

2/27/26

Proposed Rule Revision Tracker

Division 18 – Allocation of Conserved Water

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
<p>Grammar -0010(4)</p>	<p>OWRD Staff Proposed Change - The rules in this division apply to applications submitted on or after April 1, 2026. “on or” is missing</p>	<p>Added “on or”</p>	<p>Change made.</p>
<p>Living certificate Comments on -0020 Change made in - 0050, -0062, - 0065</p>	<p>April Snell (RAC; OWRC) - We are not supportive of removing the definition of “living certificate” from the definitions listed in 690-018-0020. This deletion occurs in several places in this division and other rule divisions, and we request that it be restored in all places. This deletion will lead to a requirement for a new certificate to be issued after each conserved water project, which will create more work for the Department, the districts, and lacks any reasoning as to why. These “living (water right) certificates are currently a useful way for the districts and the Department to track transactions over time, and if needed can be incorporated into a new water right certificate.</p> <p>Kimberley Priestly (RAC; WW) - We support the V3 removal of the term “living certificate” that was found in V2. As we noted in our V2 comments “living certificate” is not a term/concept that is found anywhere in statute, and in fact is directly contrary to the ACW’s requirement that new certificates be issued. See ORS 537.470(6). The issuance of new certificates is important both for the underlying right and the new instream right. If a water right is reduced because ACW transaction, the water needs to be expeditiously removed from the certificate so that there is no confusion in relation to any future transfer applications, regulation of the underlying right, m/r and/or other processes. It is also needed to protect against any future statutory changes that might try to</p>	<p>Living certificates are the common term for the process in in ORS 540.530(2). OWRD does not have authority to apply this statute to the ACW statutes. That said, we agree with April that not having the option to do living certificates is highly problematic. OWRD has added some small flexibility to the rules, by changing “upon” to “following” in the event that the significant work typically associated with irrigation district certificates cannot be completed immediately upon issuance. (Following notice, issuance of order, receipt, etc).</p>	<p>Change made in -0050, 0062, and 0065.</p>

	gain access to that water. It is also critically important that the instream portion be protected by a state held instream right as mandated by the Act. We appreciate the removal here and in other relevant sections of this rule (-0050, -0062, -0065).		
-0040(16)	OWRD Staff proposed change: This rule continues to be confusing to read and awkwardly phrased.	Modified structure of –0040(16) to more clearly differentiate between the state’s portion and the applicant’s portion of conserved water as it relates to management of the water instream.	Change made.
Application Requirements -0040(24)	Gen Hubert (RAC; DRC) - Strongly support “the Director shall waive the application fee based on the percent of conserved water allocated to the state for instream use, not to exceed 50 percent of the application fee...	Comment in support.	No change requested.
Conservation Applications/ Approval -0050(3)(j)	Gen Hubert (RAC; DRC) - Support language that assures metering, measurement and management of ACW.	Comment in support.	No change requested.
Conservation Applications/ Approval -0050(9)	OWRD Staff Proposed Changes – As it relates to the duration of the Protest Period for ACW, unlike Div. 380, 382, & 325 which clearly state the length of the protest period (e.g., 30 days or 45 days), Div. 18 does not clearly specify the length of the ACW protest period within the text of this rule.	Rule text was amended to include reference to 45 days in OAR 690-002-0220.	Change made.
Change in Use -0090(c)	April Snell (RAC; OWRD) - We also have concerns about the addition of language under 690-18-0090(c) “The proposed point of diversion would divert water from the same authorized source of water and would not constitute injury to another existing water right, including any instream water right granted pursuant to a request under ORS 537.336 or created pursuant to ORS 537.346(1) and held in trust by the Department” This seems overly broad and not clear could benefit from further definition or expansion on how potential injury to instream water rights referenced under this section in relation to standard injury review.	OWRD agrees that including it here is confusing as it is not included in other rule divisions. The standard is “injury to another existing water right” so calling out these two specifically seems to imply that others are not being considered. That is not the case. OWRD has removed the text, “...including any instream water right granted pursuant to a request under ORS 537.336 or created pursuant to ORS 537.346(1) and held in trust by the Department;” from this rule. We will evaluate injury to these regardless.	Change made.

