

2/27/26

Proposed Rule Revision Tracker
Division 380 – Water Right Transfers

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

Rule(s)	Commenter/Comment	Response	Changed?
Change in POD/POA			
Change in POD/POA -2110(3)	Kimberley Priestley (RAC; WW) - We strongly support the newly proposed language that clarifies the OWRD can condition transfers to prevent injury and enlargement. That said, we would urge the OWRD to consider removing the qualifier “resulting from the change.”	The qualifier language, “resulting from the change,” is appropriate given that OWRD’s as that is the basis for determining injury or enlargement. The Department does not evaluate injury and enlargement in absence of the change.	No change made.
Change in POD/historical -2120	Kimberley Priestley (RAC; WW) - We appreciate and support OWRD’s amendments to this section of rule that remove “point of appropriation”. The statute is very clear that this avenue for change applies only to surface water and is not allowed for groundwater. See WaterWatch comments to V1.	Comment in support	No change made.
Change in POD/historical -2120(2)(b) & (2)(b)(B)	OWRD staff proposed change – OWRD previously determined that this rule only applies to surface water rights, so the draft proposed rules deleted most occurrences of the words, “...or appropriation...” throughout this rule, but not all.	The words, “...or appropriation...” have been deleted from -2120(2)(b) & (2)(b)(B).	Change made.
Change in POD/historical -2120(3)(E), (4)	Kimberley Priestley (RAC; WW) - V3 changes the directives relating to instream water rights; removing notice to applying agencies and instead providing notice to OWRD as the agency that holds the water right in trust for the people of Oregon. Given OWRD must provide public notice of the change, and also consult with ODFW, we do not object unless ODFW registers concerns. Given instream rights are held in	Comment without objection	No change made.

	trust for the public, the opportunity for the public to provide comment is paramount		
Change in POD/historical -2120(5)	Kimberley Priestley (RAC; WW) - As with other sections, we support additional language clarifying the OWRD's conditioning authority.	Comment in support	No change made.
-2120(5)b)	OWRD staff proposed change: remove extra period	Completed	Change made.
Exchange, Substitution, Change in Industrial Use			
Exchanges of Water -2260	Kimberley Priestley (RAC; WW) - In our V1 comments we recommended new rule language to make clear that: "Any water right acquired by a public agency for a public purpose shall not be eligible to participate in an exchange under this section." OWRD responded by saying that it would need to be legislated. We disagree. ORS 540.533, the statute that allows exchanges, is limited to "any person" who holds a water right. Oregon's APA defines "person" as any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency . See ORS 183.310(8), emphasis added. Given that the APA specifically says an agency is not a person, to align the rules with the governing statute that limits utilization of exchanges to "any person," the rules need to be updated to ensure that a public agency that holds a water right for a public purpose is not eligible to use this tool.	The definition of person under the water statutes does include agencies. Per ORS 536.007, "As used in...ORS chapters 536 to 540, 542 and 543...'Person' includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof." ORS 536.007(6).	No change made.
Substitution -2330(8)	Laura Schroeder (RAC; OGWA) - Proposed OAR 690-380-2330(8) seeks to add an additional requirement that a substitution under ORS 540.524 be terminated before any subsequent transfer or change application involving that right may be approved. This requirement adds substantive conditions that are not found in the	OWRD does not agree with the interpretation presented in this comment. The statute as adopted in 1999 states "this subsection does not authorize a change in place of use, type of use, point of diversion or point of appropriation." Therefore, OWRD does not believe that this	No change made.

