



MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item H, August 25, 2021
Water Resources Commission Meeting

Division 77 Rulemaking Timeline

I. Introduction

During this agenda item, Department staff will provide the Commission an overview of the status of the Division 77 rulemaking and ask the Commission to provide guidance on the appropriate timeline for this rulemaking effort.

II. Overview of Rulemaking Process

Administrative rulemaking must follow the procedures of ORS 183.310 to 183.355, the Attorney General's Model Rules, and the Department's Division 001 rules. The rulemaking process begins with internal development of draft rules. The Department then appoints a Rulemaking Advisory Committee (RAC) comprised of persons likely to be affected by the proposed rule change. The RAC provides the Department with feedback on the substantive language of the draft rules and any fiscal impact that may result from the proposed rule change.

Thereafter, the Department will file a Notice of Proposed Rulemaking with the Secretary of State's Office (SOS), which includes information about public hearing and public comment opportunities, the proposed rule language, and a fiscal impact statement. The SOS publishes the notice in the *Oregon Bulletin*, signaling the commencement of formal rulemaking. The Department also provides notice to legislators, interested parties, the media, and the public to ensure those impacted by a proposed rule change are notified of their opportunity to comment.

Once a public hearing is held and the public comment period closes, Department staff prepare a staff report and present a rulemaking recommendation to the Commission for consideration. The Commission decides whether to adopt, amend, or repeal a rule. The final official rules can be found in the [Oregon Administrative Rules Database](#).

III. Overview of Division 77 Rulemaking Purpose and Scope

Division 77 sets forth standards for reviewing and approving instream water right transfers, instream leases, conversion of minimum perennial streamflows, and agency requested instream water rights. The proposed amendments to the rules are necessary to clarify application requirements and review processes for instream leases and transfers, improve the efficiency of Department review of applications, and implement statutory changes. This rulemaking is a focused effort that amends nine rule sections to address the items identified below:

Streamline Lease Process for Irrigation Districts

The proposed amendments to the rules streamline the process for instream leases involving irrigation districts. Currently the rules define the landowner as the water right lessor, and water right ownership and consent information is required if the lessor is not the landowner. This requirement often results in lengthy applications that take additional time for applicants to prepare, may cost more for applicants to send, and take more time for Department staff to review. The proposed amendments will reduce the amount of time spent on application preparation and review, while not reducing protections for landowners. Proposed changes include making the district the applicant (lessor) and removing the requirement for the district to provide water right ownership information for individual properties involved in a lease application. The proposed changes to the rules would allow districts to obtain consent from individual landowners or other parties holding interest in the water right and keep that documentation on file in the district office. That information would be provided to the Department, if requested. These changes are consistent with existing water right transfer requirements for irrigation districts (both temporary and permanent) under OAR 690 Division 385.

Implement Required Statutory Changes

The proposed amendments to the rules incorporate statutory changes to instream leasing resulting from Senate Bill 199 (2013) and Senate Bill 206 (2015). The proposed amendments clarify the requirements for split-season leases and make necessary changes to implement the sunset date (January 2, 2024) and ten-year limitation for split-season leases pursuant to Oregon Revised Statute 537.348 and Senate Bill 199 (2013). The proposed amendments also add determined claims to the list of existing water rights that may be leased instream and indicate the sunset date (January 2, 2026) of this provision pursuant to Senate Bill 206 (2015).

Update Lease and Transfer Processes for Storage Rights

The proposed amendments to the rules make necessary clarifications to the application and review process related to instream leases of a right to store water (i.e. storage right) and incorporate provisions which describe the application and review process for transferring all or a portion of a storage right to an instream water right (no longer storing water). The proposed changes are necessary to clarify the Department's authority under ORS 537.348 to transfer storage rights to an instream water right and to allow water users to make use of this tool, which provides greater flexibility to water users to address instream water needs, some of which may be required to meet legal and regulatory purposes.

General Rule Clean-up

The proposed amendments to the rules also provide necessary rule clarifications, update definitions, reorganize subsections for improved clarity, specify mapping requirements for lease applications, and correct grammatical, punctuation, and citation errors.

IV. Background and RAC Comments

Efforts to modify the Division 77 rules were initiated in 2005 and 2015. Ultimately, those efforts were tabled and did not result in rule amendments brought before the Commission. In light of interest from stakeholders in permanently transferring storage rights instream, the Department restarted efforts to revisit its Division 77 rules in 2020. A copy of a letter requesting the Department to undertake rulemaking to address transfers of storage rights instream is contained in Attachment 1. Department staff started developing proposed amendments to address this need and to also fold in some of the more straightforward changes contemplated in 2015.

The Department believes ORS 537.348 provides the authority for such transfers, but the current Division 77 rules are limiting and do not provide details to guide the transfer process and lack clarity for the leasing process. A document explaining the authorities relevant to transfers of storage rights is contained in Attachment 2.

The Department held two RAC meetings in 2021 (May 15 and June 16) to receive feedback on the proposed amendments to Division 77 as well as the draft fiscal impact statement. The RAC consisted of 19 members. Four interested parties were also invited to attend the meetings. A list of RAC members and interested parties is contained in Attachment 3. After the conclusion of the RAC meetings and in response to concerns from some RAC members that the timing of the rulemaking was difficult given the ongoing 2021 Legislative Session, the Department provided RAC members with an additional 28 days to submit written comments on the draft rules and draft fiscal impact statement. The Department received eight written comments from seven RAC members and one written comment from an interested party. A copy of these written comments is contained in Attachment 4.

At the June 16 RAC meeting, Department staff informed the RAC of the estimated timeline for this rulemaking effort, including potential adoption of the proposed amendments at the November 2021 Water Resources Commission Meeting. Some RAC members expressed support, while others expressed opposition to the rulemaking timeline and the inclusion of provisions related to transfers of storage rights:

Summary of Oral Comments in Opposition at June 16 RAC Meeting

- Question the necessity, complexity, and timing of the rulemaking
- Transfers of storage rights issue requires more discussion, thought, and time spent and should not be decided in a RAC meeting
- Given the ongoing conversations around transfers of storage rights more broadly, and specifically with respect to House Bill 3103 stakeholder meetings, there is a potential for different criteria for each kind of transfer of storage rights (e.g. instream, character of use, etc.)