Groundwater

<p>Groundwater</p>	<p>OWRD staff proposed change and response to comments below on groundwater. When the conserved water statute was passed it, allowed “any person holding a water right certificate issued under ORS 537.250, 537. 630 or 539. 140”to submit a project. In 1993, the following language was added to the statute, and remains there today. “If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority.” ORS 537.470 as it existed then (and today), contemplated that there may instances where the state’s portion is not put instream, and it did so when groundwater was explicitly eligible as a conservation project. Further ORS 537.465 which references diversion facilities, is not specific to surface water as it also existed in statute at the same time that groundwater was explicitly called out. The statue was later changed to “water use subject to transfer” in 2003 removing references specifically to surface and groundwater. Based on this assessment, it is clear that groundwater is eligible for the ACW program. It is also clear that the legislature contemplated that there may be instances where the state’s portion is not put instream. OWRD has removed explicit references to groundwater as it was evident in the RAC that there may need to be further discussions, and removing explicit references would maintain some flexibility. It is important to understand, however, that the current rules retain implicit authority for the Department to continue its existing practice related to groundwater rights that go through ACW. References to ORS 537.470 have been included and OWRD has added language from statute (quoted above) to OAR 690-018-0012.</p>		<p>Change made to -0012(1.)</p>
<p>Groundwater General</p>	<p>Gen Hubert (RAC; DRC) - DRC strongly supports the version 3 removal of rules relating to the use of the allocation of conserved water for groundwater uses. The Department cannot adequately track or protect conserved groundwater and groundwater allocations of conserved water do not meet the intent of the guiding statute for the ACW – to provide “instream” benefits. The inclusion of groundwater allocations of conserved water have potential - if appropriate measures are in place to assure the conservation does not result in further consumptive use and if measures are in place to adequately protect and track groundwater conservation (in the aquifer or at and below nearby discharge springs). The Department does not have the ability to protect the conserved groundwater, and this conservation would not provide a trackable “instream” benefit</p>	<p>See response above. Comment in opposition to inclusion of groundwater.</p>	<p>See response above.</p>

