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46411 Timine Way  
Pendleton, Oregon 97801

Laura Hartt  
Oregon Water Resources Department  
725 Summer St. NE, Salem, OR 97301

November 5, 2025

Re: Initial Comments on Draft OAR-690-380 Rules

Dear Laura,

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Department of Natural Resources, we are pleased to provide the following initial comments on the draft Division 380 rules:

#### Division 380 – Water Right Transfers

- 690-380-0100 Definitions: Under the definition of “Enlargement”, we ask for the following (underlined) addition to (2)(c):

*(c) Failing to keep the original place of use from receiving water diverted and applied from the same source;*

The ambiguity in this language has created inconsistencies in the administration of water right transfers across the state. Some watermasters have interpreted this as disqualifying any place of use (POU) transfer if a field is within the same floodplain as its surface water source stream. The rationale has been that these fields continue to receive shallow groundwater that sub-irrigates the place of use, and that this shallow groundwater is the same “source” as the surface water diverted to irrigate those fields, thereby precluding them from transfer eligibility.

This interpretation is problematic in that it has allowed Oregon Water Resources Department to inappropriately bias the ways in which a water right holder may put their water to legal beneficial use, which clearly is not the agency's place. For instance, if a water right holder is approaching five consecutive years of non-use, an instream lease is a convenient way in which a water right holder may put their water right to legal beneficial use and reset the five-year "forfeiture clock." However, if the agency refuses to recognize the transfer eligibility of a water right in the floodplain of the source stream, then the water right holder has had the legal beneficial uses available to them inappropriately proscribed by the agency, which, again, is not the agency's place. In such an instance, the water right holder would be forced to divert and apply the water right to their place of use or otherwise face forfeiture for non-use. This interpretation clearly creates a double standard, but because of the ambiguity in the rule language, it is one that is encountered all too often.

We think the more likely actual intent of this language is to prevent the enlargement of a water right that would arise from the same source water being *diverted and applied* to both the original POU and the new POU to which the right is being transferred. Such a practice would indeed result in more water being diverted from the stream than the water right holder is legally entitled to, thereby enlarging the right and depriving others of water to which they are legally entitled.

The addition of "diverted and applied" to the definition would resolve this problematic ambiguity and clarify that acres are eligible for a POU transfer if water can be kept from being diverted and applied from the same source.

- 690-380-2120 Change in Point of Diversion to Reflect Historical Use: We are concerned with the proposal to expand this section to groundwater via this Rules Advisory Committee. The statute enabling a point of diversion (POD) change under ORS 540.532 appears to very specifically apply only to surface water rights. If it is the will of the Legislature to extend this authority to groundwater rights, we believe the change should be made in the enabling statute via legislation, not here in the rulemaking process. We continue to see excessive groundwater use deplete aquifers and the springs and surface waters that depend on them; we should not create a loophole that encourages illegal groundwater use and risks exacerbating this problem. As such, we ask that you remove the language pertaining to groundwater and historic points of appropriation throughout this section.

- 690-380-2200 Changes in Place of Use: In echoing the concerns raised above with respect to the definitions under 690-380-0100(2)(c), we ask that you revise the new language in paragraph (2) to reflect the following:

*(2) For water rights with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380 0010(2)(c), the lands from which the water right is removed do not continue to receive water diverted and applied from the same source.*

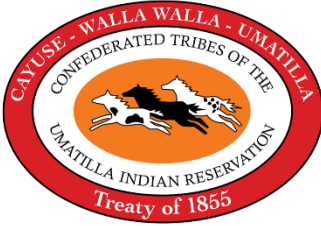
- 690-380-3400 Waiver of Fees: Consistent with our earlier comments on Division 18, we oppose removing language that requires the mandatory waiver of fees for transfers that either establish an instream right, are necessary to create a project funded by Oregon Watershed Enhancement Board, or are endorsed in writing by Oregon Department of Fish & Wildlife. These transfers are to restore a public good that has been degraded by the overallocation of our state's public water resources, not facilitate the further development of our public water supplies for private gain. As such, we strongly oppose the removal of this mandatory fee waiver.

We thank you for the opportunity to participate as a member of this Rules Advisory Committee and appreciate your consideration of these comments.

Sincerely,



Anton Chiono  
Habitat Conservation Project Leader  
Department of Natural Resources  
Confederated Tribes of the Umatilla Indian Reservation



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Laura Hartt  
Oregon Water Resources Department  
725 Summer St. NE, Salem, OR 97301

November 11, 2025

Re: Initial Comments on Draft OAR-690-077 Rules

Dear Laura,

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Department of Natural Resources, we are pleased to provide the following initial comments on the draft Division 77 rules:

#### Division 77 – Instream Water Rights

- 690-077-000(7) Purpose: We ask that you remove the new proposed language under paragraph (7), which states:

*(7) Instream water rights, instream leases, instream transfers, and instream water rights resulting from an allocation of conserved water can only be established to protect water instream within the State's borders.*

This proposed language is in fact inaccurate given reciprocal legislation that has been passed in both Oregon (Senate Bill 1567 [2024]) and Washington (Second Substitute House Bill 1322 [2023]) with respect to the Walla Walla basin. These reciprocal laws allow the State of Oregon to convey an instream lease, instream transfer, or the State's portion of saved water from an Allocation of Conserved Water (ACW) project to the Washington Department of Ecology for protection

instream under Washington State's Trust Water Rights program. These reciprocal laws allowed 8 cfs to be protected in Washington under an Oregon water right in 2024 and will enable roughly 22 cfs to be protected in Washington under an Oregon water right in 2025, including 1.138 cfs of permanent instream water from the State's portion of an ACW project.

- 690-077-0010(12) Definitions: We ask that you delete paragraph (12), which states:

*(12) "Estimated Average Natural Flow" means average natural flow estimates, by month of half month, computed by the Department and derived from watermaster distribution records, Department measurement records, or application of appropriate scientific and hydrologic technology.*

Instream water rights should not be constrained by this arbitrary criterion; the agencies authorized to apply for instream water rights should be free to apply for water rights based on the scientific data that support the need. Constraining instream water rights to a "estimated average natural flow" (EANF) is not provided for in statute and this provision should be eliminated in OAR 690-077.

- 690-077-0010(35) Definitions: It is inappropriate to include this notification requirement and we ask that paragraph (35) be removed entirely. The agencies have multiple formal public notice requirements and interested members of the public have ample opportunity to receive notification through these existing means. This added notification requirement is neither directed in the 2025 legislation nor is in the interest of clarifying the existing rules and is therefore not appropriate for inclusion here.
- 690-077-0015(4) General Statements: Consistent with our comments above, artificially handcuffing agencies by limiting instream water right applications to EANF is not consistent with statute or data. We ask that agency experts are afforded the ability to set instream water rights at levels that are legally and scientifically defensible. Please remove this section and all language in Division 77 that limits agency instream water right applications to EANF. The plight of instream flows across the state is only worsening with climate change; arbitrarily limiting our ability to utilize the best science available is not a responsible course of action.

- 690-077-0020(3) State Agency Instream Water Right Applications: Application Requirements: Consistent with our comments above, the additional notification requirements in paragraph (3) are not directed by the 2025 legislation and do not improve the clarity of the existing rules and are therefore not appropriate here. Please remove paragraph (3).

We thank you for the opportunity to participate as a member of this Rules Advisory Committee and appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anton Chiono', with a stylized, flowing script.

Anton Chiono  
Habitat Conservation Project Leader  
Department of Natural Resources  
Confederated Tribes of the Umatilla Indian Reservation

November 11, 2025

Oregon Water Resources Department  
725 Summer St. NE, Salem, OR 97301

Re: 2025-2026 Water Rights Rulemaking Rules Advisory Committee - Division 77 Comments

To whom it may concern,

Central Oregon LandWatch (“LandWatch”) provides these initial comments in writing following the 2025-2026 Water Rights Rulemaking Rules Advisory Committee (“RAC”) meetings 6 & 7 on October 29<sup>th</sup>, 2025.

LandWatch is an Oregon non-profit, public interest organization of about 950 members. Its offices are located in Bend, Oregon. LandWatch’s mission is to defend and plan for Central Oregon’s livable future, and it has advocated for the preservation of natural resources in Central Oregon for over 30 years.

These comments are focused on the proposed rule changes for OAR Chapter 690 Divisions 77.

## **I. OAR-690-77**

### **OAR-690-77-0010(35)**

LandWatch recommends removing this new definition entirely. See comments below on OAR-690-77-0020.

### **OAR-690-77-0015(4)**

As discussed during the RAC meeting, LandWatch recommends removing 0015(4) entirely.

