2/27/26
Proposed Rule Revision Tracker
Division 2 – Protests and Contested Cases

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

Rule(s)	Commenter/Comment	Response	Changed?
Grammar **-0005(7)** **-0000**	**OWRD Staff Proposed Change** - For cases not under subsection 2, these rules will apply to protests filed on or after April 1, 2026. 2025 is missing from reference to 2025 Oregon Law.	Added "on or". Added 2025 to legislative reference	Change made
Copy/paste error **-0081**	**OWRD Staff Proposed Change –** Rule Summary in filed Notice is incorrect; language inadvertently copied again from –0075.	Rule summary corrected	Change made
Discovery **-0095**	**Kimberley Priestley (RAC; WW)** - Part of the contested case process is "discovery," which allows a party to obtain documents and information from other parties to the case (and sometimes from third parties). The methods of discovery, and the limitations on those methods, are already defined, and the competing interests of efficiency and due process are already balanced, in the Department of Justice's model rules for contested cases, which have generally been adopted by OWRD. OAR Chapter 137, Division 3. HB 3544 did not disturb those definitions or balance, despite suggestions from some that it do so. OWRD's proposed rules nevertheless propose to limit discovery in contested cases in several significant ways:	The DOJ Model Rules recognize that the discovery methods and limitations in the Model Rules may not be appropriate for all types of cases and give the Commission authority to specify what methods of discovery apply in Commission/OWRD contested cases if the Commission makes certain findings. *See* OAR 137-003-0566(2). Early versions of HB 3544 included provisions addressing discovery, but those provisions were removed because the Commission already has authority to address discovery under the Model Rules. It should not be assumed that something that was in HB 3544 but later removed is indicative of legislative intent. It is important to recognize that there are expectations that OWRD will reduce processing timelines, reduce the protest backlog, and provide timely hearings to those that request them. The discovery changes in the proposed rules are intended to help meet those expectations by reducing the time and resources that OWRD and hearing participants spend on responding to discovery requests while still providing for the sharing of relevant information and ensuring the fundamental fairness of OWRD contested case proceedings. From OWRD's	No change made.

		standpoint, the fundamental fairness of OWRD's proceedings includes the timeliness of decisions. If OWRD spends all its resources on a small number or hearings while other parties wait years for a hearing, fairness and the public interest are not served.	
Requests for admission; DOJ Model Rules -0095(1)	**Kimberley Priestley (RAC; WW)-** The proposed rules would completely eliminate "requests for admission," which allow one party to ask another party to admit to certain facts and/or law to avoid having to conduct further discovery, present evidence and/or write briefs on an issue. The DOJ Model Rules allow up to 20 requests for admission, OAR 137-003-0566(1), and requests for admission are allowed in both state and federal court proceeding, which shows they are generally regarded as a useful method of discovery. OWRD's basis for eliminating requests for admission as a discovery tool is based on anecdotal experience from a limited number of cases, which should not be used to determine the process for all ca[s]es going forward.	See response above on discovery. From OWRD's perspective, requests for admission are not useful as a discovery tool. If a fact is in dispute, it is not difficult to avoid admitting to the fact in response to a request for admission. If a fact is not in dispute, alternative methods, such as stipulating to the fact, can be used to narrow the issues for hearing.	No change made
Interrogatories **-0095(2)**	**Kimberley Priestley (RAC; WW)** - The proposed rules would allow only 10 "interrogatories" (written questions to other parties), while the DOJ Model Rules allow 20. In our view, there is no justification for allowing less discovery in water related cases than the DOJ considers appropriate for challenges to agency actions generally.	See response above on discovery. In response to concerns raised during the RAC process, OWRD increased the proposed number of interrogatories from 5 to 10. OWRD believes 10 interrogatories will be sufficient for most OWRD contested cases. Where 10 interrogatories are not sufficient, the proposed rules allow OWRD to approve additional interrogatories.	No change made
-0095	**OWRD Staff Proposed Changes -** 690-002-0200 applies only to 2025 legislation, but discovery in 690-002-0095 is based on the premise that we are providing a file for all contested cases.	Added: Prior to or at the time of referral, the Department shall provide a copy of the agency file. Renumbered.	Change made.
Requests for documents **-0095(3)**	**Kimberley Priestley (RAC; WW) -** Perhaps most significantly, the proposed rules would not require OWRD to respond to requests for documents, the most important form of discovery, if doing so would exceed 30 hours of staff time. A party could still seek the documents by public records request, but OWRD could then charge for its time	See response above on discovery. Responding to broad requests for documents is a costly and time-consuming part of the hearing process and therefore one of the most important to address from an efficiency standpoint. In response to concerns raised during the RAC process, OWRD increased the proposed staff time limit from 25 to 30 hours. In many cases,	See OWRD staff proposed change above.