<p>Groundwater -0050(5)(c)(C)(i) -0050(5)(c)(D)(ii) -0065(2)(c)(A) -0065(3)(b),</p>	<p>Jeff Stone (RAC; OR Assoc of Nurseries) - I am writing to request that the Oregon Water Resources Department (“OWRD”) revise its proposed rules for OAR Chapter 690, Division 18 to ensure the rules clearly recognize that groundwater rights are eligible for the Allocation of Conserved Water (“ACW”) program set forth in Division 18.</p> <p>Specifically, OAN requests that OWRD re-insert the rule provisions OWRD proposed on October 14, 2025 in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b), which clarify that groundwater conserved under the ACW program will remain in its source aquifer.</p> <p>As a RAC member, OAN supported OWRD’s proposed revisions and insertions captured in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b). OWRD’s proposed changes to these provisions were clear, reasonable, and in alignment with statutory authority. As such, we were surprised to see that OWRD’s December 22, 2025 version of the rules—the version of the rules OWRD released for public comment—do not feature any of the language related to groundwater rights or preservation of water in the source aquifer that was contained in the earlier version of Division 18.</p> <p>Based on OWRD’s proposed rule revision document dated December 22, 2025, we understand that OWRD believes it has clear authority to process groundwater right certificates under the ACW program, but that it has replaced the proposed groundwater right provisions with general references to ORS 537.470(3) to give the agency “flexibility as it considers implementation of the statutes.”</p> <p>Since the ACW program was introduced, OWRD has processed surface water rights and groundwater rights</p>	<p>See response above. Comment in support of inclusion of groundwater.</p>	<p>See response above.</p>
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	<p>under the program, and it recognizes that the agency has the statutory authority to do so. OWRD has specifically pointed to the legislation that established the ACW program, Senate Bill 24 (1987), which recognized that any person who holds a groundwater right certificate may participate in the ACW program. The current statutory language provides that a person or group that holds a “water use subject to transfer under ORS 540.505” may submit an application for the ACW program. See ORS 537.465(1). A “water use subject to transfer” may be a surface water right or a groundwater right.</p> <p>Per OWRD’s own analysis, there is no question as to whether groundwater right holders may participate in the ACW program. As we head into a future where opportunities to obtain new water rights are non-existent or extremely limited, the ACW program will be a crucial pathway for both surface water right holders and groundwater right holders to expand their operations and gain much needed operational flexibility while advancing conservation goals.</p> <p>Oregon’s policy on water conservation is set forth in no uncertain terms in ORS 537.460(2)(a), which provides that the state policy is to “[a]ggressively promote conservation.” As noted above, there is no indication that groundwater rights should be excluded from such a critical conservation program.</p> <p>In the interest of clarifying OWRD’s existing authority, providing a roadmap for groundwater right holders who would like to participate in the ACW program, and adhering to the state’s policy of promoting conservation, OWRD should reinsert its original proposed language in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b) into Division 18.</p> <p>OWRD has acknowledged that it has statutory authority to process groundwater right certificates as part of the</p>		
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	ACW program, and we believe that addressing groundwater right certificates specifically in the ACW program rules set forth in Division 18 is a commonsense action that will promote water conservation, flexible water use, and efficient administration of the Division 18 rules.		
Groundwater -0050(7)(c)(C) -0065(2)(c)	<p>Rick Parsons (CWRE, Parsons Water Consulting) - The Conserved Water statute (1987 Senate Bill 24) considered the development of conservation proposals for ground water rights issued under ORS 537.630. A number of comments from RAC members regarding the Division 18 Rulemaking allude to “new ground water rules” and “expanding conservation rules to [include] ground water”. These statements are off the mark since the Conserved Water statute and subsequent adoption of the Division 18 rules explicitly contemplated and provided direction on the allocation of conserved water associated with ground water rights.</p> <p>In the ongoing Rulemaking Process, the Department has simply proposed adding language to clarify its current policy related to the disposition of the state’s portion of the conserved water that comes about from a conservation proposal involving a ground water right. I encourage OWRD retain the language in the following sections of the proposed Division 18 rules (11/19/2025 v2) regarding the state’s portion of conserved water.</p> <ul style="list-style-type: none"> • 690-018-0050 (7) (c) (C) • 690-018-0065 (2) (c) 	See response above. Comment in support of inclusion of groundwater.	See response above.
Groundwater -0050(7)(c)(C)(i) -0050(7)(c)(D)(ii) -0065(2)(c) -0065(3)(b)	<p>Jeremy Austin (RAC; COLW) -We strongly support the removal of language that was proposed in previous versions of the draft rules that would have expanded the ACW program to include groundwater rights. This includes removal of previously proposed language in subsections:</p> <ul style="list-style-type: none"> • OAR-690-018-0050(7)(c)(C)(i) • OAR-690-018-0050(7)(c)(D)(ii) 	See response above. Comment in opposition to inclusion of groundwater.	See response above.

