligible for conversion to an Instream Water Right;
- (c) Any portion of a Hydroelectric Water Right authorized in conjunction with another water right pursuant to ORS 543.765, or that is part of a larger distribution system for municipal, irrigation, or other beneficial purposes is not eligible for conversion to an Instream Water Right; and
- (d) Any portion of a Hydroelectric Water Right authorized in conjunction with multi-purpose dam releases including flood control, irrigation, municipal, or other beneficial uses, is not eligible for conversion to an Instream Water Right. Conversion to an Instream Water Right may not require release of water stored for other beneficial purposes. An Instream Water Right resulting from conversion under these rules shall not have priority over waters legally stored or legally released from storage;

(3) The Director shall make a preliminary finding on Injury. In making such finding, the Director shall consider:

- (a) The Actual Use of the Project. To make a preliminary finding on the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project.
- (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To make a preliminary finding on the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999; or

(D) Any other available evidence that may assist the Director to make a preliminary finding on Injury.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0030

Notice of Consideration for Conversion: Requirements and Comment Period

(1) The Director shall prepare a notice of consideration for conversion with a 30 calendar day comment period. The notice shall include the following information:

(a) The eligibility determinations and preliminary findings of fact identified in OAR 690-054-0020;

(b) The county or counties in which the Project is located;

(c) The Project file number, permit, certificate, or decree volume and page;

(d) The name of the surface water source(s);

(e) The location of the point of diversion used for the Project; and

(f) A request for comments on the proposed conversion, including the date by which comments must be received.

(2) The Department shall provide a copy of the notice to the Holder and publish the notice in the Department's weekly notice publication with information about how interested persons may comment, obtain future notices about the proposed conversion, or obtain a copy of the final proposed order.

(3) If the Hydroelectric Water Right is not Subordinated to Other Existing Water Rights as of October 23, 1999, then the notice shall provide a 30 calendar day opportunity for any interested person to propose Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses.

(4) At the discretion of the Director, if the Hydroelectric Water Right was Subordinated to Other Existing Water Rights as of October 23, 1999, then the first public notice may be given at the

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time of the proposed final order describing the conversion to an Instream Water Right under OAR 690-054-0040 to 690-054-0050.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0040

Proposed Final Order: Final Determinations and Findings of Fact

Following the close of the comment period under OAR 690-054-0030, the Director shall prepare a proposed final order. The proposed final order shall recommend either to approve or to deny the conversion of the Hydroelectric Water Right to an Instream Water Right. The Director shall make the following determinations and findings of fact for inclusion in the proposed final order:

- (1) The Director shall determine whether the Hydroelectric Water Right is eligible for conversion to an Instream Water Right pursuant to the preliminary eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right that is eligible for conversion to an Instream Water Right pursuant to the eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (3) If the full amount of the Hydroelectric Water Right is not proposed for conversion to an Instream Water Right, the Director shall include an explanation of how the amount proposed for conversion was determined;
- (4) The Director shall determine the priority date of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (5) The Director shall determine the point of diversion of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (6) The Director shall determine whether conversion of a Hydroelectric Water Right to an Instream Water Right will result in Injury. In making this determination, the Director shall consider:
 - (a) The Actual Use of the Project. To determine the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project;
 - (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To determine the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999. If Subordinated, there is a rebuttable presumption that no Injury will occur and that no Mitigation Measures are required to ensure the Continuation of Authorized Water Uses; or

(D) Any other available evidence that may assist the Director to make a finding on Injury;

(7) In order to avoid Injury and to ensure the Continuation of Authorized Water Uses the Director may include Mitigation Measures as a condition to the Instream Water Right. In determining whether to include Mitigation Measures the Director may consider:

(a) Whether Mitigation Measures were proposed during the comment period pursuant to OAR 690-054-0030, and if so, may:

(A) Share Mitigation Measures proposed by interested persons during the comment period of OAR 690-054-0030 with other interested persons who responded during the comment period;

(B) Meet and confer with those interested persons who proposed Mitigation Measures during the comment period;

(C) Extend the comment period of OAR 690-054-0030, via notice in the Department's weekly notice publication, to allow discussion of Mitigation Measures, if interested persons demonstrate reasonable progress towards agreement on Mitigation Measures; or

(D) Obtain affidavits consenting to the relevant Mitigation Measure from each holder of an Other Existing Water Right as of October 23, 1999 that is potentially subject to new regulation under Chapter 690, Division 250; and