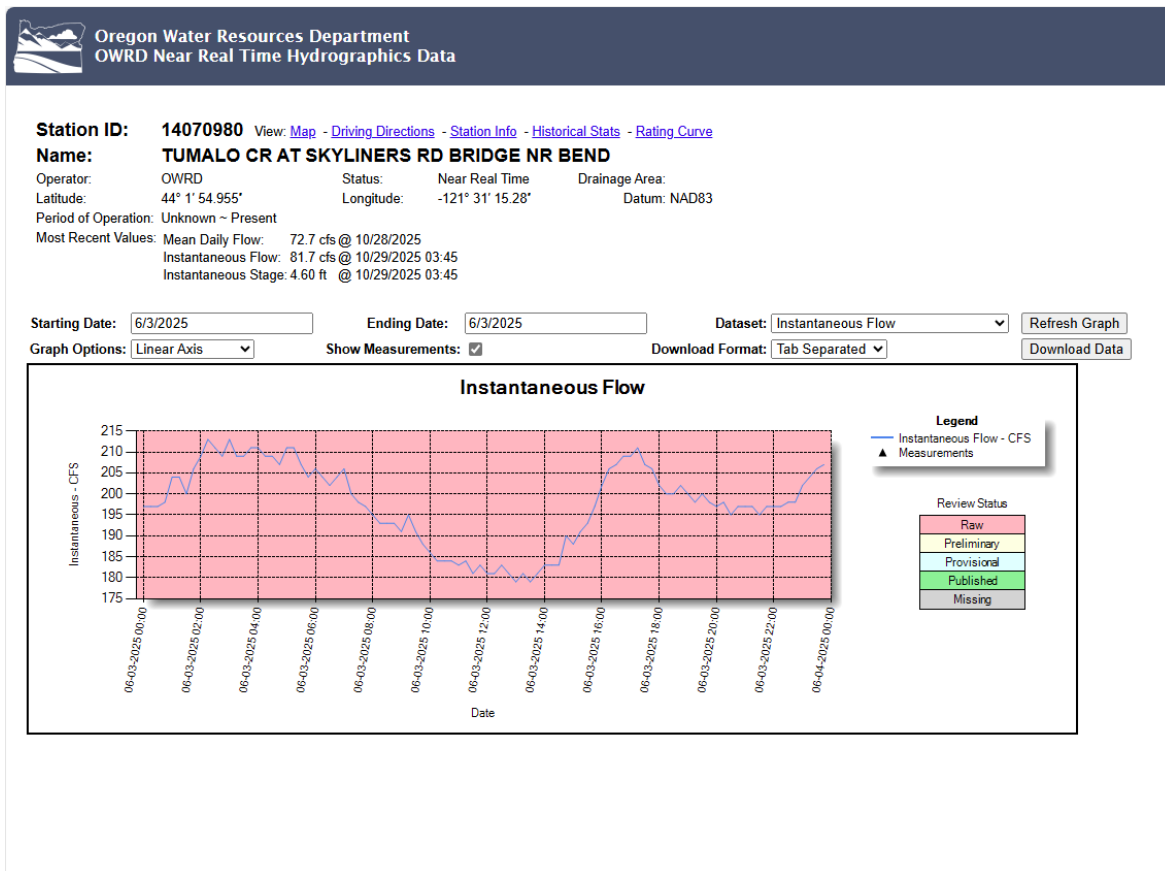
ODFW is the state agency charged with managing Oregon’s fish and wildlife and uniquely has the expertise to determine the flows necessary to support conservation, maintenance and enhancement of fish life, wildlife, fish and wildlife habitat or any other ecological values. As such, in place of ENAF, LandWatch recommends that OWRD rely on ODFW’s requested flows as a clear, consistent and defensible basis for instream water rights applications.

During the Oct 29<sup>th</sup> RAC meeting, there was a robust discussion on the concerns of relying on ENAF to protect public uses, including conservation, maintenance and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values. Among other concerns raised,



relying on an average fails to consider important daily and weekly fluctuations in stream flows that support fish, wildlife and other ecological values.

For example, Tumalo Creek in Central Oregon sees temporal changes in flows that can vary significantly (See figure 1 and 2 below). Here, even a daily average fails to capture the flows that are necessary to protect the full ecological value of a stream—let alone month or half month averages.

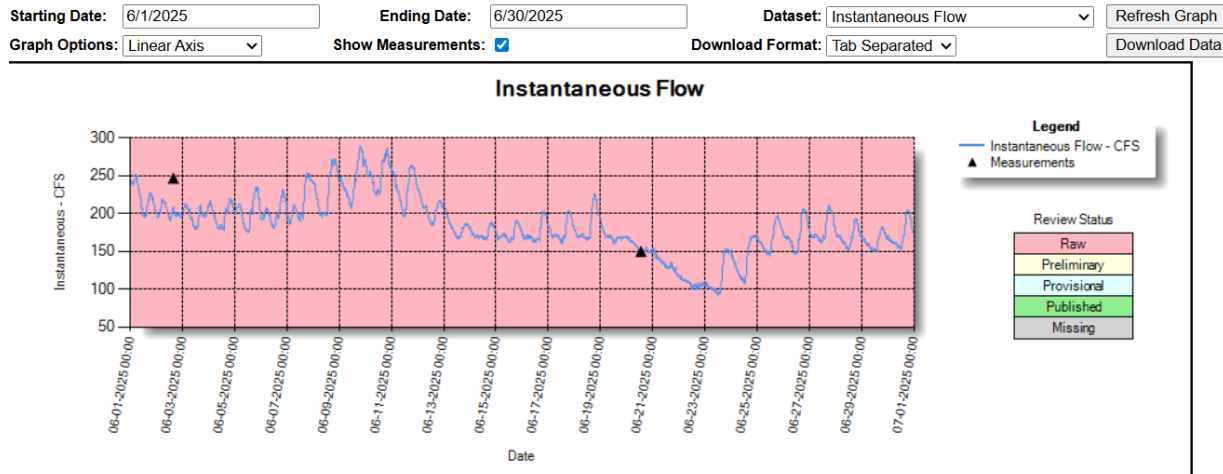


**Figure 1.** Tumalo Creek flow fluctuations over a 24-hour period in June 2025. Flows peaked ranged from nearly 215 cfs to below 180 cfs, a fluctuation of ~35 cfs over 24 hours. The average flow as calculated by OWRD's Near Real Time Hydrographics Data webpage for the same time period was ~198 cfs.





**Station ID:** 14070980 View: [Map](#) - [Driving Directions](#) - [Station Info](#) - [Historical Stats](#) - [Rating Curve](#)  
**Name:** TUMALO CR AT SKYLINERS RD BRIDGE NR BEND  
**Operator:** OWRD **Status:** Near Real Time **Drainage Area:**  
**Latitude:** 44° 1' 54.955" **Longitude:** -121° 31' 15.28" **Datum:** NAD83  
**Period of Operation:** Unknown ~ Present  
**Most Recent Values:** Mean Daily Flow: 59.1 cfs @ 11/10/2025  
Instantaneous Flow: 58.0 cfs @ 11/11/2025 11:45  
Instantaneous Stage: 4.50 ft @ 11/11/2025 11:45



**Figure 2.** Tumalo Creek flow fluctuations over a 1-month period in June 2025. Flows ranged from more than 280 cfs to below 100 cfs, a fluctuation of ~ 180 cfs. The average instantaneous flow as calculated from OWRD's Near Real Time Hydrographics Data for the same time period was ~184 cfs.

### OAR-690-77-0020(3)

LandWatch recommends OWRD remove this entire subsection. It's unclear why the Special Districts Association of Oregon, or any other non-profit, would receive special notification prior to ODFW filing an instream water right application. Further, during RAC discussion it was apparent that this requirement would place new burdens on ODFW staff, would likely increase confusion, and would be unlikely to reduce protests of instream water right applications.

If OWRD includes the Special District Association of Oregon anywhere, LandWatch recommends adding them to OAR-690-77-0031(1), which provides a list of entities the weekly public notice shall be sent to, including affected local, state and federal agencies and Indian Tribes.



**OAR-690-77-0075**

LandWatch requests that OWRD verify this process is consistent with out-of-stream water right application processing requirements.

**OAR-690-77-0080**

LandWatch supports removing this section as it does not make sense and conflicts with other rule divisions (e.g. Division 17).

Thank you for considering these comments and please do not hesitate to reach out if you have any questions.