	in responding to the requests (per public records laws), which could make obtaining the requested documents prohibitively expenses, especially for nonprofits and other parties of limited means.	gathering requested documents will take less than 30 hours staff time, in part because, under the proposed OAR 690-002-0200 and 690-002-095 (with changes proposed by Department), OWRD is shifting to providing its file prior to or at time of referring a matter for a hearing, which will reduce the need to seek documents through requests for production. Parties may keep staff time low by ensuring their requests are crafted with specificity. This will conserve parties' resources as well as OWRD's. Where OWRD converts a request for production into a public records request because it will take more than 30 hours of staff time to respond to, the requester will not be charged for the first 30 hours of staff time used in preparing the response. As such, requesters will continue to be able to receive large numbers of documents at no cost. Finally, the rule states the Department "may" require a public records request, not shall.	
Site visits **-0095(4)**	**Kimberley Priestley (RAC; WW) -** The proposed rules would not allow a site visit unless all parties agreed to it. Site visits are rarely requested, but they may be of value, or even necessary, in some cases to learn facts important to a case. As such, no party should have veto power over a request for a site visit. Like other discovery or evidentiary offers, a party should be able to request one, subject to objections that could raise any issues of inconvenience, expense or undue hardship given the nature of the specific case.	See response above on discovery. Site visits are time consuming from a scheduling standpoint and for attendance; they also increase expenses for travel; and they increase the likelihood of a hearing exceeding the 180-target set by HB 3544.	No change made
-0200	**OWRD staff proposed change –** Rule may be interpreted to require settlement discussions even when there is not opportunity based on the particular scenario.	Modified: replaced "to engage in settlement discussions with" offer to "discuss whether there is opportunity for settlement"	Change made
Default hearing schedule **-0205**	**Kimberley Priestley (RAC; WW)** - This rule provides a default 180-day schedule, which HB 3544 directed without saying what should be included in the schedule other than discovery requests, responses to discovery requests, and motions to compel discovery. Although 180 days is an extremely tight schedule for litigating a contested case, the proposed default schedule would spend the first 28 days of valuable time on written	HB 3544 and the proposed rules include flexibility with respect to the default schedule that will allow the schedule to be adjusted to address concerns raised in the comment. Under HB 3544 section 2(5), the administrative law judge may extend any of the deadlines on their own motion or upon request by OWRD after consultation with the parties. Under proposed OAR 690-002-0205(1), the default schedule may be altered by agreement of the parties, OWRD, and the administrative law	No change made

	arguments and a decision over an unnecessary "issue list," which is not required by any statute or existing rule, has no analogy in either state or federal court, and was not required by HB 3544. The issues in a case can and should be defined by the protest, just as a "complaint" defines the issues in state and federal court proceedings, especially since HB 3544 includes increased specificity requirements for protests. Requiring an "issue list" will make the protests moot and could result in legitimate issues being removed from a case before hearing. Meanwhile, for example, the proposed default schedule would require motions to compel (i.e., to order discovery not provided in response to a request) within 14 days of the deadline for responses to discovery, which leaves too little time to review discovery responses (sometimes thousands of pages of documents) to determine if they are complete. The default schedule then spends 60 days on "motions for summary determination," which are time consuming motions seeking decisions without a hearing. In the interest of time and efficiency, we suggest eliminating those motions from the process unless all parties agree that all issues in the case are legal issues that do not require an evidentiary hearing, in which case the time allocated for hearing could be used for motions for summary determination. OWRD claims to have addressed these concerns with a provision allowing the schedule to be altered in appropriate cases, but that will be a significant uphill climb for any party, given the default schedule in the rules, if another party objects.	judge. As such, if briefing on the issue list or motions for summary determination is unnecessary, the default schedule can be altered to remove those deadlines and create more time for other events. In addition, proposed OAR 690-002-0205(2) allows OWRD, in consultation with the Office of Administrative Hearings, to establish alternate default schedules to govern cases in which parties and OWRD have agreed that certain events listed in the default schedule are unnecessary. OWRD is open to discussion about establishing alternate default schedules that include other procedural scenarios, such as no issue briefing or motions for summary determination. With respect to the "issue list," HB 3544 requires issues be raised with sufficient specificity. In some instances, OWRD may determine that issues included in protests are not raised with sufficient specificity and may not include them at the time of referral. If a party objects to this determination, the objection should be briefed at the beginning of the case to provide certainty regarding the issues to be addressed in the hearing. The issue list is somewhat analogous to a motion to dismiss in state or federal court, in that it allows improperly raised issues to be disposed of at the outset so that the parties, OAH, and OWRD need not expend resources arguing them. In many cases, the issue list will likely simply refer to the protest, or OWRD and the parties will agree on the issue list, in which case there should be no need for briefing. As with other deadlines in the default schedule, if issue briefing deadlines are not needed, the schedule can be adjusted. With respect to motions for summary determination ("MSDs"), MSD deadlines are routinely included in hearing schedules because parties often have not committed to either filing or not filing them at the time the schedule is set. If dates are not set, the likelihood of a schedule extension increases. If the parties and OWRD are willing to commit not to file MSDs at the initial prehearing conference, the default schedule can be adjusted	