	<ul style="list-style-type: none"> • OAR-690-018-0065(2)(c) • OAR-690-018-0065(3)(b) 		
Land Use Compatibility			
Land Use Div 18, 310, 380	<p>Submitted by Leah Cogan (RAC; GSI) on behalf of Michael Martin (RAC; League of OR Cities); Mark Landauer (RAC; Special Districts Association of OR); Adam Denlinger (OR Water Utilities Council); Mike Buettner (OR Water Utilities Council); Jason Green (OR Assoc. of Water Utilities) - During the rulemaking, our members paid close attention to the proposed changes related to land use compatibility in Divisions 18, 310, 380, and 382. Land use issues are very complex. We appreciate OWRD's willingness to listen to the concerns of public water suppliers and to postpone any major rule changes to allow time for better coordination between OWRD and the Department of Land Conservation and Development (DLCD) and potentially to update the Land Use Planning Procedures Guide. Taking a step back now allows more time for thoughtful consideration of these issues and a better outcome that maintains consistency with the State Agency Coordination program, the Land Use Planning Procedures Guide, and Division 5 rules. OWRD shared that it plans to work more closely with DLCD to better integrate land use and water management and that interested parties will have an opportunity to share concerns and ideas. OWUC, LOC, OAWU, and SDAO look forward to being part of these conversations.</p>	Comment in support	No change made.
Land use compatibility -0040(22)(a) -0090(2)(c) -0050(3)(c)	<p>Jeremy Austin (RAC; COLW) - Please see our comments on Div 310 and incorporate into Div 018, where applicable. This includes, but is not limited to, subsections:</p> <ul style="list-style-type: none"> • OAR-690-018-0040(22)(a) • OAR-690-018-0090(2)(c) • OAR-690-018-0050(3)(c) 	OWRD's Land Use Information Form asks the local planning official to cite the "most significant, applicable plan policies & ordinance section references" if the planning official identifies that a discretionary land use approval is required. Therefore, the planning official cites the land use regulations relevant to the approval, in addition to identifying if the approval has been obtained, denied, is being pursued, or is not being pursued.	No changes made

	<p>Comments on Div 310 relating to Div 17 land use compatibility:</p> <p>The proposed rule language would amend the application requirements for a permit to appropriate water concerning the required compliance with local land use regulations required by ORS 197.180. ORS 197.180(1) requires that “state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use: (a) In compliance with the goals, rules implementing the goals and rules implementing this section; and (b) In a manner compatible with acknowledged comprehensive plans and land use regulations.”</p> <p>The proposed language does not adequately ensure the Department will “take actions” “in a manner compatible with acknowledged comprehensive plans and land use regulations” as required by ORS 197.180(1) because the proposed language, OAR 690-005-0035, and the Guide, all omit the critical language “and land use regulations.” Comprehensive plans are guiding policy documents, but their language is often vague or aspirational, often including language like “The County should do...” or “Seek opportunities to do...” or “Support efforts to do...” More regulatory local land use law is most often found in other local land use regulations, usually a local zoning code or local development code. Therefore, it is critical to add the language “local land use regulations” in addition to “acknowledged comprehensive plans[s]” in order to ensure that proposed water permits are reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1).</p>	<p>OWRD acknowledges that OAR Chapter 690, Division 5 does not contain a definition of acknowledged comprehensive plan. Note that the Land Conservation and Development Commission’s rules at OAR 660-031-0010 define acknowledged comprehensive plan to mean both the comprehensive plan and implementing ordinances. The Department has determined that any broader changes around land use should be addressed at a later time that allows for a more comprehensive review. Discussions with the Commission about future updates to the State Agency Coordination program will begin with the February 2026 Commission meeting.</p>	
Other			
Scope	April Snell (RAC; OWRC) - The changes proposed in Division 18 are not driven by the 2025 legislation and merit additional discussion. Additionally, there was very	While there are some portions of the changes that are not driven by 2025 legislation, many of the changes are as a result of the changes to ORS 537.470 in section 15 of HB 3544	No change made.