Sincerely,



Jeremy Austin  
Wild Lands & Water Program Director  
Central Oregon LandWatch  
2843 NW Lolo Dr St. 200  
Bend, OR 97703





November 11, 2025

Oregon Water Resources Department  
Laura Hartt – Water Policy Analyst / Rules Coordinator / Tribal Liaison  
725 Summer St. NE, Suite A, Salem, OR 97301

Submitted via email to: [Laura.A.Hartt@water.oregon.gov](mailto:Laura.A.Hartt@water.oregon.gov)

Re: 2025-2026 Water Rights Rules Advisory Committee, RAC 6 and 7, Division 77 Comments

Ms. Hartt:

Thank you for the opportunity to participate in Rule updates and for our seat on the Rules Advisory Committee (RAC). The hard work of the OWRD staff on this extensive rulemaking is so appreciated. DRC provided comments during the RAC meeting for Division 77 with additional comments here.

The Deschutes River Conservancy (DRC) restores streamflow and improves water quality in the Deschutes Basin using a coordinated, collaborative, and voluntary approach. Founded in 1996 as a consensus-based, multi-stakeholder organization, the DRC's Board of Directors includes diverse representation from tribal, environmental, irrigated agriculture, and hydropower interests as well as federal, state and local government. Together with our partners we have restored well over 300 cubic feet per second of flows to our basin's rivers while increasing the reliability of agricultural water rights and operations, and water supply for our growing communities.

The DRC utilizes Division 77 extensively as one of the larger contributors to instream leasing across the state and in developing and completing many permanent instream transfers. The DRC works with 8 irrigation districts and up to 350 landowners annually who voluntarily lease up to 70-75 cubic feet per second back to our streams. Division 77 and 18 are very important rules and programs for the flow restoration achieved in the Deschutes basin by the DRC and our partners – protecting flows back to streams that had once been fully diverted and left dry. Improving efficiencies and streamlining where possible will be beneficial to future flow restoration actions and will improve workflow for the state staff who process these transactions.

We utilized the Departments feedback forms for the Water Rights Rulemaking RAC 6 and 7 sessions. The form follows this cover letter. DRC also commented during the RAC meeting for Division 77 and may provide further comments after rule revisions are completed and available for review.

Thank you for your consideration of these comments and for allowing the DRC the opportunity to participate and comment during this rulemaking process.

With sincere appreciation,

Genevieve Hubert  
Senior Program Manager  
Deschutes River Conservancy

E-mail: [gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Feedback on Water Rights Rulemaking – Input (Division 77, RAC 6 and 7, Oct 29, 2025)****RAC Member Name: Deschutes River Conservancy, Genevieve Hubert, Sr Program Manager**

<b>Rule #</b> e.g., 690-014-0170(1)(b)	<b>Concern</b>	<b>Proposed Rule Language/Description of Proposed Fix</b>
690-077-0000(7)	Consider clarifying language that acknowledges protection across state borders via mutual agreement/laws such as Oregon SB 1567 (2024) and Washington HB 1322 (2023) which allow for cross border protection in the Walla Walla basin. Similar agreements may come about for other basins in the future.	Add clarifying language that leaves this open and acknowledges protection across state borders if supported by both states.
690-077-0010(12)	Estimated Average Natural Flow	Please see comments for 690-077-0015(4)
690-077-0015(4)	If Estimated Average Natural Flow is to remain as a restriction for instream water right applications, it should reference the guiding statute and rely on science and the ecological needs determined by ODFW. This may include habitat needs, but also temperature needs necessary for key aquatic species to survive and thrive.	Please cite statutory requirement for EANF requirement for new instream water rights. If this is not a statutory requirement, then clarify how EANF flows are determined for instream and whether they sufficient to meet ecological flows, fish/wildlife needs, and water quality. In the Deschutes Basin, some state instream water rights, restricted by EANF and lower than what was requested by ODFW, are not sufficient to meet temperature standards for anadromous fish and resident redband trout (Whychus Creek).
690-077-0020(3)	Is this in statute or a new requirement directed by 2025 legislation? If this is not a legal requirement, should it be in rule? Suggest removal of (3) if not a statutory requirement. ODFW can choose to contact SDAO.	Suggest removal of (3), but if (3) is not removed “shall” should be changed to “may” provide? Also suggest removal of the word “only” from this same sentence.
690-077-0020(5)(e)(B)	Suggest additional detail for GPS coordinates for accuracy.	GPS coordinates can vary greatly. It could be helpful to note the datum source used

		and the accuracy of the point at the time of identification.
690-077-0020(5)(e)(C)	A map showing quarter-quarters to cover the requested reach may be excessive. Mapping the reach using the standardized mapping for water rights (Division 305) may be excessive and may not be accurate over time for instream water rights. If you have a reach that is 100 miles long, that could be 400 or more quarter-quarters for a meandering stream. The stream may also shift out of certain quarter-quarters over time.	The state's Web Mapping highlights ISWR reaches and the ISWR certificates identify upstream and downstream extents which are key identifiers. Reconsider this as a requirement.
690-077-0043(2)	Additional clarification suggestion	"if a protest was timely submitted <b>and meets the requirements</b> for protest (reference protest Divisions 690-002 & 310?), the Department shall:
690-077-0047(6)	Consider wordsmithing for added clarity	Upon issuing a final order, or upon a proposed final order becoming <b>a final order</b> by default...
690-077-0054(struck 1)	Consider keeping some of the language in (1) for context as there may be some minimum perennial streamflows that have not yet been converted.	
690-077-0065(5)	Strongly support modification that strikes reference to EANF.	
690-077-0070(4)(e)	Support the modification that strikes the original (e).	
690-077-0071(1)(e)	POD's are identified on the applications. If required on a map, this may mean additional maps, especially when Irrigation Districts are involved. This has not been a requirement for leases. Please restrict this to transfers.	Please restrict this to transfers. If requiring for instream leases, allow a single map to be used repeatedly for district leases.

690-077-0071(1)(h)	The requirement to include “any other information the Departments requests and considers necessary” is too vague.	Suggest deletion of (h).
690-077-0071(2)	Strongly support not requiring a CWRE stamped map for instream leases and transfers.	
690-077-0075(3)	Much of this language for reach losses is practice, but losses should not be a specific percent identified in the final order unless actually measured and a methodology identified. If this is a requirement for instream transfers, this should also be identified for a POD transfer down a reach (690-380), otherwise this is a more stringent requirement for instream.	If this language remains, suggest clarification that allows for better measurement in the future and adjustment of losses and include similar language for Division 380.
690-077-0075(4)(a)(A)	Suggest clarifying that a portion of a certificate may be cancelled and there may be a “living certificate”	Cancel the existing water right(s), <b>or portion of a water right</b> , affected by the instream transfer application, or update the “living certificate”. May need to add a definition for living certificate.
690-077-0076(2)(c)	A small clarification here as the lessee is sometimes an organization acting as an agent in the lease and does not always compensate the lessor.	but not limited to, individuals or organizations <b>who may assist with the lease application</b> , or who may provide compensation to the lessor(s)...
690-077-0076(4)(b)	Very strongly support the added language that allows a district to hold landowner paperwork (lessors, co-lessors) on file. This is consistent with other temporary transfers allowed for districts (water user to water user, temporary movements of water). Add clarifying language to include	690-077-0076(4)(h) lists other documentation (A & C) and (B) lists water conveyance agreements. It should be clarified that these are included in what the district can hold on file for (4)(b).

	<p>districts can hold quitclaim deeds/water conveyance agreements on file. Some of the paperwork required for instream leases can be a deterrent to leasing. This rule update will improve the leasing process and efficiencies for irrigation districts, partnering organizations (DRC and others) and for the state staff who process lease applications.</p>	
690-077-0076(5)(f)(A)	<p>Suggest a modification here regarding “and a copy of the recorded deed;” as a recorded deed is not always available if the landowner is the federal government (such as Wickiup Reservoir), but agreements or contracts might be available.</p>	<p>Suggest an exception to “and” if the landowner is the federal government.</p>
690-077-0077(3)	<p>For consistency, injury and enlargement and return flow considerations or reviews should be equally specific in 690-380-4000 reviews or less specific here. They should be treated equally.</p>	
690-077-0100(1)thru(4)	<p>Consider changing word “petition” to “formally request”. The word petition may have a more specific legal context. If that is what is intended, then retain the current language.</p>	



**James Fraser**

Oregon Policy Director, [james.fraser@tu.org](mailto:james.fraser@tu.org), (971) 278-8085

November 7, 2025

Oregon Water Resources Department  
725 Summer St. NE A  
Salem, OR 97301  
Via email to [laura.a.hartt@water.oregon.gov](mailto:laura.a.hartt@water.oregon.gov)

**Re: Trout Unlimited comments on proposed revisions to Division 77 Administrative Rules  
(Instream Water Rights)**

Hi Laura,

Trout Unlimited (TU) is a non-profit dedicated to conserving cold-water fish such as trout, salmon, and steelhead, and their habitats. We work closely with water right holders, tribes, partner organizations, and agencies on instream flow restoration efforts in Oregon. TU often engages in the instream leasing program, and we closely track policy related to instream water rights.