- Likewise, it is important to hear from secondary water right users during the larger conversation around transfers of storage rights so there are not multiple standards
- There is not a need for this rulemaking in the Deschutes basin; Central Oregon Irrigation District is able to accomplish needs with existing tools

Summary of Oral Comments in Support at June 16 RAC Meeting

- The Department has statutory authority to transfer storage rights instream regardless of this rulemaking, but the rules help to address procedural issues
- There is a need for transfers of storage rights instream to move forward (whether through statutory or rulemaking action) in a timely fashion; in particular, lack of this tool is a barrier in the Deschutes basin, for projects of the Confederated Tribes of the Umatilla Indian Reservation in Northeast Oregon, and for other project opportunities beyond the Deschutes that benefit different stakeholders and communities
- Rules do address the questions and complications surrounding secondary water rights
- While there are larger ongoing conversations around transfers of storage rights it is important to understand the process that will be used and to make that as clear as possible
- Transfers of storage rights instream provide an important tool for increasing instream flows statewide

Since the last RAC meeting, the 2021 Legislature passed HB 3103. A copy of HB 3103 (2021) enrolled is contained in Attachment 5. Section 3 of HB 3103 directs the Commission to engage professional facilitation services and hold six to 12 meetings with at least 20 diverse stakeholders before June 30, 2023 for the purpose of finding agreement among stakeholders on a path forward for transfers of stored water and development of related legislative proposals. The various written comments received by RAC members and an interested party after the June 16 RAC meeting provide a range of opinions on how to proceed:

- Request the Department pause the rulemaking until after stakeholder meetings under HB 3103 are completed
- Commend the Department for taking up the rulemaking now and suggest the Department consider expanding the rulemaking, if necessary, to address changing the type of use associated with storage rights
- Request the Department consider initiating a broader rulemaking effort in the near future to ensure the goals of the Instream Water Rights Act are met
- Request the Department postpone the rulemaking
- Request the Department pause the rulemaking until after the irrigation season is over and the drought is more resolved (if the Department chooses not to pause the rulemaking until after the conclusion of the HB 3103 stakeholder meetings)

V. Rulemaking Timeline Options

Given comments during the June 16 RAC meeting and written comments received after the meeting, the Department seeks direction from the Commission as to the appropriate timeline for this rulemaking.

The Commission may consider the following options:

1. Move forward with the current scope of the rulemaking, including changes related to leases and transfers of storage rights, with an estimated November 2021 timeline for rule adoption.
2. Limit the scope of the rulemaking in order to exclude changes related to leases and transfers of storage rights and amend the draft rules and draft fiscal impact statement as required. One exception would be to weigh the possibility of modifying “water use subject to transfer” in the definition of “instream lease” to make it consistent with other provisions of the leasing rules (but make no other changes related to storage). Move forward with an estimated November 2021 timeline for rule adoption for the amended draft rules and reserve all changes related to storage rights for a separate rulemaking effort undertaken at a future date.
3. Halt the entire rulemaking indefinitely pending the outcome of the stakeholder meetings convened under HB 3103.
4. Other course of action as determined by the Commission.

VI. Recommendation

The Director recommends Option 2 for several reasons.

First, there is no reason to not move forward with the Division 77 rulemaking on issues identified in Section III that do not relate to the lease of transfer of storage rights.

Second, based on new information, there does not seem to be an urgent need for permanent transfers converting storage rights to instream rights and the Department will continue to offer instream leasing of storage rights. The Department maintains that it has statutory authority to convert via lease or transfer a primary storage right instream. An update to the rules will ultimately be needed because the current rules conflict with the statute and are internally inconsistent with respect to leases. Under Option 2, the Department would continue to process leases of storage rights instream as it has under the current rules. Individuals interested in converting a storage right to an instream right would be able to do so temporarily through the leasing provisions. However, the Department would not process transfers of stored water until completion of a subsequent rulemaking, which may be informed by discussions associated with HB 3103.

Lastly, some of the policy issues raised in the comments relate to work that will be done to implement HB 3103. The Department sees value in having a consistent approach for storage rights where possible in regards to character of use changes authorized under HB 3103, potential solutions to be identified for point of diversion and location changes of storage not yet authorized that will be discussed per direction of the bill, as well as instream leases and instream transfers. As such, the Department recommends Option 2 to allow for some of the potential issues to be addressed via the work undertaken pursuant to HB 3103. If agreements on policy are identified, Division 77 and other laws will be updated as appropriate in order to implement in a consistent manner.

If no policy agreement is identified on matters pertinent to the Division 77 rulemaking through the processes related to HB 3103, the Department can restart this process to update the Division 77 rules for the lease and transfer of storage rights as currently proposed.

Attachments:

1. Request to Undertake Rulemaking
2. Changes to Reservoir Rights
3. RAC Roster – OAR 690, Division 77
4. Written Comment
5. Enrolled House Bill 3103

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Director Tom Byler
Oregon Water Resources Department
725 Summer St NE A
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November 16, 2020

RE: Division 77 rulemaking to transfer primary storage rights instream

Dear Director Byler,

The purpose of this letter is to underline the importance of being able to transfer primary storage rights instream to meet balanced water management goals in the Deschutes Basin. The Deschutes River Conservancy (DRC) respectfully requests that the Oregon Water Resources Department initiate a rule advisory committee and rulemaking as soon as possible to enable this tool.

We understand, based on the Department's communications, that its position is that it does not have authority to authorize transfers of the **primary storage rights under ORS Chapter 540**, because the right to store water is not a "water use subject to transfer." In contrast, **ORS 537.348 (pertaining to instream transfers and leases)** does not refer to "water uses subject to transfer," instead stating that "an existing water right" may be transferred or leased instream. The Department has stated that an existing water right could include a primary right to store water under the statute. The Department also stated that it needs to clarify the administrative rules that govern instream water rights to allow for the permanent transfer of stored water to instream rights.

