

Division 10 Rules Advisory Committee Meeting 2 (January 10, 8 a.m. - 12 p.m.)



This document is a summary of Division 10 Rules Advisory Committee (RAC) hybrid meeting number two held at the Oregon Water Resources Department Headquarters on January 10, 2023, from 8 am to 12 pm. For more information, see the Meeting Agenda, Meeting Presentation, Draft Rules, and other Meeting Materials, [available on our rulemaking website](#).

Meeting Attendees

RAC members in attendance were Anton Chiono, April Snell, Bob Waldner, Brad Parrish, Brandon Haslick, Brock Nation, Cheyenne Holiday, Christopher Hall, Chrysten Rivard, Clark Balfour, David Filippi, James Baker, John Stadel, Julie Weikel, Karen Lewotsky, Kelly Warren, Lisa Brown, Marika Sitz, Nathan Rea, Ryan Hartman, Sarah Liljefelt, Tamra Mabbot, Zach Freed

Oregon Water Resources Department (OWRD) staff in attendance were Kelly Mainz, Ivan Gall, Timothy Seymour, Chris Kowitz, and Laura Hartt.

Welcome and Introductions

Oregon Water Resource Department staff introduced themselves, as did the RAC members and public attendees.

Presentation

Kelly Mainz and Timothy Seymour gave a presentation to the RAC Members. Topics covered were a review of the agenda, a discussion of the Critical Ground Water Area Rule Writing Process (see flow chart, available online:), and updated proposed changes to rules 690-010-0100 to 690-010-0160 based on comments from the last RAC meeting held December 5, 2022. Additionally, RAC meeting attendees reviewed the Contested Case process (see flow chart, available online:) and summary of the rules discussed in this meeting (rules 699-010-0170 – 690-010-0230).

Discussion on Changes Made to Rules 690-010-0100- 690-010-0160

During the presentation OWRD and RAC members discussed changes to the draft rules based on the RAC members comments from the first RAC meeting.

Discussion of Changes made to Rule 690-010-0130 based on Prior RACs Comments:

A RAC member asked a question to clarify the difference between the ten-year review under 690-010-0130(2) (A) and the 3-year review under 690-010-0150(5). OWRD staff explained that the 10-year review applies to Critical Ground Water Area Basin conditions to determine if a critical groundwater area designation is needed. A 3-year review is required when the Water Resources Commission (WRC) adopts a rule curtailing groundwater use under ORS 537.780(3). The adoption of a rule designating the basin as a critical groundwater area (CGWA) will not result in curtailment of groundwater use. The curtailment will come from the final orders from the contested case process described in rules 690-010-0160 – 690-010-220.

Discussion of Changes Made to Rule 690-010-0140 Based on Prior RACs Comments

A RAC member asked when a basin is declared a CGWA and part of that basin contains a tribal reservation, will parts of the reservation be declared as CGWA? OWRD staff responded that the department lacks authority to declare a tribal reservation a CGWA.

A RAC member expressed concern that the proposed rules lack statutory authority to require consultation with the Affected Local Government and Indian tribes. OWRD responded that the Department was focused on the required agency coordination with land use planners under Chapter 690 Division 5.

Discussion on Draft Rules

Following the presentation, RAC members discussed proposed rules 690-010-0170 – 690-010 -230.

Draft Rule 690-010-0170

A RAC member asked why only those who requested the initial notification under 690-010-0160 will receive the notification of corrective actions 690-010-0180. OWRD staff replied that they would look into the requirement.

A RAC member had concerns with 690-010-0170(3)(B) with respect to notification of proposed corrective actions limited to those with both a groundwater right in the basin and those who had requested the initial notification. The RAC member suggested that just one of the two conditions should be necessary for receiving the notification of proposed corrective actions.. OWRD staff responded that requiring both conditions was not the intention, and they would revisit the wording.

A RAC member shared concern with the term “any information” under 690-060-0170(2)(6), noting that the language was open-ended. The RAC member suggested updating wording within the subsection to set a standard of information.

A RAC member asked how OWRD finds information on groundwater right holders within the basin, as referenced in 690-010-0170(3)(A). OWRD staff replied that they rely on data, assessors’ records, and water rights records.

A RAC member was concerned that the notification outlined in 690-010-0160 appeared less thorough than that outlined in 690-010-0170. The RAC member explained that the discrepancy could lead to public misunderstanding as to OWRD’s intentions with respect to ordering corrective actions. OWRD staff asked the RAC member to forward any language recommendations to improve the notification process outlined in 690-010-0160 to OWRD.

Draft Rule 690-010-0180

A RAC member asked for clarification of the timeline under this section. OWRD responded that the timeline we are talking about is a procedural process that OWRD must follow.

A RAC member pointed out that a review order denying party status is controlled by ORS 183.484, not ORS 183.482. OWRD responded that they would look into it.

Two members expressed concern about not serving a person who does not hold ground water right regarding 690-010-0180(4). They both think that for fairness, they should also be served.

OWRD staff responded that they would investigate it.

Rule 690-010-0190

No discussion.

Rule 690-010-0200

A RAC member asked why the department would put anything they think is relevant into the proceedings. OWRD staff responded that the intention is to make all information available.

A RAC member asked how they can get the department data collection status/understanding of GW impacts before CGWA designation. OWRD staff responded that the data is available online.

Rule 690-010-0210

A RAC member commented that 20 days seems short for filing exceptions. OWRD staff responded that we agree and would take another look.

Rule 690-010-0220

A RAC member informed OWRD that when you remand back to the factfinding body, you can develop additional facts. The RAC member pointed out that remand is limited to what is currently in the record as written in the rules. They suggested that there should be the development of admin records. OWRD staff responded that we would look into it.

A RAC member asked why the final order contains a recommendation and not a action. They pointed out that the last orders shouldn't contain recommendations. Who is the WRC recommending? OWRD staff responded they would investigate clarifying the rule language.

A RAC member shared a similar concern with the recommendation issued in the final order; whether it's an order action or recommendation the decision hasn't been adjudicated at this point in the process. The issues would need to be modified, and additional fact-finding would need to be needed. OWRD staff responded that they would take a look at the language.

A RAC member expressed concern that section 3 subsection c is the weakest link.

Draft Rule 690-010-0230

A RAC member expressed concern these rules will allow for an easy pathway to undo a CGWA declaration. They pointed out that the process for a declaration is more robust compared to updating rules. OWRD staff responded by ensuring that these rules are only for updating existing CGWA.

Discussion on the Fiscal Impact Statement

The RAC members agreed with the proposed Fiscal Impact Statement.

Discussion on the Statement of Need

A RAC member expressed concern that there is no clarification around the fact that rules are forward looking and recommend adding language to 690-010-0100 and the statement of need.

Public comment:

A member of public asked the question on why these rules are needed. OWRD staff explained the background and provided some context with designating Harney basin a CGWA.