As you know, we are also on the rulemaking advisory committee (RAC) for the Oregon Water Resources Department (OWRD) rulemaking that's underway for seventeen administrative rule divisions. We have provided verbal comments and suggestions to the Department in all RAC meetings to date, and understand that OWRD is considering that input as the agency further revises and adjusts the proposed rules.

Given the frequency with which TU engages with OWRD on instream issues—and the extent to which we use and refer to the Division 77 rules—we are providing additional written comments on the draft Division 77 rules below, using the template provided by the Department:

Draft Rule # e.g., 690-014-0170(1)(b)	Input / Concern	Proposed Rule Language/Description of Proposed Fix
690-077-0000(7)	This new statement could cause problems for instream flow restoration efforts in places like the Walla Walla River basin, where efforts are underway to protect water instream within Oregon <i>and</i> then have the State of Washington legally protect that water further downstream. OWRD's proposed language appears broader than stating that the Department will only protect water instream within Oregon's borders (which is our understanding of its purpose). OWRD's language is written in passive voice without a specified actor, and we recommend adjusting that to active voice which specifies this language is about what <u>OWRD</u> can or cannot do.	Adjust the language to the following or similar:  "The Department will only legally protect water instream under instream water rights, instream leases, instream transfers and instream water rights resulting from an allocation of conserved water within the State's borders."
690-077-0010(12)	Limiting state agency instream water right applications to "estimated average	Delete (12).

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	natural flow” (EANF) is not provided for in statute. As commented below, TU recommends removing this limitation from the rules.	
690-077-0010(35)	Adding language about Special Districts Association of Oregon (SDAO) here and further below is neither directed by 2025 legislation nor a clean-up, and is therefore outside the scope of this rulemaking. See related comments below.	Delete (35) entirely.
690-077-0015(4)	Limiting state agency instream water right applications to “estimated average natural flow” (EANF) is not provided for in statute. TU agrees with the comments and reasoning provided by multiple RAC members during the Oct. 29 <sup>th</sup> meeting. ODFW is the state’s expert on what native aquatic species need for instream flow, and therefore, the state’s requested amounts are scientifically and legally defensible (even if not always or typically capped at EANF).	Delete language in Division 77 that limits state agency requested instream water rights to EANF.
690-077-0020(3)	Proposed revisions about SDAO are neither provided for in 2025 legislation nor a clean-up. Accordingly, these revisions should not be included in this rulemaking. Further, as TU commented during the Oct. 29 <sup>th</sup> RAC meeting, it is not appropriate to add special notifications and communications from a state agency to a non-profit organization (i.e., SDAO) above and beyond what’s provided for the public generally in statute, <u>with</u> related obligations, workload, and procedural pitfalls for an agency. Oregon Dept. of Fish and Wildlife (ODFW) is already providing this information to SDAO and related parties and holding public meetings on new instream water right application filings beyond what’s required in existing law. This new provision is unnecessary and adds procedural steps that, if not strictly followed, could increase the exposure of state agencies to legal challenges.	Delete SDAO notification and communication provisions. At a bare minimum, delete the word “only” from this provision, as it creates a trap of sorts whereby ODFW could violate the new requirement if they happen to notify more than just “those potentially affected water-related entities...”
690-077-0054	Deleting the existing sub (1) of this rule provision also deletes the context for the remaining language and additions.	Revise new sub (1) to provide context on what the referenced “conversions” are. For instance:

		“When the Commission intends to convert a minimum perennial streamflow to an instream water right, any person . . .”
690-077-0071(1)(f)	The requirement to map “the proposed instream reach” is burdensome and difficult, with little corresponding benefit. This new requirement complicates the mapping requirement significantly because the detail applicants would need to show about the place of use and property is best shown with a large-scale map (small area, high level of detail) but the protected reach would best be captured on a small-scale map (large area, less detail). It would not be an issue in cases where the protected reach is short and adjacent to the places of use, but applicants sometimes request reaches that are many miles long. It is sometimes not possible to clearly display all the requested detail on one map; in most cases applicants would have to make and submit 2 maps.	Delete (f). Alternatively, replace it with a requirement that the submitted map include a statement on it of the proposed instream reach or point.
690-077-0071(1)(h)	This new requirement that maps include “any other information the Department requests and considers necessary” is vague and open-ended. It introduces uncertainty and room for disagreement in the rule. If there is additional information that OWRD needs, the rule should specify it.	Delete (h).
690-077-0075(3)(c)(B)	TU questions the need to adjust the rule language if the purpose of the clause and specifics it provides are not changing. As we commented during the Oct. 29 <sup>th</sup> RAC meeting, it’s difficult to turn this adjusted narrative into an equation. The existing language about “prorating” seems more straightforward than “subtracting” the losses proportionately.	Leave the provision as-is, or add an equation as an example so that practitioners (and judges, if needed at some point) can consistently and unambiguously apply this language mathematically.

Thank you for considering these comments, and please reach out to me if you have any questions.

Sincerely,

James Fraser  
Oregon Policy Director  
Trout Unlimited  
[james.fraser@tu.org](mailto:james.fraser@tu.org)

*1<sup>st</sup> draft dated 9/23/2025*

*2<sup>nd</sup> draft dated 10/16 with revisions highlighted in yellow.*

## **Division 2**

### **PROTESTS AND CONTESTED CASES**

#### **690-002-0000**

##### **Scope and Purpose**

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in this Division (division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR chapter 690 and statutory provisions govern entitlement to a contested case hearing.

**Statutory/Other Authority:** ORS 183, 536.027 & 536.029

**Statutes/Other Implemented:** ORS 183, 536.027 & 536.029; Or. Laws, Chapter 575 (2025

##### **History:**

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-075-0000

WRD 11-1986, f. & ef. 9-30-86

WRD 4-1983, f. & ef. 8-10-83

#### **690-002-0005**

##### **Applicability**

(1) OAR 690-002-0000 through 690-002-0023 and 690-002-0080 through 690-002-0190 apply to all contested case hearings for the Water Resources Department, except for contested case hearings held pursuant to ORS Chapter 539.

(2) OAR 690-002-0200 through 690-002-0235 apply to:

(a) A contested case hearing under a provision of ORS Chapter 537 or 540 that references Or Laws 2025, ch 575, section 2 and 3a.

(b) A contested case hearing on an application related to the use of water under a provision of ORS Chapter 537, 540 or 541 in which the contested case proceeding is provided for in rule or order and the rule or order refers to Or Laws 2025, ch 575, section 2 and 3a.

(3) OAR 690-002-0025 through 690-002-0075 apply to contested case hearings not listed in subsection (2) of this rule, except for contested case hearings pursuant to ORS Chapter 539.

(4) Except as provided in subsections (5) and (6):

(a) These Division 2 rules apply to contested cases that have not been referred to the Office of Administrative Hearings before April 1, 2026.

(b) The Department shall use the rules in effect at the time of referral for those cases referred prior to April 1, 2026.

(5) The requirements of Or Laws 2025, ch 575, section 3, governing the filing of protests and requests for party status, apply to protests and requests for party status with deadlines on or after January 1, 2026.

(6) For protests that were pending on or before January 1, 2026, the effective date of this 2025 Act, the Water Resources Department shall provide to applicants, protestants, persons that submitted a request for standing and persons that have requested or been granted party status mailed notice of the provisions and requirements of Or Laws 2025, ch 575, section 2 and 3 sections 2 and 3 of this 2025 Act. The notice shall also state that a person that submitted a request for party status before January 1, 2026, need not amend the request. The Department shall provide not less than 90 days after issuance of the notice for:

(a) A person that submitted a request for standing to request party status in an existing contested case proceeding.

(b) A protestant in an existing contested case proceeding to amend the protest as necessary to comply with the provisions of Or Laws 2025, ch 575, section 3 section 3 of this 2025 Act. The amended protest may not add issues not raised in the original protest.

Statutory/Other Authority: ORS 536.025, 536.027, 183

Statutes/Other Implementation: ORS 183, Or Laws 2025, ch 575

**Rule Summary:** This rule defines the applicability of these rules to contested case proceedings, including which portions of the bill apply prior to the effective date of the rules due to legislation, as well as which portions of the rules are governed by Or Laws 2025, ch 575.

## **690-002-0010**

### **Definitions**

The following definitions apply to OAR chapter 690, division 002:

(1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Water Resources Department.

(5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and, as applicable, the address, electronic mail address, or facsimile number to which the document was sent mailed.

(6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a

party to a contested case hearing. For the purposes of this Division, where the Department's statutes and rules provide for the right to request a contested case hearing, the hearing request is considered to be a "protest."~~Where provided or required by applicable law, a "protest" may include a request for contested case hearing.~~ Except as provided in ORS 543.230, a protest must be in writing.