(b) Whether the conversion of a Hydroelectric Water Right to an Instream Water Right would result in Injury pursuant to the findings in section (6);

(8) If the Director determines Mitigation Measures are necessary to avoid Injury and to ensure the Continuation of Authorized Water Uses, the Director shall condition the Instream Water Right to state: "Authorized water uses by Other Existing Water Rights as of October 23, 1999, shall not be subject to regulation under Chapter 690, Division 250 to satisfy this Instream Water Right." If the Director chooses to include other Mitigation Measures as a condition to an Instream Water Right, the Director shall condition the Instream Water Right according to the Mitigation Measures agreed-upon pursuant to section (7);

(9) No Mitigation Measures other than in section (8) above shall be included as conditions of the Instream Water Right without an affidavit consenting to the relevant Mitigation Measure from

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each holder of a water right that is potentially subject to new regulation under Chapter 690, Division 250; and

(10) The Director shall determine whether the conversion, together with any recommended Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses, is consistent with ORS 543A.305 and shall either approve or deny the conversion. If the Director approves the conversion to an Instream Water Right, then the proposed final order shall include a draft certificate, including any proposed Mitigation Measures.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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 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;

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- (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 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.
- (4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. 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.
- (5) Upon receiving a protest, the Director shall:
- (a) Send a copy of all protests timely filed to the protestant(s), if any ;
 - (b) If a protest was timely submitted, the Water Resources Director shall:
 - (A) 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, 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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

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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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Adopt

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.

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(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/Others Implemented: ORS 543A.305, ORS 183

690-054-0080

Issuance of Instream Water Right Certificate

After the Director issues a final order approving the conversion of a Hydroelectric Water Right to an Instream Water Right, the Department shall issue a certificate for an Instream Water Right. Each Instream Water Right is allocated individually and shall not be additive to other Instream Water Rights. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon. A certificate for an Instream Water Right supplied by stored water shall describe the reservoir.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

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Division 305
GENERAL MAP CRITERIA

Amend

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, 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

History:

WRD 3-2026, adopt filed 03/20/2026, effective 04/01/2026

690-305-0010

General Map Criteria

Each map submitted to the Department shall meet the following general criteria in addition to any specific criteria identified in the rules for the relevant water right transaction:

(1) Drawing

(a) The map shall be drafted on paper or polyester film with ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced or scanned. Maps may be submitted electronically in portable document format (pdf) and must be prepared consistent with, and include the same information as, a paper map.

(b) The preferred paper size is 8.5 inches by 11 inches and should be no larger than 30 inches by 30 inches. A map greater than 30 inches by 30 inches may be submitted if the Department grants, by mail or electronic means, advance approval of the larger size.

(c) Beginning April 1, 2029, regardless of whether the map is submitted electronically, on paper, or on polyester film, for any map that OAR chapter 690 requires be prepared by a Certified Water Right Examiner, a digital file containing the coordinate system and geospatial features of the map as specified by the Department shall be submitted in addition to the map, unless the Department provides a waiver. The digital file shall be submitted as a shapefile or other approved format in a manner required by the Department.

(d) A platted and recorded subdivision map, deed description survey map, or county assessor map may be submitted as the application map if all of the required information included in sections (2) and (3) of this rule is clearly shown.

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(e) An aerial image may be provided in addition to the map to aid the Department in understanding the proposal.

(f) The map submitted under subsection (a) shall be the official record of the water right. An aerial image or digital file shall not be the official record of the water right.

(2) Scale

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

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

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

(3) Features: Features shall be clearly identified and labeled. Unless otherwise indicated in rule, the following features must be included in each map submitted to the Department:

(a) Mapping scale.

(b) North directional symbol.

(c) Legend.

(d) General location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features used to transport water from the point(s) of diversion or appropriation to the place use and to include the delivery features at the place of use.

(e) Other topographical features such as rivers, creeks, streams, lakes, reservoirs, ponds, roads, or railroads that may be helpful to clarify and identify the location of points of diversion, wells, dams, and places of use.

(f) Location and flow direction of the water way if the source is surface water. If multiple water ways exist in the area of the proposed diversion and use, the map must identify the location and flow direction of the additional water ways.

(g) Township, range, section, quarter-quarter, and tax lot(s), donation land claims, or government lots where water will be or has been diverted, conveyed, and used. If the map is for municipal use the map:

(A) Must identify but does not need to label the quarter-quarters,

(B) Does not need to identify or label tax lots, donation land claims, or government lots.