The DRC strongly supports initiating this rulemaking, to allow for the transfer of primary storage rights instream under **ORS 537.348**, as soon as possible. Permanently protecting primary storage rights instream is a needed tool to meet balanced basin-wide water management goals. We understand that legislative change is necessary to facilitate transfers of primary storage rights (character of use and point of diversion, for example) under **ORS Chapter 540**. We believe that these transfers can also be important tools in the basin. We strongly encourage solutions to these issues as well, and hope we are involved in those processes. In the near term, however, having the use of a tool that already has statutory authority to transfer primary storage rights instream is critical to keep the basin moving forward.

The mission of the DRC is to restore streamflow and water quality in the Deschutes Basin using community-based collaborative strategies. Having a path to protect water instream below Wickiup Reservoir is a key component of the basin-wide management strategy being pursued by partners right now to resolve long-standing streamflow restoration and water management issues.

Thank you for your consideration. We appreciate all of the work that OWRD does!

Respectfully,

A handwritten signature in black ink, appearing to read "Ron Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ron Nelson
Executive Director

2/7/2018

Changes to Reservoir Rights

The Water Resources Department has long debated about its authority to make changes to storage rights. In light of a lack of clarity in its existing laws, the Department has occasionally allowed changes in the location of reservoirs and, more commonly, has processed changes in the purpose of use identified in the right to store water (e.g. from irrigation to multi-purpose). Although the Department has tried to conform current law to water right holder needs, after considerable internal review, the Department has determined that it does not believe that it has statutory authority to allow changes to the purpose of use identified in a right to store water or to change the location of reservoirs.

As a result, the Water Resources Department has developed this handout in response to questions about the Department's understanding of its authorities related to the transfer of storage rights. *This handout provides general information on the Department's authorities but is not intended to provide an exhaustive list of every exception.*

A storage right is a different type of right from a surface water right and a groundwater right. This is evidenced throughout the Oregon Water Code.

ORS 537.400 outlines the characteristics of a storage right, which provides for a right to store water to serve as a source for a subsequent beneficial use. Storage itself is not the beneficial use of the water. In general, in order to make beneficial use of the stored water, a second water right is needed. These secondary rights can be issued through ORS 537.147, which allow a person to apply "for a water right permit to use stored water," wherein the reservoir right is listed as the supply source of the water. Similarly, ORS 537.336 requires "an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water." As a result, the right to store water is also inherently tied to the second water right to use the stored water and apply it to a beneficial use. This is different from a surface or groundwater right, where a second water right is not needed to apply it to a beneficial use.

The Water Code is clear that storing water is different than using the water and that groundwater, surface water, and stored water are different types of rights. ORS 537.130(2) states that "a person may not use, store or divert any waters..." ORS 537.143 allows "a person to obtain a limited license to use or store ground water..., to use or store surface water, to use stored water..." As a result, it is clear that there are water rights "to use" water and water rights to "store water for a use." With some exceptions, storage is generally a source or supply for secondary water rights.

Some statutes identify when a change in the type of a water right is authorized. ORS 540.531 provides when a change between a groundwater and surface water right can occur. Similarly, ORS 540.524 allows for substituting a supplemental right from a groundwater source for a primary water right from a surface water source. The exchange statutes provide that "water rights" may be exchanged and provide for changes between groundwater, surface water and stored water. See ORS 540.533 stating a person "may apply ...to use stored, surface or ground water from another source ... A person may apply for an exchange... among any combination of surface, storage or ground water rights." Furthermore, the transfer statutes are silent on the authority to change the reservoir right and refer only to water *uses* subject to transfer, not reservoir permits, storage rights, or rights to *store* water.

As is always the case in water law, there are exceptions to the above; for example, ORS 540.570, which authorizes a transfer of the type of use identified in a right to store water under specific circumstances (note, however, it does not authorize a change in the location of storage rights).

In addition, ORS 537.348 allows for "existing water rights" to be leased instream or transferred instream. In looking at the statute, it appears to the Department that a right to store water is an "existing water right," and therefore, there is statutory authority for instream leasing and permanent changes of a right to store water to instream purposes. While the Department's rules provide for leasing storage water rights instream, the process for permanently transferring storage rights instream needs to be further clarified in rule.

In conclusion, in most cases, the transfers statutes do not allow changes to rights to store water, such as changes in the character of the stored water or the location of the stored water. However, the statutes that allow changes of rights to instream purposes appear to allow for temporary (lease) and permanent transfers of the right to store water to an instream right; however, the Department's rules will need to be updated to provide greater clarity – particularly for permanent instream transfers.

May/June 2021 RAC Version

RAC ROSTER OAR 690, Division 77			
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May/June 2021 RAC Version

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May/June 2021 RAC Version

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RAC Members



July 8, 2021

Director Tom Byler
Oregon Water Resources Department
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RE: Division 77 Rulemaking

Director Byler,

In light of the recent passage of HB 3103 by the 2021 Oregon Legislature, the Oregon Water Resources Congress (OWRC) respectfully requests that the Oregon Water Resources Department (OWRD) pause its Division 77 rulemaking until after stakeholder discussions mandated by HB 3103 have been completed. This new law has direct implications for several of the concepts contained in the Division 77 rulemaking effort, and we believe that moving ahead with the rulemaking prior to these discussions is inappropriate and unnecessary.

OWRC is a nonprofit association of irrigation districts, water control districts, water improvement districts, drainage districts and other local government entities delivering agricultural water supplies. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities, and deliver water to roughly one-third of all irrigated land in Oregon.