(7) "Protestant" means any person filing a protest against an action or proposed action.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.310 - 183.497, &ORS 536 - 543, Or Laws 2025, ch 575

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

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

WRD 8-1992, f. & cert. ef. 6-24-92

**Rule Summary:** This amendment clarifies existing rule language and provides that "hearing requests," as used in certain Department statutes and rules, are considered "protests" for the purposes of this Division.

**690-002-0020**

**Authorized Non-Attorney Representation**

A party or limited party participating in a contested case hearing may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-003-0555 of the Attorney General's Model Rules.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341 & 183.457

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-002-0001

WRD 1-1988, f. 1-19-88, cert. ef. 2-23-88

WRD 8-1987(Temp), f. 8-27-87, ef. 8-25-87

**690-002-0023**

**Agency Representation by Officer or Employee**

As authorized by the Attorney General pursuant to ORS 183.452, Department officers and employees may appear and participate on behalf of the Department and Commission in the following types of contested case hearings:

- (1) Civil penalty hearings under ORS 537.792 and OAR chapter 690 division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;
- (2) Civil penalty hearings under ORS 536.900 and OAR chapter 690 division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;

- (3) Protested water use applications under ORS 537.170 or 537.622 and OAR chapter 690 divisions 77 or 310;
- (4) Protested conversions of minimum perennial streamflows to instream water rights under OAR chapter 690 division 77;
- (5) Requests for reservations of water for future economic development under OAR chapter 690 division 79;
- (6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;
- (7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;
- (8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;
- (9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under 537.211;
- (10) Non-FERC hydro projects under OAR 690 division 51 and ORS chapters 543 and 543A;
- (11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;
- (12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and
- (13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341, 183.452 & 536 - 543

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 2-2000, f. & cert. ef. 5-26-00

WRD 7-1996, f. & cert. ef. 7-23-96

**690-002-0025**

**Time for Filing Protests—~~or Requests for Hearing~~ for Protests Not Governed by OAR 690-002-0005(2)**

- (1) Pursuant to the Model Rules of Procedure, a protest is timely filed only if:
  - (a) The protest is filed by the applicable deadline ~~as described in OAR 137-003-0520(98)~~; and
  - (b) The protest includes any statutorily required fees.
- (2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a ~~protest request for hearing~~ is considered filed only when actually received by the Department.
- (3) ~~A person may not file a protest or request for hearing by electronic mail.~~

(3) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341, ORS 536 – 543, Or Laws 2025, ch 282

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

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

**Rule Summary:** This rule is amended to increase efficiency for the Department and protestants by allowing protests/requests for hearing to be filed by electronic mail and to implement Or. Laws, Chapter 282 (2025)’s allowance for electronic filing of documents. The rule is also amended to remove an outdated rule reference and, consistent with the definition of “protest” in 690-002-0010(6), to remove references to “request for hearing” and replace them with “protest.”

**690-002-0030**

**Form and Content of Protest for Protests Not Governed by 690-002-0005(2)**

(1) Except ~~for protests governed specified in by OAR 690-002-0005(2), and~~ as otherwise provided in ~~ORS Chapter 537 and OAR 690 divisions 77 and 310 relating to applications for water rights, in ORS Chapters 543 and 543A relating to hydroelectric projects, and in OAR 690, division 17 relating to cancellation of perfected and developed water rights,~~ a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, ~~and~~ include any statutory filing fee. ~~A protest must~~ and contain a detailed statement of:

(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;

(b) The specific relief or action requested;

(c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; ~~and~~

(d) The electronic mail address of the protestant, if the protestant has an electronic mail address;

(e) The name, address, telephone number, and electronic mail address of the protestant’s attorney, if the protestant is represented by an attorney; and

(f) Citation of legal authority or basis for the claim or relief asserted or requested.

(2) Proof of service upon the person or persons whose rights or application are protested shall be attached to the original protest, unless the protestant is the sole applicant for or holder of the right.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341, ORS & 536 – 543, Or Laws 2025, ch 575

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06



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

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-001-0010

WRD 11-1986, f. & ef. 9-30-86

WRD 8-1978, f. & ef. 10-18-78

WRD 4-1978, f. & ef. 5-22-78

**Rule Summary:** This rule is amended to reflect that it will not apply to protests governed by Or Laws 2025, ch575. This rule is also amended to require protests to include the protestant's email address, if the protestant has an email address, and contact information for the protestant's attorney, if the protestant is represented by an attorney. The detailed statement required for protests covered by this rule is based on the agency's determination that it is required due to the complexity of the contested cases covered by this rule.

### **690-002-0035**

#### **~~Requests for Standing in Matters Involving Applications Made under ORS Chapter 537~~**

~~(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing by complying with OAR 690-310-0160.~~

~~(2) Any person who has filed a request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.~~

~~(3) If no protest is filed, and the department does not change the proposed final order, the director must refund the standing fee.~~

~~**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027~~

~~**Statutes/Other Implemented:** ORS 537.153 & 537.621~~

#### ~~**History:**~~

~~WRD 6-2006, f. & cert. ef. 10-6-06~~

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

**Rule Summary:** This rule is repealed because Or Laws 2025, ch575 modifies the process for requesting standing and party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225, rendering this rule obsolete.

### **690-002-0075**

#### **Scope of Hearing for Hearings Not Governed by 690-002-0005(2)**

The issues to be considered in a contested case hearing are limited to issues timely raised by the parties in any protests, requests for hearing or requests for standing, and as identified by the administrative law judge as allowed by applicable law.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341 & 536 - 543

#### **History:**

**Rule Summary:** The header of this rule is amended to clarify that it only applies to hearings not governed by OAR 690-002-0005(2).

### **690-002-0080**



### **Contact Information**

(1) Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings, unless timely updated by the party.

(2) Regardless of other provisions in this Division, documents served or filed by the Department or Commission through the U.S. Postal Service by regular mail are presumed to have been received, subject to evidence to the contrary.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341 & 536 – 543

**Rule Summary:** This rule is adopted to require parties to maintain accurate contact information during a contested case proceeding, to ensure efficient communication with the parties. Provides that documents sent by regular mail are presumed received.

### **690-002-0085**

#### **Method of Filing and Service After Referral**

After referral, electronic filing and service is the default method of filing and service for contested case proceedings subject to this Division, except:

(1) if another form of service is required by statute or OAR 137-003-0501 through -0700, or

(2) if a party informs the Department prior to referral, or the ~~and~~ Office of Administrative Hearings after referral, that the party will be using another method of filing and service permitted under OAR 137-003-0501 through -0700 and/or requests to be served using another method of service permitted under OAR 137-003-0501 through -0700.

**Statutory/Other Authority:** ORS 183.341, ORS 536.025 & 536.027

**Statutes/Other Implementation:** ORS 183.341, ORS 536 -543

**Rule Summary:** This rule is adopted to increase efficiency by establishing a default for electronic service in contested case hearings once they are referred to the Office of Administrative Hearings except where another form of service is required by statute or the Attorney General's model rules for contested case hearings or a party requests to use another permissible form of filing and service. The rule will reduce the need for the Department, the Office of Administrative Hearings, and parties to expend time and resources to document consent to electronic service on a case-by-case basis. In the Department's experience, a large majority of parties have access to and prefer electronic methods of service.

### **690-002-0090**

#### **Consolidation of Proceedings**

One or more proposed Department actions may be consolidated into a single proceeding or bifurcated into separate proceedings at the Department's discretion. If, prior to referral, the Department has decided on consolidation or bifurcation, the Department shall notify the parties and the Office of Administrative Hearings.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implementation: ORS 183.341, ORS 536 - 543

**Rule Summary:** This rule is adopted to increase efficiency by either allowing for consolidation into a single proceeding or bifurcation into separate proceedings depending on the nature of the protest(s).

### **690-002-0095**

#### **Discovery**

(1) Requests for admission are not an available method of discovery in contested cases subject to these rules.

(2) An administrative law judge may not order responses to more than 5 interrogatories (each subpart to count as a separate interrogatory) in a contested case subject to these rules without the Department's written consent.

(3) Requests for production of documents are an available method of discovery in contested cases subject to these rules; provided, however, that if the Department determines that the combined response time to a party's requests for production of documents made to the Department would exceed 25 hours of staff time, the Department may require the requesting party to make a public records request in lieu of a request for production of documents. If the Department requires a public records request and an exemption from disclosure would apply to the public records request but not to a discovery request, the Department will not apply the exemption. The Department will not charge applicable public records fees for the first 25 hours of staff time.

(4) An administrative law judge may not order a site visit in a contested case subject to these rules without the Department's written consent. A site visit requires the consent of the Department, the parties, and the administrative law judge.