	<p>little time dedicated to this section during the RAC process (part of one meeting) and an acknowledgement by Department staff that there are more potential changes that could be made to improve the ACW program and associated processes. We recognize and appreciate that some proposed changes were removed from the current draft rules but feel strongly that no changes should be made to this section and instead a separate RAC be created rather than rushing partial changes through. It would be more prudent to spend the time to thoughtfully craft changes with a RAC group that has experience and interest in the ACW program rather than do partial adjustments as part of the rushed process.</p>	<p>(contested case provision) and section 37 of HB 3342 (removal of newspaper notice and instituting initial review, etc.). In addition, many of what appears to be changes are driven by reorganization of the rules, which are in part due to the introduction of the initial review process resulting from the 2025 legislation.</p>	
<p>Process Div 18, 77, 380</p>	<p>James Fraser (RAC; TU) - TU works closely with landowners on instream flow restoration projects, and we appreciate the instances where WRD have clarified language in rule divisions related to instream transfers (Division 380), the Allocation of Conserved Water program (Division 18), as well as instream leases and instream water rights (Division 77). TU's verbal and written comments have already provided specific input on numerous rule provisions, and we will not repeat those here because many have been handled in the final rule package to our satisfaction.</p>	<p>Comment in support</p>	<p>No change made.</p>
<p>Deschutes Basin Div 18, 77</p>	<p>Kate Fitzpatrick (RAC; DRC; Bend Hearing; summarized from transcript) - And we specifically today just want to comment on appreciation for the improvements to Division 77 and Division 18 we made in stream leasing and permanent in stream transfers and the allocation of conserved water statutes. Related to Division 77, DRC works with 80 irrigation districts and about 350 landowners annually to in stream lease up to 75 cubic feet per second back to</p>	<p>Comment in support</p>	<p>No change made.</p>

	<p>our streams alongside an additional 74 CFS that have been permanently transferred in stream. And we also utilize Division 18, which has protected 174 cubic feet per second in partnership with irrigation districts to our streams through the allocation of conserved water program. These are very important programs and rules for flow restoration in the Deschutes Basin and reaches that had once been fully diverted. And we just wanted to comment that the improved efficiencies proposed in the rules will be beneficial to the resource and will improve the workflow for practitioners like the DRC and irrigation partners who use these programs and state staff who process these transactions.</p>		
Definitions “natural flow”	<p>Mary Powell (N/A; Bend) - Some of the terminology commonly used and understood by water professionals have misleading names or attached conditions that alter the meaning that are not apparent at first. Such as:</p> <ul style="list-style-type: none"> • “Natural Flow”; one would think this is the natural unimpeded flow available year to year to the river maybe even a historical flow however the Districts in Bend consider it any water not otherwise appropriated or stored in reservoirs and available to them by seniority. I don’t know whether it is used otherwise in water law, rules, writings, but someone had to explain it to me. In OAR-690-018: a definition of natural flow would be helpful and if it is otherwise used I would hope it would be explained. 	<p>Natural flow is not a term used in the rules. Best practice for rule writing is to only define terms that are used in the rules. Commenter’s interest appears to be increasing understanding of words used in the community; we believe that would be better addressed in publications, instead of rule.</p>	No change made.
-0050(7)(a)(B)	OWRD staff proposed change: Missing comma in 7(a)(B)	Added	Change made.
--0062(2)	OWRD staff proposed change: Missing “quantity of” and “the” in subsection 2 so there is parallel phrasing between two amounts in the rule in subsection 2.	Added	Change made.