OWRC appreciates the time and efforts OWRD staff have invested in proposing rule changes to OAR Chapter 690, Division 77. However, given recent legislative action, we believe that delaying the rulemaking effort until a later date is the most prudent and appropriate course of action at this time. In particular, we are concerned with and question the inclusion of stored water in the rulemaking when there are ongoing conversations about the Department's statutory authority regarding changes to stored water. As you are aware, HB 3103 authorizes holders of stored water rights to request changes to the type of use and directs the Water Resources Commission to hold facilitated meetings with stakeholders regarding transfers of stored water more broadly. These legislatively mandated discussions regarding the Department's authority and processes related to stored water will undoubtedly inform not only the current Division 77 rulemaking effort, but may very well lead to agreements over what concepts ought to be removed from the current rulemaking effort and instead included in proposed legislation in a future session. In short, the framework under which the Department and stakeholders have been operating has shifted dramatically between the time that the Division 77 rulemaking was initiated and the end of the recent legislative session. Pausing now and stepping back to reassess the various moving pieces will help lead to a better and more sound rulemaking result.

In addition to the implications of HB 3103 upon the rulemaking, we are also concerned about the rushed approach to the Division 77 rulemaking effort and do not see any the urgency of proceeding with the rulemaking at this time. To be blunt, the timeframe for the rulemaking is far from ideal; being initiated during the end of a hectic legislative session, during irrigation season, and in the midst of an extraordinarily difficult water year. These factors heavily impact our association's ability to engage and provide feedback on the proposed Division 77 rule changes. Now that the 2021 Session has concluded it is clear there are a number of higher priority issues that both OWRD and interested stakeholders need to tackle at this time.

As you are aware, OWRC staff and district representatives have actively participated in the Division 77 Rulemaking Advisory Committee (RAC) meetings to date. OWRC was also a member of the previously initiated Division 77 RAC in 2015, which notably did not include any proposed rule changes related to stored water. We are supportive of the items included in the previous rulemaking, including administrative streamlining for district instream leases, addressing changes from SB 199 related to split season leasing, and incorporating SB 206 related to instream use of determined claims. However, we are not supportive of the inclusion of stored water into the current rulemaking effort, particularly given the need to digest and implement the provisions of HB 3103.

In sum, we are not supportive of the Division 77 rulemaking proceeding at this time and urge the Department to postpone the rulemaking until after the formal discussions related to HB 3103 have taken place. Otherwise, it is highly likely the rulemaking will need to be redone. It will be a much more efficient use of OWRD staff resources and stakeholder time to revisit and resume the rulemaking after these discussions have concluded. The rulemaking needs to be postponed, or at least modified to exclude from the proposed rule revisions those subject areas, such as stored water, that are addressed in HB 3103 and other legislation passed during the 2021 Session.

Thank you for your consideration of our request. Please contact me to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Snell', written in a cursive style.

April Snell
Executive Director



Food & Wildlife for the Future

July 13, 2021

Transmitted Electronically
Breeze.K.Potter@oregon.gov

Breeze Potter, Water Policy Analyst
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, OR 97301

Re: Instream Water Right Rules / Rules Advisory Committee

Dear Ms. Potter:

While Water for Life, Inc. appreciates the opportunity to participate as a member of the above noted Rules Advisory Committee, I am writing to encourage the Water Resources Department to refrain from advancing the rulemaking process at the present time. Rather than moving forward with the process to amend current rules, which have been in place for a significant number of years, Water for Life, Inc. strongly encourages the Department to delay further action until the “stakeholders” have completed the discussion process identified in pertinent legislation enacted during Oregon’s 2021 Legislative Session (House Bill 3103).

As you are aware, pursuant to provisions contained in HB 3103, the Water Resources Commission has been directed to oversee or coordinate a series of 6-to-12 meetings of interested stakeholders to review issues associated with the transfer of water rights secured for the purpose of storage. For your immediate reference, attached is a copy of enrolled HB 3103.

Inasmuch as the issue of transferring a right to store water was one of the primary issues identified for the Rules Advisory Committee to review, I believe this discussion should be held in abeyance until the meetings of interested stakeholders identified in HB 3103 are concluded.

Aside from the immediate request to postpone the current rulemaking process, Water for Life, Inc., would like to register a few general comments associated with information distributed in conjunction with the proposed rules. We strongly disagree with the apparent assertions contained in information distributed by the Department with respect to the Rules Advisory Committee.

First, contained in the document identified as “Changes to Reservoir Rights” dated 2/7/18, the language, in part, states . . . “storage itself is not the beneficial use of water”. Taken literally, the immediate question would appear to be that in the event a storage right is deemed to not represent a beneficial use, how then would such a right ever gain the initial approval of the Department? In essence, in the event storage itself is not to be considered a “beneficial use,” the Department would be unable to initially approve a permit, certificate or subsequent decree designating such a right for the purpose of storage (please see ORS 537.130, 537.140). Furthermore, it has long been established that “beneficial use shall be the basis, measure and limit of all rights to the use of water in this state” (ORS 540.610).

Additionally, as noted in the “Need For The Rules”, language states, “[T]he proposed changes are necessary to clarify the Department’s authority under ORS 537.348 to transfer storage rights to an instream water right and to allow water users to make use of this tool which provides greater flexibility to water users to address instream water needs, some of which may be required to meet legal and regulatory purposes”. Such language appears to suggest, aside from the provisions contained in HB 3103, the Department would maintain the ability to facilitate a transfer of a storage right for purposes of an instream use, however, on a similar basis, would lack authority to approve other transfers associated with the type of use of the water. We believe such reasoning is awkward at best and represents a misinterpretation of provisions contained in ORS 537.348.

Finally, in light of the fact that current rules have been in place for a number of years, coupled with the recent directive given to the Commission to convene a series of stakeholder meetings, it would be prudent to delay current consideration of modifications to existing administrative rules.

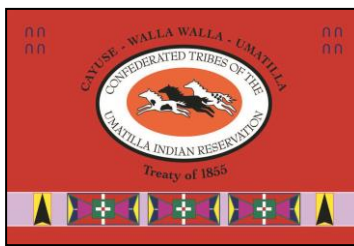
Sincerely,



Richard Koesan
For Water for Life, Inc.