(5) Subpoenas for the production of documents made to any party, or to any employee or agent of any party, must be issued no later than:

(a) two weeks after the deadline for filing a motion to compel, if the issuing party did not file a motion to compel; or

(b) two weeks after the administrative law judge's ruling on the motion to compel, if the issuing party did file a motion to compel.

(6) A public records request made to the Department is not a basis for the extension of a hearing schedule if:

(a) it is made more than two weeks after the deadline for filing a motion to compel, if the requestor did not file a motion to compel; or

(b) it is made more than two weeks after the administrative law judge's ruling on a motion to compel, if the requestor filed a motion to compel.

Statutory/Other Authority: ORS 536.027, ORS 183.630; OAR 137-003-0566(2)

Statutes/Other Implementation: ORS 536.027, ORS 183.630; OAR 137-003-0566(2)

**Rule Summary:** This rule is adopted to prevent discovery from unduly complicating and interfering with the hearing process in Department contested case hearings while still providing procedures sufficient to ensure the fundamental fairness of such hearings. The limitations in this rule are necessary due to the volume of the Department's caseload and the need for speed in completing Department contested case hearings to resolve disputes related to water use and provide stakeholders and the public with final decisions in a timely manner.

### **690-002-0105**

#### **Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622**

~~(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6), and OAR 690-002-0035 may file a request to participate as parties or limited parties in the contested case hearing in which standing was obtained following the procedures in OAR 137-003-0535.~~

~~(2) In contested cases conducted pursuant to ORS 537.170 or 537.622, the Administrative Law Judge may only allow persons who have timely filed a request for standing to intervene in the case pursuant to OAR 137-003-0535.~~

~~Statutory/Other Authority: ORS 183, 341, 536.025 & 536.027~~

~~Statutes/Other Implemented: ORS 183.341, 537.170 & 537.622~~

#### **History:**

~~WRD 6-2006, f. & cert. ef. 10-6-06~~

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

**Rule Summary:** Or Laws 2025, ch575 modifies the process for requesting party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225 rendering this section obsolete. Propose to repeal this rule.

### **690-002-0175**

#### **Exceptions to Proposed Orders of the Administrative Law Judge**

(1) If the recommended action in the proposed order issued by the Administrative Law Judge is adverse to any party or the Department, the party or Department may file exceptions and present argument to the Department. Exceptions 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 policies, rules, or statutes which the party contends support the requested modifications. ~~to which modifications are sought.~~

(2) Parties must file their exceptions with the Department ~~at its Salem offices,~~ by any method allowed in the notice of appeal rights provided in the proposed order.

(3) A party must file any exceptions within 30 days following the date of service of the proposed order on the parties to the contested case proceeding.

(4) Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order.

(5) If the applicable law provides for the Commission to review any exceptions or issue the final order, the Commission may form a subcommittee to review the exceptions and provide a report prior to the Commission issuing a final order.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341, 183.470 & 536 – 543

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 2-2000, f. & cert. ef. 5-26-00

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

**Rule Summary:** This rule is amended to clarify that the exceptions must identify the authority for exceptions by requiring citations to the record, rules, policies, or statutes. This rule is also amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and to implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

**690-002-0190**

**Exceptions to Final Orders of the Director**

(1) Any party to a contested case hearing held pursuant to ORS 537.170 or 537.622 may file exceptions to a final order.

(a) Parties must file their exceptions with the Department ~~at its Salem offices,~~ by any method allowed in the notice of appeal rights provided in the final order.

(b) The party must file any exceptions within 20 days following the date of service of the final order on the parties to the contested case proceeding.

(2)(a) If a party files an exception to a final order under subsection 1, the Department must refer the exceptions to the Commission.

(b) The Commission must consider the party's arguments contained in its exceptions filed pursuant to subsection (a), and may allow and consider oral arguments by all parties to the contested case hearing, prior to issuing a final order on exceptions.

(c) The Commission may form a subcommittee to review the exceptions and provide a report to the Commission.

(3) Where exceptions are timely filed to the final order, within 60 days from the close of the exception period, the Commission must either issue a modified final order or deny the exceptions and affirm the final order.

**Statutory/Other Authority:** ORS 183.341, 536.025 & 536.027

**Statutes/Other Implemented:** ORS 183.341, 537.173 & 537.626

**History:**

WRD 6-2006, f. & cert. ef. 10-6-06

**Rule Summary:** This rule is amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

**690-002-0200**

**Pre-referral Notice**

The Department will notify the parties prior to referring a protest to the Office of Administrative Hearings. The Department's notice will include a copy of the agency's file, an offer to engage in settlement discussions, a proposed list of issues to be determined at hearing, and the default hearing schedule provided in OAR 690-002-0205.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implementation: ORS 536 - 543

**Rule Summary:** This rule is adopted to establish notice requirements for referral of protests to the Office of Administrative Hearings. The rule will increase efficiency by requiring provision of the Department's file and encouraging discussions concerning settlement and the issues to be decided at hearing prior to referral.

**[NOTE: ITEMS IN () ARE PROVIDED FOR THE RAC'S CONVENIENCE AND WILL BE REMOVED IN THE FINAL RULE]**

**690-002-0205**

**Default hearing schedule**

Unless extended pursuant to Or. Laws, Chapter 575 (2025), section 2(5), the following deadlines apply to contested case proceedings governed by these rules. For any referral that is submitted in compliance with OAR 137-003-0515, deadlines are counted from the date of the Department's referral to the Office of Administrative Hearings. Any of the listed events may occur prior to the applicable deadline.

Written objections to proposed issue list provided with notice of referral: 744 days

Written responses to objections to proposed issue list: 14 24 days

Prehearing conference: 284 days

Order on prehearing conference, including issues list: 28 35 days (14-day window)

Discovery requests: 35 42 days (7-day window)

Discovery responses: 56 64 days (21 22-day window)

Motions to compel discovery: 63 74 days (7-day window)

Responses to motions to compel: 70 78 days (7-day window)

Order on motion to compel: 80 88 days (10-day window)

Motions for Summary Determination: 94 102 days (14-day window)

Responses to Motions for Summary Determination: 115 116 days (21 44-day window)

Ruling on Motions for Summary Determination: 155 156 days (40-day window)

Exhibits and witness lists: 165 166 days (10-day window)

Hearing complete (Evidentiary record closed): 180 days (10-14 day window between exhibits and hearing start)

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(4)

**Rule Summary:** This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishment of a uniform contested case hearing schedule that does not exceed 180 days.

### **OAR 690-002-0210**

#### **Form of testimony**

An administrative law judge shall, to the greatest extent practicable, ~~give preference to~~ require testimony to be ~~being~~ provided orally rather than in writing.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(6)

**Rule Summary:** This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for oral testimony to be provided orally.

### **OAR 690-002-0215**

#### **Hearing Location**

The administrative law judge shall determine the venue for conducting the hearing, subject to the approval of the Water Resources Department, and shall give preference to conducting a hearing by a remote method.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(7)

**Rule Summary:** This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for conducting a hearing testimony remotely.

### **OAR 690-002-0220**

#### **Protests**

(1) Unless a timeline is otherwise specified under ORS Chapter 537, 540 or 541, protests must be submitted within 45 days after publication of the notice of the proposed final order in a weekly public notice of the Water Resources Department or, if weekly public notice is not required,

within 45 days after issuance of notice of the proposed final order. Protests governed by these rules are considered submitted only when actually received by the Department.

(2) Protests actually received after the deadline for submission will not be accepted by the Department. OAR 137-003-0528(1) does not apply to protests governed by these rules.

(3) Protests governed by these rules must meet the requirements of Or Laws 2025, ch 575, section 3a. In addition, protests governed by these rules must:

(a) Include the electronic mail address of the protestant, if the protestant has an electronic mail address.

(b) Include the name, address, telephone number, and electronic mail address of the protestant's attorney, if the protestant is represented by an attorney.

(c) Include any required fees.

(4 3) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects.

**Statutory/Other Authority:** Or Laws 2025, ch 575, section 3a

**Statutes/Other Implementation:** Or Laws 2025, ch 575, section 3a

**Rule Summary:** The rule is adopted to implement Or Laws 2025, ch 575, section 3a, with respect to establishment of a uniform process for protesting a proposed final order issued by the Department.

### **OAR 690-002-0225**

#### **Requests for party status**

(1) OAR 137-003-0535 does not apply to requests to participate as parties or limited parties in contested case proceedings governed by these rules.

(2) Any person who supports the proposed final order may file a request for party status for the purpose of participating in any contested case proceeding on the proposed final order or for judicial review of a final order resulting from the proposed final order.

(3) Party status requests must be filed within 30 days after the deadline for filing a protest.