(h) Location of each proposed or developed diversion point, well (point of appropriation), or dam by reference to a recognized public land survey corner. For a reservoir without a dam, the center of the reservoir shall be referenced to a recognized public land survey corner.

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(A) The locations shall be shown by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall also include latitude and longitude as established by a global positioning system.

(B) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764°). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84.

(i) Location of the proposed or developed place of use by township, range, section, and nearest quarter-quarter section.

(A) For irrigation or nursery use, the map shall additionally indicate the place of use in each quarter-quarter of a section by shading or hatchuring and indicate the number of acres in each quarter-quarter section, donation land claim, government lot, or other recognized public land survey lines.

(B) For places of use that are limited to a point, such as a stock watering tank, the location may also be identified by distance and bearing, or by coordinates (distance north or south and distance east or west from the corner). In addition, they shall include latitude and longitude as established by a global positioning system.

(C) Latitude and longitude coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764°). The datum used to establish the coordinates shall be indicated on the map. Examples of datums include NAD 83, NAD 27 and WGS84.

(D) Where more than one point of diversion or well is included, the map must clearly identify the place(s) of use served by each point of diversion or well.

(j) If for a supplemental irrigation application or claim of beneficial use, the location and water right reference number of the underlying primary right, registration or claim.

(k) Any other information the Department requests and considers necessary to evaluate the water right transaction.

Statutory/Other Authority: ORS 536.027 & ORS 537.409

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

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Division 320
MISCELLANEOUS WATER RIGHT PROVISIONS

Repeal
690-320-0010
Extension of Time Limits

Repeal
690-320-0020
Cancellation of Permit

Repeal
690-320-0030
Claims of Beneficial Use for Applications Filed After June 30, 1987

Repeal
690-320-0040
Incremental Perfection of a Municipal Water Right

Repeal
690-320-0050
Temperature Control

690-320-0060
Assignment or Change of Ownership of a Permit or Groundwater Registration

(1) When a change of interest or ownership occurs in lands covered by a permit or groundwater registration, the record holder may request, in writing, the Director to record the assignment of a new owner.

(2) Should the record holder of the permit or groundwater registration be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit or registration. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (a) A copy of the deed to the land;
- (b) A copy of a land sales contract;
- (c) A court order or decree; or
- (d) Documentation of survivorship of property held jointly.

Statutory/Other Authority: ORS 536.025 & 536.027
Statutes/Other Implemented: ORS 537.220 & 537.635

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History:

WRD 4-1998, f. & cert. ef. 11-2-98

WRD 1-1996, f. & cert. ef. 1-31-96

690-320-0070**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 536.027

Statutes/Other Implemented: ORS 540.610 - 540.650

History:

WRD 1-1996, f. & cert. ef. 1-31-96

10/1/26

Division 54**CONVERSION OF A HYDROELECTRIC WATER RIGHT TO AN INSTREAM WATER RIGHT****Amend****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**History:**

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0010**Definitions**

Unless the context requires otherwise, the following definitions apply in OAR Chapter 690, Division 54:

(1) “Actual Use” means:

(a) For a Project, the maximum amount of water, expressed in cubic feet per second (cfs), legally diverted through the hydroelectric turbine to produce electricity for each month of the year, including those months in which no water was used, pursuant to a Hydroelectric Water Right, based on documents available to the Department; or

(b) For Other Existing Water Right(s) as of October 23, 1999, the amount of water, expressed in cfs, legally diverted and beneficially used, based on documents available to the Department;

(2) “Continuation of Authorized Water Uses” means that Other Existing Water Right(s) as of October 23, 1999, shall not be required to curtail Actual Use under their existing water rights as a result of the conversion of a Hydroelectric Water Right to an Instream Water Right;

(3) “Department” means the Oregon Water Resources Department;