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3103/Enrolled>

CC Mr. Tom Byler - wrd_dl_Director@oregon.gov
Mr. Dwight French - dwright.w.french@oregon.gov



Ms. Breeze Potter
Rules/IWRS Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

July 14, 2021

Re: Rules Advisory Committee – OAR 690-077 Instream Water Rights

Dear Ms. Potter,

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Water Resources Program is pleased to participate on the Rules Advisory Committee for instream water rights under Chapter 690, Division 77 of the Oregon Administrative Rules.

Providing clear direction on instream transfers for storage rights is of critical importance to CTUIR's work on instream flow restoration, and is an important step in reconciling the inconsistencies between Oregon's current Division 77 administrative rules and relevant statute. We commend Oregon Water Resources Department (OWRD) for taking up this rulemaking now, and believe that this work is particularly timely given the pressing, immediate need for guidance on this topic throughout the state.

Indeed, our collaboration with a diverse suite of stakeholders on the Wallowa Dam Rehabilitation Project has been hobbled by the lack of clarity on this issue. Formal guidance on transferring and changing the type of use identified on storage rights will resolve this challenge and allow our work to proceed. This will not only create great benefits for the instream resources affected, but also will be of tremendous value for the local agricultural economy and community. As such, we underscore the importance and timeliness of this rulemaking not just for environmental interests, but for Oregonians broadly.

Finally, we are greatly pleased at the recent passage of House Bill (HB) 3103 in the 2021 legislative session. We feel this legislation provides clear direction on changing the type of use associated with storage rights; however, if additional guidance is necessary on this topic, we suggest that OWRD consider expanding this current rulemaking to assume that task. We also note that the passage of HB 3103 further underscores the timeliness of this current rulemaking generally.

We thank you for your time and consideration, and greatly appreciate the opportunity to participate in this Division 77 Rules Advisory Committee,

Anton Chiono
Water Resources Program
Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation



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June 14, 2021

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Water Policy Analyst
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Salem, OR 97301



Re: Oregon Department of Fish and Wildlife Comments on Draft Division 77 Rule Revisions

Dear Ms. Potter:

Thank you for the opportunity to provide comments on Oregon Water Resources Department's (OWRD) Draft Division 77 Rule Revision. The Oregon Department of Fish and Wildlife (ODFW) has appreciated the opportunity to participate as a member of the Division 77 Rules Advisory Committee (RAC). The scope of the RAC was limited and generally included advising on minor/grammatical changes or specific components of the split-season leasing and instream storage transfers/leases sections. Generally, ODFW supports the rule language changes proposed by OWRD. In particular, ODFW appreciates the revision to the definition of "ODFW Flow Restoration Priority Watershed" to accommodate forthcoming updates. However, we are concerned that the proposed rule language lacks specificity regarding monitoring, reporting and enforcement requirements which are necessary to ensure that water remains instream at the appropriate time, location and quantity. Additionally, ODFW respectfully requests that OWRD consider initiating a broader rulemaking effort and/or stakeholder discussion in the near future to address other provisions of Division 77 to help ensure that the goals of the Instream Water Rights Act are being met. ODFW's specific comments are below.

Proposed Rule Language

(1) Instream Transfer of Storage Right

ODFW supports OWRD's efforts to provide clarity around the process to transfer storage rights to instream uses. However, RAC discussion highlighted some of the complexities associated with this process including the separate management of storage water and live flow water, accounting for secondary storage water rights especially in circumstances where they exceed the storage volume of a reservoir and management of storage rights in times of shortage. Given the complexities, it seems clear that robust measurement and reporting should be a condition of any approved transfer.

Recommendation: Include language in the rule that approved transfers shall include monitoring and reporting requirements as conditions in the new authorization. The proposed rule language does not explicitly make this a requirement of all transfer approvals. Instead, the proposed rule contemplates a process where a transfer applicant consults with the watermaster to determine the necessary measurement and reporting requirements. In addition to clarifying that measurement and reporting will definitively be a requirement of any new instream transfer or lease, the rule should require that the watermaster consultation be documented in a written format. This should also include specific information regarding how the storage rights are managed and enforced in a time of shortage.

(2) Rate and Volume

The proposed rule language regarding instream transfer of a storage right identifies the volume **or** rate of the storage right and portion proposed for instream transfer in the application.

Recommendation: The application should include a description of the rate **and** volume, when applicable, and should provide information regarding how instream releases will be shaped.

(3) Application Requirements

The rule language specifies certain requirements for applications for an instream transfer of a storage right, including the time periods of the instream use and quantity of water to be transferred to instream use.

Recommendation: The application should specify the rate, duration, and timing of the transfer/lease, including the option for variable release rates over the leasing or transfer period. ODFW can provide recommendations for shaping the leased/transferred water to provide the highest ecological uplift.

Future Rulemaking Efforts

ODFW understands that OWRD focused on certain limited changes to Division 77 during this process. However, there are opportunities for broader revisions that would help facilitate the use of instream transfers, promote establishing instream water rights and ensure the protection of instream flows consistent with statutory requirements. ODFW encourages OWRD to consider initiating a broader effort that could encompass the issues below.

- (1) Changes and/or clarifications to OAR 690-077-0015(4) to ensure that instream water right (ISWR) applications can be approved in quantities that are sufficient for the public use and consistent with statutory requirements;
- (2) Changes to facilitate broader use of the split-season leasing program including identification of possible statutory changes to meet this goal (such as removal of the concurrent use limitation or allowance of multiple purpose of use changes in an irrigation season);
- (3) Changes to ensure instream transfers are not inappropriately limited such as allowing instream leases/transfers to exceed an amount applied for under a state application;
- (4) Changes to ensure that the assumptions, methodologies and practices used to determine returns flows, calculate crop water use/irrigation requirements, and instream seepage and evaporative losses for the purposes of determining the “protectable” portion of an instream transfer are based on the best available science, consistent across districts, and appropriately consider climate change.

