

OREGON



WATER RESOURCES
DEPARTMENT

Division 77 Rulemaking Timeline

Oregon Water Resources Commission

August 25, 2021


Rulemaking Process



Develop Rules



Rulemaking Advisory Committee



Notice of Proposed Rulemaking



Public Hearing(s) & Public Comment



Staff Recommendation & Commission Decision

Division 77 Overview

Relating to: Leases and transfers of existing water rights to instream water rights

Purpose:

- Clarify application requirements and review processes
- Improve efficiency of Department review
- Implement statutory changes

Division 77 Background

- Restarted rulemaking in 2020 based on stakeholder interest
- ORS 537.348—authority for leases/transfers of storage rights instream
- Current rules are limiting—do not provide details to guide transfer process and lack clarity for leasing process

HB 3103

- **Section 1 & 2:** Amends ORS 540.510 & 540.520—authorizes change of type of use of storage right
- **Section 3:** Directs Commission to hold facilitated stakeholder meetings

Summary of Support:

- Department has authority
- Need for permanent transfers
- Rules address issues and provide guidance on process

Summary of Opposition:

- Question necessity, complexity, and timing of rulemaking
- No need for permanent transfers currently
- Potential for different criteria and concern about interplay with HB 3103
- *See attachments for additional comments*

Timeline Options: Option 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.

Timeline Options: Option 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.

Timeline Options: Option 3

Halt the entire rulemaking indefinitely pending the outcome of the stakeholder meetings convened under HB 3103.

Timeline Options: Option 4

Other course of action as determined by the Commission.

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