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- (4) “Director” means the Department Director or staff authorized by the Director to administer these rules;
- (5) “Holder” has the meaning given that term in ORS 543.075;
- (6) “Hydroelectric Water Right” is a water right issued and used for hydroelectric purposes including: hydroelectric licenses containing time-limited water rights issued under ORS 543; water right certificates issued under ORS 543A; water right permits or certificates issued under ORS 537; and power claimants under ORS 543.705 to 543.730 whether certificated or uncertificated;
- (7) “Injury” means the proposed conversion of up to the full amount of a Hydroelectric Water Right associated with a Project to an Instream Water Right would result in Other Existing Water Rights as of October 23, 1999 not receiving previously available water, based on the Actual Use of both the Project and the Other Existing Water Right(s) as of October 23, 1999, to which the Other Existing Water Right(s) as of October 23, 1999 are legally entitled, pursuant to the considerations of OAR 690-054-0040(6);
- (8) “Instream Water Right” means a water right held in trust by the Department for the benefit of the people of the State of Oregon to maintain water in stream for public use. An instream water right does not require a diversion or any other means of physical control over the water;
- (9) “Mitigation Measures” means conditions to the Instream Water Right that avoid, abate, minimize, rectify, reduce, or compensate for impacts of the conversion in order to avoid Injury and to ensure the Continuation of Authorized Water Uses;
- (10) “Other Existing Water Right(s) as of October 23, 1999” means a decreed, certificated, or permitted water right(s) issued on or before October 23, 1999, or a determined claim established on or before October 23, 1999, using water from the same water source or tributary as the Hydroelectric Water Right proposed for conversion;
- (11) “Project” means any hydroelectric power project;
- (12) “Reauthorized” has the meaning given the term “reauthorize” in ORS 543.075; and
- (13) “Subordinated” means a condition of a water right that expressly makes it inferior in right and subsequent in time to any appropriation of water upstream for beneficial use.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0020

Notice of Consideration for Conversion: Eligibility Determinations and Preliminary Findings of Fact

For the purposes of a notice of consideration for conversion to an Instream Water Right, the Director shall make the following eligibility determinations and preliminary findings of fact:

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(1) The Director shall determine whether a Hydroelectric Water Right associated with a Project is eligible for conversion to an Instream Water Right. A Hydroelectric Water Right is eligible for conversion if one of the following criteria is met:

- (a) Use of water under the Hydroelectric Water Right has ceased for a period of five years;
- (b) A time-limited Hydroelectric Water Right has expired and has not been extended or Reauthorized;
- (c) The Hydroelectric Water Right was transferred under ORS 540.520 and 540.530 and has expired; or
- (d) The Director has received written consent of the Holder;

(2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right associated with the Project that is eligible for conversion to an Instream Water Right. The amount of a Hydroelectric Water Right eligible for conversion is subject to the following limitations:

- (a) Any portion of a Hydroelectric Water Right transferred under ORS 540.520 and 540.530 is not eligible for conversion to an Instream Water Right, except upon expiration of that time-limited water right;
- (b) Any portion of a Hydroelectric Water Right for which hydroelectric production is not the sole beneficial use authorized by the right is not eligible for conversion to an Instream Water Right;
- (c) Any portion of a Hydroelectric Water Right authorized in conjunction with another water right pursuant to ORS 543.765, or that is part of a larger distribution system for municipal, irrigation, or other beneficial purposes is not eligible for conversion to an Instream Water Right; and
- (d) Any portion of a Hydroelectric Water Right authorized in conjunction with multi-purpose dam releases including flood control, irrigation, municipal, or other beneficial uses, is not eligible for conversion to an Instream Water Right. Conversion to an Instream Water Right may not require release of water stored for other beneficial purposes. An Instream Water Right resulting from conversion under these rules shall not have priority over waters legally stored or legally released from storage;

(3) The Director shall make a preliminary finding on Injury. In making such finding, the Director shall consider:

- (a) The Actual Use of the Project. To make a preliminary finding on the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project.
- (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To make a preliminary finding on the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999; or

(D) Any other available evidence that may assist the Director to make a preliminary finding on Injury.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0030

Notice of Consideration for Conversion: Requirements and Comment Period

(1) The Director shall prepare a notice of consideration for conversion with a 30 calendar day comment period. The notice shall include the following information:

(a) The eligibility determinations and preliminary findings of fact identified in OAR 690-054-0020;

(b) The county or counties in which the Project is located;

(c) The Project file number, permit, certificate, or decree volume and page;

(d) The name of the surface water source(s);

(e) The location of the point of diversion used for the Project; and

(f) A request for comments on the proposed conversion, including the date by which comments must be received.

(2) The Department shall provide a copy of the notice to the Holder and publish the notice in the Department's weekly notice publication with information about how interested persons may comment, obtain future notices about the proposed conversion, or obtain a copy of the final proposed order.

(3) If the Hydroelectric Water Right is not Subordinated to Other Existing Water Rights as of October 23, 1999, then the notice shall provide a 30 calendar day opportunity for any interested person to propose Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses.