(4) Party status requests are considered filed only when actually received by the Department.

(5) The request for party status must be in writing and must include:

(a) Names, addresses, and electronic mail addresses (if any) of the requestor and of any organization the requestor represents;

(b) Name, address, and electronic mail address of the requestor's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the requestor seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the requestor seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the requestor's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(g) The fees described in ORS 536.060(1)(n) and (o).

(6) A person may file a request for party status by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action.

(76) The Department shall serve a copy of the request on each party by electronic mail, or, if a party does not have an electronic mail address, personally or by mail. Each party shall have seven calendar days from the date of personal or electronic mail service or agency mailing to file a response to the request.

(78) The Department shall rule on requests for party status within 60 days of the deadline for submitting party status requests. The Department's ruling on a request for party status shall be by written order and served promptly on the requestor, all parties, and, if the matter has been referred at the time the request is received, the Office of Administrative Hearings. If the request is allowed, the agency shall also provide the requestor with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

(89) In ruling on requests to participate as a party or a limited party, the agency shall consider:

(a) Whether the requestor has demonstrated a personal or public interest that could reasonably be



affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the requestor to represent that interest; and

(d) The extent to which the requestor's interest will be represented by existing parties.

(109) The Department may treat a request to participate as a party as if it were a request to participate as a limited party.

(110) If the Department grants a request, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(12) If the Department does not grant the request, the agency shall refund the fees described in ORS 536.050 (1) (o), pursuant to Or Laws 2025, ch 575, section 3a(6).

**Statutory/Other Authority:** Or Laws 2025, ch 575, section 3a

**Statutes/Other Implementation:** Or Laws 2025, ch 575, section 3a

**Rule Summary:** This rule is adopted to implement Or. Laws, Chapter 575 (2025) section 3a with respect to establishing standardized provisions for requesting party status for a contested case after the close of the protest period for a proposed final order.

### **OAR 690-002-0230**

#### **Notification of protests received**

Within 20 days after the close of the protest period, if the protestant is not the applicant, the Department shall send a copy of all protests timely received to the applicant.

**Statutory/Other Authority:** ORS 536.025 & 536.027

**Statutes/Other Implementation:** ORS 537, 540, 541

**Rule Summary:** This rule is adopted to establish requirements for notifying the applicant of protests filed.

### **OAR 690-002-0235**

#### **Final orders by 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 all protestants to a contested case default 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.

Statutory/Other Authority: ORS 183, Or Laws 2025, ch 575, section 3a

Statutes/Other Implementation: ORS 183, Or Laws 2025, ch 575, section 3a

**Rule Summary:** This rule is adopted to implement Or Laws 2025, ch 575, section 3, with respect to proposed final orders becoming final if no protest is filed within 33 days and that a hearing is not required if a protestant defaults or withdraws the protest.



## WaterWatch of Oregon

### Protecting Natural Flows In Oregon Rivers

November 11, 2025

Laura Hartt  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Delivered via email: [laura.a.hartt@water.oregon.gov](mailto:laura.a.hartt@water.oregon.gov)

#### Re: Initial comments, Draft OAR 690-077

Dear Laura,

In addition to comments made in RAC meetings, we offer the following initial comments.

#### 690-077-0000 Purpose

- **(7):** We suggest deleting this new section as it could inadvertently cut against work that Oregon and neighboring states are working towards to try to protect water instream (e.g. Walla Walla, Columbia, etc).

#### 690-077-0010 Definitions

- **(29) Secondary Water Right:** We suggest the following changes: “Secondary Water Right” means a water right to put stored water stored under a reservoir right to an out-of-reservoir beneficial use.
- **(12) Estimated Average Natural Flow:** Please delete for reasons outlined in comments to OAR 690-077-0015(4). However, if retained, we suggest edits so it reads:  
"Estimated Average Natural Flow" means average natural flow estimates, by month or half month, computed by the Department from sources including watermaster distribution records, Department measurement records, and application of appropriate available scientific and hydrologic technology.
- **(35) Water-Related Entities identified by the Special Districts Association in Oregon:** Please delete for reasons outlined below in OAR 690-007-0020(3).

#### 690-077-0015 General Statements

- **(4) as it relates to state applied instream water rights:** Please strike this provision to ensure rules align with statute. There is nothing in statute that allows OWRD a blanket reduction of flows recommended by ODFW, DEQ or Parks. OWRD may only approve an instream water right for a lesser quantity of water than is applied for in instances where the reduction is consistent with the intent of “ORS 537.332 to 537.360” (the Instream Water Rights Act). ORS 537.343(1).

The language of the Instream Water Rights Act very clearly directs the state to issue instream water rights in the amount necessary to protect the public use applied for by ODFW. Instream

flow means the minimum quantity of water necessary to support the public use requested by an agency. ORS 537.332(2). Public use includes but is not limited to conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values. ORS 537.332(5)(b). Public uses are beneficial uses under Oregon law. ORS 537.334(1). For instream water rights for fish and/or wildlife, the request shall be for the quantity of water necessary to support those public uses as recommended by ODFW. ORS 537.336(1).

ENAF is not representative of biological needs of fish. ENAF is simply an “average” of flow for a given month (as derived from historical records) that has no relation to any biological determination. An average is “an estimate or approximate representation of an arithmetic mean.” *Webster’s Third New International Dictionary* 1930 (unabridged ed. 2002). In other words, sometimes flows are above the average, sometimes they are below. By statute, instream water rights are to be set for the quantity of water necessary to support the public use applied for; whether they coincide with an “average” flow or not is of no relevance either to the biological needs of the fish or to the statutory directive to issue water rights in the amounts necessary to support the public uses applied for.

Based on the language of the Act, it is clear that the “intent” of the Instream Water Rights Act, as it relates to fish, is to protect those flows needed for the public purpose applied for, which includes all life stages. Flow needs for fish are developed by ODFW, the State’s experts on the biological needs of fish. From a biological point of view, it is illogical and insufficient to limit an ODFW requested amount to ENAF; doing so could rob fish of the flows they need when the flows in any given river or stream are in fact above ENAF. The rules’ limiting of the instream water right to ENAF is not consistent with either the language or intent of the Instream Water Rights Act.

- **(4) as it relates to transfers/leases:** We strongly support the OWRD’s proposal to remove this limitation from instream water rights that result from transfers, leases and allocations of conserved water. There is no authority in statute to limit transfers/leases/ACW to ENAF.
- **(5) Proposed deletion:** We strongly support the proposed deletion of this section. The governing statutes do not limit transfers/leases of consumptive use rights to the amount of a state applied instream water right. See ORS 537.348.
- **(8):** Close attention needs to be paid to whether the withdrawals for municipal use prohibited “appropriation” or “use”. Withdrawals that prohibited further appropriations would not apply to instream rights, as the water is not diverted from the stream. More discussion is needed here, but at this point we recommend deleting (b).
- **(9):** Support language limiting this to state applied instream water rights to align it with statute.
- **(10):** The limiting language that ties public use to subsections (4) and (5) are not supported by statute. To comply with statute, please strike “and shall be consistent with Sections (4) and (5) of this rule”.

- **(11):** Please clarify that the priority date referenced is the “date of the minimum perennial streamflow”. See ORS 537.346.

## **OAR 690-077-0020 State Agency Instream Water Right Applications: Application Requirements**

- **(3) SDAO pre-notice:** We strongly oppose the inclusion of a prenotice to SDAO. There is nothing in statute that requires this. This is an unbalanced, unfair provision that will give water users an advanced, closed door opportunity to exert political pressure on ODFW to stall/stop submittal of applications, waste ODFW staff time by requiring them to provide notice to the full list that SDAO provides, set up instream water right applications for legal challenge and many other problems. ORS 537.349 very clearly states that processing of ISWR shall be in accordance with processing of water right applications, except as provided under 537.343. Nothing in 537.343 directs or allows “pre-notification”. This section, as well as section (5)(j) relating pre-notice to local governments and (5)(k) again relating to SDAO, needs to be struck. Instream water rights are held in trust for the people of Oregon (ORS 537.332(3)) - they are the peoples’ water rights - and thus establishing a process by rule (that is not supported by statute) that gives only certain water user interests and entities, who typically oppose instream water rights, unbalanced and advanced access to influence instream water right applications is inconsistent with the statutory scheme. We will also note, as a general matter, requiring agencies to take steps not required by statute goes against the whole premise of this rulemaking, which is to provide “efficiencies” in processing. Note: we also object to the existing prenotice to local governments as that also is not directed by statute (see comments to (5)(k)). Both should be removed.
- **(5)(c):** As discussed in the RAC, the mapping provisions for instream water right applications do not seem aligned with providing the public with information that makes clear to the public what reach of a river is protected but instead, for instance in (5)(c)(C), seem to place an onerous task on ODFW for no real benefit. We urge OWRD to work with ODFW on language here.
- **(5)(j):** This section should be struck. There is nothing in statute that supports rule language that requires ODFW to send a notice of “intent to file” iswr applications to local governments. This section should be struck in order to align rule with statute, and also to ascribe to the goal of efficient processing.
- **(5)(k):** This section should be struck for the same reasons outline in comments on (3).

