

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. Contested case proceedings must be conducted in accordance with applicable provisions of ORS chapter 183 that govern contested cases, except as otherwise provided by Or Laws ch 575 and these division 002 administrative rules, or as otherwise specified in the Department's statutes.

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) For cases under subsection 2, 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) For cases under subsection 2, 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 on cases under subsection 2 that were pending on or before January 1, 2026, the Department shall provide to applicants, protestants, persons that submitted a request for standing, persons that have submitted standing statements, 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. 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.
- (b) A protestant to amend the protest as necessary to comply with the provisions of Or Laws 2025, ch 575, section 3. The amended protest may not add issues not raised in the original protest.

(7) For cases not under subsection 2, these rules will apply to protests filed after April 1, 2026.

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.

(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." 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.

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.

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 represent 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.

690-002-0025**Time for Filing Protests 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; and
 - (b) The protest includes any statutorily required fees.

(2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a protest is considered filed only when actually received by the Department.

(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. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.

690-002-0030

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

(1) Except for protests specified in OAR 690-002-0005(2), or as otherwise provided in ORS chapters 543 and 543A and OAR chapter 690, divisions 51, 52, 53 and 54 relating to hydroelectric projects, a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, include any statutory filing fee, 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;
- (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.

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.~~

690-002-0075

Scope of Hearing for Hearings Not Governed by OAR 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 or party status as allowed by applicable law.

690-002-0081

Contact Information

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 or standing, as applicable, 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.

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, 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 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.

690-002-0089

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 of its decision. A party may file a motion with the administrative law judge to consolidate or bifurcate if the Department has not notified the parties of a decision prior to referral.

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 10 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 30 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 30 hours of staff time.

(4) 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 the Department, or to any employee or agent of any party or the Department, must be issued no later than the deadline for filing 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.

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.~~

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, Commission policies, rules, or statutes which the party contends support the requested modifications.

(2) Parties must file their exceptions with the Department 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.

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 in person, by mail such that they arrive by the deadline, or by electronic mail or other electronic means provided by the Department.

(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.

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.

690-002-0205

Default hearing schedule

(1) Unless extended pursuant to Or. Laws 2025, ch 575, section 2(5) or altered by agreement of the parties, the Department, and the administrative law judge, the deadlines in (a) - (n) 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.

- (a) Written objections to proposed issue list provided with notice of referral: 7 days
- (b) Written responses to objections to proposed issue list: 14 days
- (c) Discovery requests: 14 days
- (d) Prehearing conference: 28 days
- (e) Order on issues list: 28 days
- (f) Discovery responses: 44 days
- (g) Motions to compel discovery: 58 days
- (h) Responses to motions to compel: 65 days
- (i) Order on motion to compel: 75 days
- (j) Motions for Summary Determination: 89 days
- (k) Responses to Motions for Summary Determination: 110 days
- (l) Ruling on Motions for Summary Determination: 150 days
- (m) Exhibits and witness lists: 160 days
- (n) Hearing complete (Evidentiary record closed): 180 days

(2) OWRD, in consultation with OAH, may establish other alternate default schedules to govern cases in which parties and OWRD have agreed that certain case events listed in the default schedule in subsection 1 are unnecessary.

690-002-0210

Form of testimony

An administrative law judge shall, to the greatest extent practicable, require testimony to be provided orally. If written testimony is submitted, it must be subject to oral cross-examination at hearing.

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.

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) 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. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.

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 this rule.

(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. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments of fees will need to be received by the Department in the mail or in person prior to the deadline. For entities that conduct frequent transactions with the Department, payment may be made through withdrawal of funds from an established customer holding account. Nothing in this section obligates the Department to establish new holding accounts or to continue to provide holding accounts.

(7) 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.

(8) 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.

(9) 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.

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

(11) 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).

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.

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.

(4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

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