(4) At the discretion of the Director, if the Hydroelectric Water Right was Subordinated to Other Existing Water Rights as of October 23, 1999, then the first public notice may be given at the

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time of the proposed final order describing the conversion to an Instream Water Right under OAR 690-054-0040 to 690-054-0050.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0040

Proposed Final Order: Final Determinations and Findings of Fact

Following the close of the comment period under OAR 690-054-0030, the Director shall prepare a proposed final order. The proposed final order shall recommend either to approve or to deny the conversion of the Hydroelectric Water Right to an Instream Water Right. The Director shall make the following determinations and findings of fact for inclusion in the proposed final order:

- (1) The Director shall determine whether the Hydroelectric Water Right is eligible for conversion to an Instream Water Right pursuant to the preliminary eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right that is eligible for conversion to an Instream Water Right pursuant to the eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (3) If the full amount of the Hydroelectric Water Right is not proposed for conversion to an Instream Water Right, the Director shall include an explanation of how the amount proposed for conversion was determined;
- (4) The Director shall determine the priority date of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (5) The Director shall determine the point of diversion of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (6) The Director shall determine whether conversion of a Hydroelectric Water Right to an Instream Water Right will result in Injury. In making this determination, the Director shall consider:
 - (a) The Actual Use of the Project. To determine the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project;
 - (b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To determine the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

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(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999. If Subordinated, there is a rebuttable presumption that no Injury will occur and that no Mitigation Measures are required to ensure the Continuation of Authorized Water Uses; or

(D) Any other available evidence that may assist the Director to make a finding on Injury;

(7) In order to avoid Injury and to ensure the Continuation of Authorized Water Uses the Director may include Mitigation Measures as a condition to the Instream Water Right. In determining whether to include Mitigation Measures the Director may consider:

(a) Whether Mitigation Measures were proposed during the comment period pursuant to OAR 690-054-0030, and if so, may:

(A) Share Mitigation Measures proposed by interested persons during the comment period of OAR 690-054-0030 with other interested persons who responded during the comment period;

(B) Meet and confer with those interested persons who proposed Mitigation Measures during the comment period;

(C) Extend the comment period of OAR 690-054-0030, via notice in the Department's weekly notice publication, to allow discussion of Mitigation Measures, if interested persons demonstrate reasonable progress towards agreement on Mitigation Measures; or

(D) Obtain affidavits consenting to the relevant Mitigation Measure from each holder of an Other Existing Water Right as of October 23, 1999 that is potentially subject to new regulation under Chapter 690, Division 250; and

(b) Whether the conversion of a Hydroelectric Water Right to an Instream Water Right would result in Injury pursuant to the findings in section (6);

(8) If the Director determines Mitigation Measures are necessary to avoid Injury and to ensure the Continuation of Authorized Water Uses, the Director shall condition the Instream Water Right to state: "Authorized water uses by Other Existing Water Rights as of October 23, 1999, shall not be subject to regulation under Chapter 690, Division 250 to satisfy this Instream Water Right." If the Director chooses to include other Mitigation Measures as a condition to an Instream Water Right, the Director shall condition the Instream Water Right according to the Mitigation Measures agreed-upon pursuant to section (7);

(9) No Mitigation Measures other than in section (8) above shall be included as conditions of the Instream Water Right without an affidavit consenting to the relevant Mitigation Measure from

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each holder of a water right that is potentially subject to new regulation under Chapter 690, Division 250; and

(10) The Director shall determine whether the conversion, together with any recommended Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses, is consistent with ORS 543A.305 and shall either approve or deny the conversion. If the Director approves the conversion to an Instream Water Right, then the proposed final order shall include a draft certificate, including any proposed Mitigation Measures.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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 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;

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- (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 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.
- (4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. 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.
- (5) Upon receiving a protest, the Director shall:
- (a) Send a copy of all protests timely filed to the protestant(s), if any ;
 - (b) If a protest was timely submitted, the Water Resources Director shall:
 - (A) 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, 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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

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

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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

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Adopt

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.

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(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/Others Implemented: ORS 543A.305, ORS 183

690-054-0080

Issuance of Instream Water Right Certificate

After the Director issues a final order approving the conversion of a Hydroelectric Water Right to an Instream Water Right, the Department shall issue a certificate for an Instream Water Right. Each Instream Water Right is allocated individually and shall not be additive to other Instream Water Rights. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon. A certificate for an Instream Water Right supplied by stored water shall describe the reservoir.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022