		and the time allocated for MSDs redistributed to other events. That said, in the interest of efficient hearings, parties should not assume that all hearings should use the maximum timeline provided (180 days).	
Rule Efficacy	**Ryan Krabill (RAC; OFB)** - OFB is concerned that the proposed revisions to protests and contested case procedures may, in practice, make it harder for affected water users to participate meaningfully and protect existing interests through the administrative process. OFB supports accountability in appeals, including an appeal filing fee structure that is tied to the actual costs imposed on the applicant and the agency, with reimbursement if the appeal succeeds and cost responsibility if the appeal fails. We urge OWRD to ensure that any "efficiency" changes do not function as procedural barriers that prevent legitimate protests from being heard on the merits, particularly where long-term agricultural operations may be directly affected.	OWRD appreciates the commenter's concern but does not believe the proposed changes to Division 2 will act as procedural barriers that prevent protests from being heard on the merits. Many, though not all, of the provisions are required by 2025 legislation. They will make the hearing process more efficient while preserving the opportunity for full and fair hearings. By increasing efficiency, they will increase the number of hearings OWRD can provide as well as the timeliness with which OWRD can make decisions on protested applications. That will increase the number of protests which receive a timely, fair hearing. Currently, one of the largest procedural barriers to protests being heard on the merits is the protest backlog and the amount of time and resources individual hearings consume. If the Commission adopts the proposed rules, OWRD is committed to implementing them with the twin goals of increasing efficiency and providing full and fair hearings.	No change made
Scope	**April Snell (RAC; OWRC**) - This division contains proposed changes related to implementing HB 3544, which made changes to procedures and timing of water rights protests and contested cases. OWRC was not directly involved in the legislation as external stakeholders who weighed in were primarily water attorneys. Our understanding is that the intent of HB 3544 is to help reduce the amount of time it takes for these cases to be resolved, which can be an improvement for both the agency and external stakeholders. The proposed changes to Division 2 seem to line up with the statutory direction in HB 3544. We are supportive of the proposed changes for this division, including limiting the number of interrogatories and placing modest limits on discovery. Protests and contested cases are an important legal and procedural process of Oregon's water law. However, some	Comment in support or neutral	No change requested

	of these cases have led to protracted delays and high costs born by OWRD, the State of Oregon, the applicants, and protestants. These cases also drain staff and financial resources that could be better used in other program areas. It is worth noting that for OWRC and our members this issue can cut both ways. In some instances, the water right transaction subject to protest may be a water right held by a district and the district supports the decision made by OWRD, and is not a protestant. Conversely, if the district disagrees with OWRD's decision, they may choose to protest that decision as the applicant. At other times, our members may be the third party protesting a OWRD decision that impacts their water right. These actions are all equally important to have as options, but not drag on for decades before a legal resolution is reached.		
Scope	**Kimberley Priestley (RAC; WW)** - Proposed revisions to Division 2 would make multiple changes to procedural rules for contested cases, which are administrative proceedings analogous to court cases before an administrative law judge. Contested cases are used to resolve challenges to proposed agency actions, including most proposed water-right decisions. House Bill 3544 (2025) directed limited revisions to the contested case process for most water related decisions based on a belief that the current process was contributing unnecessarily to the "backlog" of unresolved cases. WaterWatch questions that assumption, but ultimately did not oppose the bill, believing it left intact, in response to push-back from WaterWatch and other organizations, sufficient means to prepare and present a case to support a challenge ("protest") to a proposed water-right decision; i.e., "due process" for protestants. OWRD's proposed changes to Division 2 rules were justified primarily as necessary to implement HB 3544. WaterWatch supports many of the changes and appreciates modifications to some proposed changes in response to WaterWatch's	OWRD response is included for specific sections in other rows above.	No change made

	comments. However, OWRD's proposed changes to Division 2 go well beyond what HB 3544 required, taking away important procedural rights that were not taken away in the balance struck by HB 3544. The proposed rules also include a "default" schedule that includes unnecessary steps and, partially because of that, leaves too little time for necessary steps. We have submitted detailed comments throughout the rulemaking but focus here on our most significant comments that have not been adequately addressed.		