ODFW looks forward to continued engagement with OWRD and other stakeholders on this effort. Thank you for the opportunity to comment.



Chandra Ferrari
Water Program Manager
Chandra.a.ferrari@odfw.oregon.gov



July 14, 2021

Breeze Potter, Water Policy Analyst
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Division 77 RAC Comments

Dear Ms. Potter,

The Oregon Water Resources Congress (OWRC) has been an active participant in the Rules Advisory Committee considering revisions to the Oregon Water Resources Department's Division 77 rules. We offer the following comments on the most recent draft of the rules.

To begin with, and as set forth in our recent letter to Director Byler, given the recent passage of HB 3103 by the 2021 Oregon Legislature, OWRC respectfully requests that the Department pause its Division 77 rulemaking until after the stakeholder discussions that are mandated by HB 3103 have been completed. This new law has direct implications for several of the concepts contained in the Division 77 rulemaking effort, and we believe that moving ahead with the rulemaking prior to these discussions will only create more work in the long run.

In particular, we are concerned with and question the inclusion of stored water in the current Division 77 rulemaking when there are ongoing conversations about the Department's authority regarding changes to stored water rights. Meanwhile, HB 3103 authorizes holders of stored water rights to request changes to the type of use and directs the Water Resources Commission to hold facilitated meetings with stakeholders regarding transfers of stored water more broadly. These legislatively mandated discussions regarding the Department's authority and processes related to stored water will undoubtedly inform not only the current Division 77 rulemaking effort, but may very well lead to agreements over what concepts ought to be removed from the current rulemaking effort and instead included in proposed legislation in a future session. In short, the framework under which the Department and stakeholders have been operating has shifted dramatically between the time that the Division 77 rulemaking was initiated and the end of the recent legislative session. Pausing now and stepping back to reassess the various moving pieces will help lead to a better and more sound rulemaking result. As such, OWRC is not supportive of the inclusion of stored water as part of the current rulemaking effort.

Along these same lines, we believe that there may be some misconception about the value of the proposed Division 77 rules as they relate to stored water managed by

districts. Stated bluntly, leasing a storage right to instream use (and thereby diminishing the amount of water that can be stored) does not make sense for many of the reservoirs managed by districts. In those situations where stakeholders are looking to augment summer flows, districts will still need to store as much as possible under the storage right during the storage season, and then release water from storage under a secondary water right in order to accomplish the instream flow objectives. Such an approach would allow the instream flows downstream of the reservoirs to be timed in such a way to get greatest benefits for fish and wildlife. But such a process would not involve leasing the storage right to instream use. Otherwise, if instream flows are needed during the storage season itself, then the storage rights need not be exercised in the first instance; instead, water would simply be bypassed, and there's rarely, if ever, any issue with whether this water is subject to a lease, protecting it from other diversions, because it's happening during the winter when live flow irrigation rights are less prevalent. And again, HB 3103 has teed up a framework for discussions about storage-related transfers that should occur prior to further work on the proposed Division 77 rules.

With the above comments in mind, we nevertheless would make the following specific comments on the current RAC draft. Note that while we have attempted to tie a particular comment to a specific section of the proposed rule, the same comment may apply to multiple sections in the current RAC draft. Moreover, OWRC reserves the right to make further or additional comments whether as part of the RAC or any formal, proposed rule made available for public comment. As discussed in prior RAC meetings, this rulemaking effort has been largely occurring during an extremely busy legislative session, and during a very intensive drought that has precluded our district members from being able to fully participate in the ongoing process.

1) Regarding the proposed language in OAR 690-077-0075(2)(d), we do not believe there is any basis for requiring that secondary water rights not exceed the total storage. Not every secondary water right needs to be exercised in a given year to the maximum extent (whether in terms of rate or volume). We often have situations where secondary water rights exceed the maximum volume of the underlying storage right, because by their very nature, secondary water rights often provide a supplemental water supply, or provide redundancy. While at one time, the Department was concerned with this notion of "thin water," we understand that this concept was ultimately rejected. Otherwise, limiting secondary water rights to the total storage capacity of a reservoir has the perverse effect of only encouraging water users to build more storage than what is actually needed in any given year, or encouraging storage water to be held in storage rather than being used where and when it's needed most.

2) Regarding the proposed language in OAR 690-077-0076(4)(c), and particularly with respect to storage rights, we do not believe that districts should have to affirmatively secure the permission of each and every water user where the water right is held by a district in trust for its members, and the district is making an application for an instream lease. While policies may of course vary from district to district, these decisions are up to the district board, and often delegated to the district manager. The blanket approach

described in the proposed rules will often be completely unworkable, in addition to being inconsistent with governing statutes and case law. As one example, if a district chooses to enter into an agreement to use stored water for instream flow needs (whether pursuant to the federal Endangered Species Act, as mitigation for the use of other water supplies, or whatever the reason), which would involve a diminishment in the allocation of stored water across the district, the district must be able to make these water management decisions without seeking out the permission of every district patron for every decision.

3) Regarding the proposed language in OAR 690-077-0076(5), districts should not be required to dry up acres in order to lease storage rights to instream use. Districts should be free to reduce the overall duty (or allocation) to some or all lands within the district, per whatever might be the applicable district policy. Measurement of the bypass or instream flows should fully satisfy concerns around potential enlargement.

4) Regarding OAR 690-077-0076(8)(h) and (i), an explanation of how use under other secondary rights will be curtailed may be appropriate, but we would not describe this as a “suspension” of the rights. Moreover, the extent of the “suspension” may change from year to year for the term of the lease. Consistent with the above comments, we believe the focus should be on measurement on the front end, and not over-management of the secondary uses on the back end.

5) Regarding OAR 690-077-0077(3)(e) & (f), and (11), and consistent with the above, just because secondary water rights (including instream lease amounts) exceed total storage, that should not automatically mean that there is enlargement or injury. In addition, there are places in the rules in which there seems to be confusion over whether a storage right is being leased to instream use, or whether a secondary water right for the use of stored water is being leased to instream use. We would request that this issue be further examined as part of the next turn of the draft rules. And again, it’s exactly the sort of issue that should be included in the HB 3103 stakeholder discussions.