## **690-077-0027 to -0053 (sections relating to application processing, IR, protests, contested cases)**

We urge the OWRD to delete the detailed directives on processing an application (through final order) found in sections 690-077-0027 through 690-077-0053. The Division 77 rules should simply state that instream water right applications will be processed in the same manner as other water right applications. This would be consistent with the Instream Water Rights Act, which states:

**537.349 Processing request for in-stream water right.** Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252.

It is cumbersome and inefficient to have 45 pages of rules specifically on instream water rights when there are detailed rules on processing applications, and instream water rights are supposed to be treated

the same as other water rights. OWRD should not be describing the same process in separate sets of rules--among other problems, it creates too much potential for inconsistencies, inadvertent or otherwise.

#### **690-077-0054 Conversion of Minimum Streamflows**

This rule should be deleted or substantially rewritten because it provides for process that is not contemplated by statute. ORS 537.346 says minimum perennial streamflows “shall be converted to instream water rights.” While it says this shall be done “after the Water Resources Commission reviews the streamflows,” it does not provide for protests or hearings on the conversions. Instead, it requires that the conversions take place as a ministerial matter of course. While the statute says a certificate shall be issued “in accordance with ORS 537.343,” that simply refers, as the statute says, to the certification, not the process in ORS 537.343 for new instream water rights. (It does not make sense to subject minimum flow requirements already set by rule to the same process as new instream water rights.)

To the extent there was any right to a hearing on conversion of a minimum perennial streamflow, that right has long expired, as described in the existing rule, for any conversion proposed in the Secretary of State’s bulletin if no hearing was requested within 60 days of publication.

**(1)(a) and (b) proposed deletion:** While we understand this language is dated, there are in fact MPS which have not yet been converted to instream rights. There needs to be some retention of the statutory direction to covert the remaining MPS to instream water rights, regardless of the fact the state has not yet met all requirements.

#### **690-077-0065 Instream Leases and Transfers: General Provisions**

- **(3):** please change “if possible” to “if needed”

#### **690-077-0075 Processing an Instream Transfer Application**

- **(3) (previously (2)):** ORS 537.348 (1) states in relevant part: “Except as provided in subsection (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.” Per this directive, the OWRD is required to review instream transfers in the same manner as out-of-stream transfers. Despite this, the Div 77 rules have a number of requirements that are in addition to this, including analyzing return flows, losing reaches, etc. These are not found in Div 380. Instream transfers are supposed to be reviewed in the same manner as out-of-stream transfers. OWRD should either strike this whole section, or in the alternative, add this section to Div 380. This may provide benefits in the processing of non-instream transfers. To keep as is, where instream transfers are scrutinized to a much greater degree than out-of-stream transfers, and often cut back accordingly when the same transfer if not instream would not have been, is inequitable, inconsistent with statute, and goes against state policy which encourages instream protection and restoration.

#### **690-077-0077 Processing an Instream Lease Application**

- **(3)(b) &(c):** Same comment as above. The “except as provided in subsection (2) to (6)” of ORS 537.348 does not absolve the OWRD from processing instream leases in the same manner as out-of-stream, but rather notes specific attributes not allowed “to a person who transfers a water right

by purchase, lease or gift”, which includes “lease.” So again, unless these same standards are added to Div 380, they should be struck from this section.

- **(11):** Please strike this section. As discussed in the RAC, there are instances where the storage right would be used in tandem with a secondary right to shape storage releases for instream uses

#### **690-077-0079, Split Season Use Instream Leasing**

- **(2):** We urge the use of the term “Department” rather than “water master”. There needs to be some uniformity of measurement/reporting, and while the watermaster can help determine proper requirements, ultimately, they must meet statutory standards in a manner consistent with all split season leases.
- **(3)(d):** Please add reporting requirements. Both measurement and reporting are required by statute.

#### **690-077-0080, Miscellaneous, Cancellation or Waiving of an Instream Water Right**

- We support the proposed deletion of this section.

#### **690-077-0100, Miscellaneous Provisions: Precedence of Future Uses**

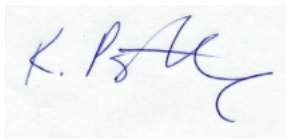
- This section does not appear to track statute and needs further work

#### **690-077-0105, Application for Instream Lease Renewal**

- **(a) and (b):** Applications for a renewal of an instream lease should be required to be submitted before the instream lease has expired.
- **New requirement:** The applicant should have to provide evidence to the OWRD that, absent the instream lease, they are ready, willing and able to put the water to the original beneficial use. Without such a requirement, the proposed process would allow a water right holder to hang onto a water right indefinitely and/or allow them use it to fuel a new use absent having to utilize the water right process (including modern day public interest review). Instream leases are similar to temporary transfers, which do require, upon expiration, that the transfer revert to the original use (the implication being the water right holder is ready, willing and able to put that water to use upon reversion, or start the forfeiture clock).

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Priestley", is written over a light blue rectangular background.

Kimberley Priestley  
Sr Policy Analyst



November 6, 2025

VIA EMAIL [WRD\_DL-RULE-COORDINATOR@WATER.OREGON.GOV] AND  
FIRST CLASS MAIL

**Shonee D. Langford**

Admitted in Oregon, Washington and  
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Laura Hartt  
Rules Coordinator  
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RE: Comments on Draft Permit Amendment Rules (OAR 690-380-7000 to 7300)  
Rules Advisory Committee Meeting #5, October 21, 2025  
2025-26 Water Rights Rulemaking  
Our File No.: 144637-293044

Dear Ms. Hartt:

This office routinely represents water right permit holders who have submitted permit amendment applications to the Oregon Water Resources Department (“OWRD”). For reasons that follow, we strongly urge the department to revise draft rule OAR 690-380-7300, as presented to the Rules Advisory Committee (“RAC”) on October 21, 2025, to remove subsection (3) pertaining to enlargement and to clarify that the new rules will apply only to applications filed after the effective date of the rules.

ORS 537.211 is the sole statute governing permit amendments. Although it prohibits permit amendments that would “result in injury to an existing water right,” it does not mention enlargement. In contrast, the transfer statutes expressly prohibit both injury and enlargement. *See, e.g.* ORS 540.510, 540.523, 540.524, 540.531, 540.570 and 540.585. Since ORS 537.211 does not prohibit enlargement, OWRD has no authority to do so through rulemaking. OWRD appears to be conflating the separate and distinct requirements for transfers and permit amendments, contrary to the plain language of the statutes. Adding an enlargement requirement to the draft permit amendment rules is akin to adding requirements that apply only to permit amendments (e.g. ownership/control and contiguity) to the transfer rules. Either one would require the legislature to amend the governing statutes.

OWRD recently proposed to deny one of our clients’ permit amendment applications on the basis of enlargement. We responded that OWRD lacks statutory authority to deny on this basis, has no rules allowing it to do so, and would need the legislature to amend ORS 537.211 before imposing any new substantive requirements on permit amendment applications. It would seem OWRD is attempting to address our objections by adopting the proposed permit amendment



Laura Hartt  
November 6, 2025

rules, but these efforts will result in rules that are outside the scope of OWRD's statutory authority, and they will remain so absent legislative changes.

Lastly, we note that OWRD's authority to require permit amendment applications is questionable. ORS 537.211 makes no mention of an application process, whereas the statutes governing other water right processes, such as transfers, provide a detailed description of application requirements. One could argue that the legislature intended permit amendments to be self-executing, similar to a municipality's statutory authority, under ORS 540.310(3), to apply water to beneficial use on lands outside of the authorized place of use. Indeed, the current transfer rules recognize that both permit amendments and municipal changes under ORS 540.310(3) can be made without filing a transfer application. OAR 690-380-0010(2).

For the above reasons, OWRD should delete the proposed enlargement provisions of draft permit amendment rules (draft OAR 690-380-7000 to 7300).

We respectfully request that you share this letter with the RAC for discussion in an upcoming RAC meeting.

Best regards,



Shonee D. Langford

SDL:asc

cc: Racquel Rancier (racquel.r.rancier@water.oregon.gov – *via email*)  
Katie Ratcliffe (katie.s.ratcliffe@water.oregon.gov – *via email*)  
Lisa Jaramillo (lisa.j.jaramillo@water.oregon.gov – *via email*)