Out of Scope

<p>Out of Scope -0012(2)</p>	<p>Gen Hubert (RAC; DRC) - While this is a statutory allowance, the ability to submit an allocation of conserved (ACW) water with the plus 1 minute priority date warrants further review (of statute), especially for partially or fully publicly funded projects. If a junior water right utilizes the plus 1 minute allowance, this could result in very little water protected instream. The intent of the ACW is to provide the benefit of protected flow while improving efficiency. If a mid-priority date utilizes the plus 1 minute priority date for the conserved water, the protected water will also not have the same reliability as the diverted water. This could improve the conserver's reliability while still impacting more junior water rights (water users and instream). When conserved water is publicly funded and protected instream, it should retain the same priority date and reliability as the original water right.</p>	<p>Outside scope of this rulemaking. Statutory change.</p>	<p>No change made.</p>
<p>Out of Scope -0012(3)</p>	<p>Gen Hubert (RAC; DRC) - 690-018-0012(3) and other rules that relate to measurement – the addition of 3rd party or Department verification of the conserved water rate and volume could assure transparency of the protected water measurements, especially when publicly funded.</p>	<p>Outside of the scope of this rulemaking. Requires more policy discussion to further understand the costs and benefits of such an approach.</p>	<p>No change made.</p>
<p>Out of Scope "duty water" -0018(1) -0020(3) -0020(4)</p>	<p>Jim Powel (N/A; Bend) - Add clarification that the ACW surface water pathway applies to only "duty" water, l. Rule Notations include:</p> <ul style="list-style-type: none"> • 690-018-0010(1) "any water conserved" is implied to be eligible and subject to allocation based on ORS 537.470(3). • 690-018-0020(3) states that "Conservation means the reduction of the amount of water diverted to satisfy an existing beneficial use ..."; and • 690-018-0020(4), mentions the "maximum amount of water that can be diverted using the 	<p>Outside scope of this rulemaking and notice. This would need significantly more research and discussion, including an evaluation of whether there is authority to do this.</p>	<p>No change made.</p>

	<p>existing facilities" as one of the metrics in determining "Conserved Water"</p> <p>2. History</p> <ul style="list-style-type: none">• The concept of ACW with a 50-50 split and the potential for spreading, as well as that of making instream use a beneficial use, arose within a Bend-Deschutes County study of the Deschutes Basin in 1986. Both concepts were intended to encourage on farm conservation and a protected improvement of surface water resources. The available technology and costs impacting districts at the time did not practically enable sustained conservation within the canal infrastructure itself.• In the Deschutes Basin, five district irrigation diversions included not only duty water but also a 1928-33 decreed extra diversion usufruct - a percentage (33-65%) of the duty diversion (based on a district's irrigated acreage) specifically designated to offset "losses and obstructions in the canals" as established by the Circuit Court and State Engineer. That same decree increased the Deschutes Basin duty water from ~3.5 to ~ 5.45 AF/A per season, the most generous duty in the state. <p>When the 1986 OWC summarily refused to consider either concept, our Representative introduced bills supporting them in 1987. The Legislature changed the split to 25-75 and applied the concepts statewide. Diversion waters eligible for AWC provisions were based on duty water alone.</p> <p>3. Current Events in The Deschutes Basin:</p> <ul style="list-style-type: none">• For the past several years, the Basin has been utilizing previous collaborative processes to formulate an initial Regional Basin Plan.		
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	<ul style="list-style-type: none">• Public Funding (PL566 and state grants particularly) and new technology have placed conservation by canal piping within reach for districts. The districts all applied for funding, completed NEPA processes, and agreed to return conserved water from piping to the public and protected instream flow.• Most districts and the Regional Watermaster have returned non-duty water as well as ACW determined portions of duty water conserved by district piping projects to the state. One of our districts now is suggesting that the ACW provisions apply to <u>all</u> water diverted by districts, including the extra decreed water, and implying it may consider non-duty waters in the calculations of district retained water under the statute. If this were to happen, it would be the equivalent of increasing the duty on affected acres by 45% - or from 5.45 to 9.91 AFIA. Like the original decree, this additional retained water would reduce water resources available to junior right holders or instream protections. <p>4. Rationale:</p> <ul style="list-style-type: none">• All basins now effectively base the ACW on duty water. None but five districts in the Deschutes Basin have the opportunity to divert water in excess of duty water to compensate for transmission losses.• Clarifying ACW eligibility's being limited to duty water would continue to put all basins and districts on an equal footing — which was one of the considerations by the Legislature in assigning the 25-75 split percentage allocations of waters conserved under this act.		
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