Thank you for your consideration of our comments. Please contact me to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Snell', with a stylized flourish at the end.

April Snell
Executive Director

From: [Rocky Dallum](#)
Sent: Wednesday, July 14, 2021 4:46 PM
To: [STONE Jeff](#); [Mary Anne Cooper](#); [POTTER Breeze K * WRD](#)
Cc: [April Snell](#); [KOESAN Richard](#); [Filippi, David](#); [BYLER Thomas M *](#)
[WRD](#); [Tammy Dennee](#)
Subject: Re: Division 77 Comments

Breeze,

On behalf of Oregon Cattlemen's Association, we would also request postponing the Division 77 rulemaking. As one organization that supported 3103, we understand the need to address a wide variety of issues at the department related to in-stream water rights, transfers and other needs and challenges for ranchers and our producers. However, given the myriad of challenges this year is already presenting, the pending facilitated process for authorizing transfers of stored water, and the limited capacity for our (and other) organizations, we think it would be wise to hold off on further clarification on in-stream rights.

While this request isn't a letter with substantive comments regarding Division 77, we respectfully request the delay of the rulemaking.

Thank you,

Rocky Dallum and Tammy Dennee on behalf of Oregon Cattlemen's Association

Rocky Dallum | Tonkon Torp LLP

Partner

888 SW Fifth Ave., Suite 1600

Portland OR 97204

503.802.2175 direct

rocky.dallum@tonkon.com | [website](#) | [bio](#)

From: Jeff Stone <jstone@oan.org>

Date: Wednesday, July 14, 2021 at 3:59 PM

To: Mary Anne Cooper <maryannecooper@oregonfb.org>, POTTER Breeze K * WRD <Breeze.K.POTTER@oregon.gov>

Cc: April Snell <aprils@owrc.org>, Richard Kosesan <rkos@rdkcompany.com>, Rocky Dallum <rocky.dallum@tonkon.com>, "Filippi, David" <david.filippi@stoel.com>, Thomas M * Byler <thomas.m.byler@oregon.gov>

Subject: RE: Division 77 Comments

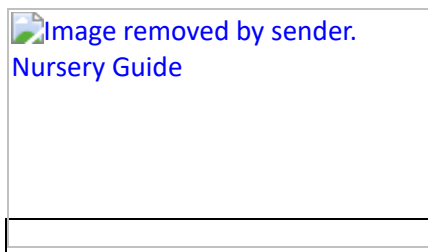
Breeze

I completely agree and would add for spice that we are dealing with some pretty substantial plant damage due to the heat and this rulemaking comment did not make the cut to get done. Mary Anne is right to ask that this get kicked to late August at least.

Jeff



JEFF STONE
Executive Director
Oregon Association of Nurseries
voice: 503-582-2003 cell: 971-235-3868
COVID (64th Ave Bunker) 503- 746-7033



From: Mary Anne Cooper <maryannecooper@oregonfb.org>
Sent: Wednesday, July 14, 2021 3:49 PM
To: POTTER Breeze K * WRD <Breeze.K.POTTER@oregon.gov>
Cc: April Snell <aprils@owrc.org>; Jeff Stone <jstone@oan.org>; Richard Koesan <rkos@rdkcompany.com>; Rocky Dallum <rocky.dallum@tonkon.com>; Filippi, David <david.filippi@stoel.com>
Subject: Division 77 Comments

Breeze,

Thank you for the opportunity to provide initial comments on the Division 77 rulemaking. I would like to renew my request per my email on Monday to Director Byler that the Department pause its Division 77 rulemaking until after HB 3103 and its associated workgroup meetings have concluded. I am concerned that with this rulemaking moving before the HB 3103 conversations, we could end up with differing and potentially inconsistent regulations governing the transfer of stored water, and with the broader conversations that should move first happening second.

At the very least, I request that you pause this rulemaking until after the irrigation season is over (and drought is more resolved) so that I can discuss some of the aspects of this rulemaking with my members. With ongoing drought related and other natural disaster challenges for my sector, paired with end of session related work and this being my members' absolute busy season, I have not had time to have some of

the critical conversations that we need to have to develop a position on the issues being explored in Division 77. Since I was not part of the first iteration of this rulemaking, these are new issues I need to cover with my members, and there is no way I will get their attention prior to September or October.

Please let me know if we can pause this rulemaking – otherwise, I will reserve all further ability to comment until this fall.

Thanks!

Mary Anne

Mary Anne Cooper | Vice President of Public Policy

Oregon Farm Bureau

1320 Capitol St. NE, Suite 200, Salem, OR 97301

Cell: 541.740.4062 • **Office:** 503.399.1701 x. 306 • **Fax:** 503.399.8082

maryanne@oregonfb.org • oregonfb.org

Interested Parties



KLAMATH IRRIGATION DISTRICT

6640 K.I.D. LANE
KLAMATH FALLS, OREGON 97603
Phone: (541) 882-6661 Fax (541) 882-4004

12 July 2021

TO: Director Tom Byler
FOR: Breeze Potter, Water Policy Analyst
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, OR 97301

RE: Division 77 Rules Advisory Committee on Instream and Stored Water Rights Rules

Ms. Potter:

On behalf of Klamath Irrigation District I would like to thank you for the opportunity to be allowed to participate in the Division 77 Rules Advisory Committee as an interested party. Being able to observe this process is very educational.

I am writing to restate our concern for advancing this rulemaking process at the present time. As previously stated, the topic of transferring a right to stored water is a primary issue given our current litigation, the crisis here in the Klamath Basin focused specifically on stored water, and the unknown impacts of Oregon's 2021 Legislative Session House Bill 3103.

Many questions are raised relating to existing statutory provisions addressing the transfer of water (ORS 540.505 et seq.) We believe further clarifications are needed in the proposed rulemaking process. In the passage of House Bill 3103, absent further clarification regarding actual storage rights, we are concerned modifications to pertinent administrative rules may very likely serve to enhance the prospect of additional litigation; an unfortunate factor that may otherwise be avoided.

We ask the Department to delay taking further action until the provisions in House Bill 3103 are resolved.

Sincerely,

Gene Souza

Executive Director
Klamath Irrigation District
Gene.Souza@KlamathID.org

Enrolled House Bill 3103

Sponsored by COMMITTEE ON WATER (at the request of Representative Ken Helm)

CHAPTER

AN ACT

Relating to water uses; creating new provision; and amending ORS 540.510 and 540.520.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 540.510 is amended to read:

540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use [*theretofore made*] of the water [*in all cases*] without losing priority of the right [*theretofore established*]. A district may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not approve the transfer of a supplemental water right or permit if the transfer would result in enlargement of the original water right or injury to an existing water right. If the department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

(b) A holder of a water right certificate that authorizes the storage of water may change the type of use identified in the water right certificate, as described in subsection (1)(a) of this section, without losing priority of the right.

(2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated by the Water Resources Commission under ORS 537.470 may be severed from the land and transferred or sold after notice to the commission as required under ORS 537.490.

(3)(a) Any water used under a permit or certificate issued to a municipality, or under rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may be applied to beneficial use on lands to which the right is not appurtenant if:

(A) The water is applied to lands which are acquired by annexation or through merger, consolidation or formation of a water authority, so long as the rate and use of water allowed in the original certificate is not exceeded;

(B) The use continues to be for municipal purposes and would not interfere with or impair prior vested water rights; or

(C) The use is authorized under a permit granted under ORS 468B.050 or 468B.053 and for which a reclaimed water registration form has been filed under ORS 537.132.

(b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit or certificate issued to a district may be applied to beneficial use on lands within the district to which the right is not appurtenant.

(5) The relocation of a point of diversion as necessary to follow the movements of a naturally changing stream channel does not constitute a change in point of diversion for purposes of ORS 540.520 if:

(a) The diversion point stays within 500 feet of the point of diversion on record with the Water Resources Department;

(b) The change does not move the diversion point upstream or downstream beyond the diversion point of another appropriator; and

(c) The diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife.

(6) In the event that government action results in or creates a reasonable expectation of a change in the surface level of a surface water source that impairs or threatens to impair access to a point of diversion authorized by a water right permit, certificate or decree, the owner of the water right may change the point of diversion or add an additional point of diversion in accordance with the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530. Before changing the point of diversion, the water right owner shall provide written notice of the proposed change to the Water Resources Department. Within 15 days after receipt of such notice, the department shall provide notice by publication in the department's public notice of water right applications. Within 60 days after the department receives notice from the owner, the Water Resources Director, by order, shall approve the change unless the director finds the changes will result in injury to other existing water rights. All other terms and conditions of the water right shall remain in effect.

(7) The sale or lease of the right to the use of conserved water under ORS 537.490 does not constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

(8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be subsequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use or place of use under this section.

SECTION 2. ORS 540.520 is amended to read:

540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change the place of use, the point of diversion, or the use made of the water, an application to make such change, as the case may be, shall be filed with the Water Resources Department.

(b) A holder of a water right certificate that authorizes the storage of water may change the type of use identified in the water right certificate, as described in this section.

(2) The application required under subsection (1) of this section shall include:

(a) The name of the owner;

(b) The previous use of the water;

(c) A description of the premises upon which the water is used;

(d) A description of the premises upon which it is proposed to use the water;

(e) The use that is proposed to be made of the water;

(f) The reasons for making the proposed change; and

(g) Evidence that the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or that the water right is not subject to forfeiture under ORS 540.610.

(3) If the application required under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and (d) of this section. The assistance provided by the department may include, but need not be limited to, development of an application map.

(4) If the application is to change the point of diversion, the transfer shall include a condition that the holder of the water right provide a proper fish screen at the new point of diversion, if requested by the State Department of Fish and Wildlife.

(5) Upon the filing of the application the department shall give notice by publication in a newspaper having general circulation in the area in which the water rights are located, for a period of at least two weeks and not less than one publication each week. The notice shall include the date on which the last notice by publication will occur. The cost of the publication shall be paid by the applicant in advance to the department. In applications for only a change in place of use or for a change in the point of diversion of less than one-fourth mile, and where there are no intervening diversions between the old diversion of the applicant and the proposed new diversion, no newspaper notice need be published. The department shall include notice of such applications in the weekly notice published by the department.

(6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or the mailing of the department's weekly notice, whichever is later, any person may file, jointly or severally, with the department, a protest against approval of the application.

(7) If a timely protest is filed, or in the opinion of the Water Resources Director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, the department shall hold a hearing on the matter. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

(8) An application for a change of use under this section is not required if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

(9) A water right transfer under subsection (1) of this section is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

(a) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

(b) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

(c) The person who makes the change in water use provides the following information to the Water Resources Department:

(A) The name and mailing address of the person using water under the water right;

(B) The water right certificate number;

(C) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued; and

(D) A description of the general industrial use to be made of the water after the change.

SECTION 3. For the purpose of finding agreement among stakeholders on a path forward for transfers of stored water and development of related legislative proposals, the Water Resources Commission shall:

(1) Engage professional facilitation services.

(2) Seek a facilitator with national renown and subject matter expertise.

(3) Retain, if possible, a senior lead facilitator and a junior support facilitator.

(4) Hold six to 12 meetings, in person if practicable, with at least 20 diverse stakeholders, including from federal and state agencies, between the effective date of this 2021 Act and June 30, 2023.

(5) Design a process for the meetings and conduct stakeholder interviews and research before the meetings.

SECTION 4. In addition to and not in lieu of any other appropriation, there is appropriated to the Water Resources Commission, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$485,100 to be used to carry out the provisions of section 3 of this 2021 Act.

Passed by House June 24, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 26, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State