	<p>plain meaning of ORS 540.524. This statute limits what a substitution does not authorize (changes to a water right such as additional POA, change in POU, etc.), but it does not require that a substitution that either is going through the review to final order process determining injury or that has already been approved by a final order be terminated at any time but particularly not before the water right holder seeks a transfer under ORS 540.520.</p> <p>The proposed rule infers additional meaning into ORS 540.524 that is not supported by the plain statutory language, the legislative intent underlying the 1999 enactment of the statute, or existing water right transfer procedures. As proposed, OAR 690-380-2330(8) would require a water user to terminate their substituted right before proceeding with a transfer application, incorrectly inferring that transferring a substituted right constitutes an automatic injury. This interpretation is inconsistent with ORS 540.524 which already provides an established process to terminate substitutions during the substitution approval process to determine injury. Further, the transfer process pursuant to ORS 540.520 already provides robust mechanisms to ensure that no injury occurs to existing water rights, priority dates are preserved, and proposed changes are fully evaluated by the Department through notice, protest, and contested case proceedings. Requiring termination of a substitution before a transfer application may even be reviewed does not enhance these protections. Instead, the proposed requirement will eliminate much of the practical benefits of substitutions and increase the number of filings required by applicants. Given that the purpose of this proposed rulemaking is to make agency water right</p>	<p>would allow any other changes in place of use (POU), type of use (USE), point of diversion (POD), or point of appropriation (POA) to occur while the substitution of sources is in place. Additionally, OWRD does not believe the text of the draft proposed rules infers that transferring a substituted right constitutes automatic injury. Rather, OWRD believes the proposed rule language, as drafted, conveys the intent of the statute to not allow other types of changes while a substitution is in place.</p> <p>The statute, also as originally adopted in 1999, allows termination upon request of the water right holder and it indicates that upon termination the substituted primary and supplemental rights revert to their original status. OWRD believes that because the statutory language does not restrict the reversion and does not require any type of review of the reversion request, it supports OWRD's interpretation that no change can be made to the water right while the substitution is in place. Statute recognizes the limitations of substitutions and allows a guaranteed reversion so a transfer can be sought if desired. The commenter asserts that -2330(6) "establishes how substituted rights are to be treated during review" and that (8) creates a conflict with (6) by "by effectively prohibiting review unless the substitution is terminated." OWRD disagrees that -2330(6) describes review of an application. Subsection (6) implements ORS 540.524(6) almost verbatim. ORS 540.524(6) makes it clear that a substituted</p>	
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	<p>processes more clear, efficient, and consistent, this is especially concerning.</p> <p>Finally, proposed OAR 690-380-2330(8) is inconsistent with other provisions within Division 380. OAR 690-380-2330(6) states that “for the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental groundwater right shall be treated as a primary water right.” This provision establishes how substituted rights are to be treated during review by the Department. Proposed subsection (8) conflicts with this framework by effectively prohibiting review unless the substitution is terminated, creating ambiguity and inconsistency within the rule itself.</p> <p>While we honor the purpose of the proposed rulemaking (to address growing backlogs and inefficient processing rules), we are concerned that the proposed rule’s inclusion of OAR 690-380-2330(8) undermines the legislative intent of Senate Bill 301 (1999) and incorrectly assumes that a transferred substituted right will automatically cause injury. This requirement does nothing to increase efficiency of the Department, nor does it protect against injury to other water rights. Instead, the proposed rule adds procedural barriers that are not required by existing statute and will increase administrative backlog and contested cases.</p> <p>We request the withdrawal of the proposed rule OAR 690-380-2330(8) and for a revised rule to be republished that is consistent with the plain meaning of the statutory language of ORS 540.524 and existing transfer procedures under ORS 540.520. An alternative, consistent with existing and applicable rules, would require that where a transfer application involves a</p>	<p>primary surface water right shall be treated as a supplemental water right and a substituted supplemental groundwater right shall be treated as a primary water right “for the purpose of ORS 540.610”. ORS 540.610 addresses forfeiture for nonuse rather than application review.</p>	
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	<p>substitution that has already been approved by final order, the substitution remains effective and if pending, that the substitution application be procedurally aligned with the transfer so that both matters proceed concurrently. In other words, where a substitution has been finalized prior to the transfer, it should remain in place. If not finalized by order, then the substitution application should continue alongside the transfer process. This approach would preserve the already established statutory procedures for terminating a substitution when requested by the water right holder or by determination by the Director that the use of the ground water as the primary water right causes injury. Certainly, processing both substitution and transfer simultaneously will reduce the backlog and if required, move forward with only one contested case instead of two. Additionally, we request that these comments inform that effort. Thank you for considering our comments on the proposed rule.</p>		
General industrial use -2340	Kimberley Priestley (RAC; WW) - We support the changes made to this section of rule that clarify the parameters that apply to determine the quantity used (and thus applicable limits).	Comment in support	No change made.
Application Requirements			
Transfer applications -3000	Kimberley Priestley (RAC; WW) - We support additional language making it clear that an application can only include one water right per application, except in very limited circumstances (e.g. layered rights).	Comment in support	No change made.
Transfer applications -3000(8)	Kimberley Priestley (RAC; WW) - We support the retention of the additional requirements here. See V1 comments for details.	Comment in support	No change made.
Transfer applications	Kimberley Priestley (RAC; WW) - We support the additional changes in V3, as well as the clarification	OWRD declines to make the requested change to broaden the requirement for providing water	No change made.

-3000(12)	that these are not exhaustive standards, but would ask the OWRD to reconsider our comments on V1 requesting additional standards. The OWRD response was that additional standards were outside of the scope of rulemaking. We disagree, requiring more information of the applicant upfront will expedite the agency's review, which is in line with the intent of water right processing improvements.	use information to the full forfeiture look back period (20 years) at this time and other associated documentation recommendations. The topic is out of scope as it requires a more thorough discussion with interested parties.	
Transfer applications -3000(12)(b)(B)	Kimberley Priestley (RAC; WW) - We support the addition of dated satellite imagery.	Comment in support	No change made.
Transfer applications -3000(12)(c)	Kimberley Priestley (RAC; WW) - We support the retention of this section.	Comment in support	No change made.
Application Review			
Initial review -4000 Comment was on 4000, but changes made to 2110, 7010, and 690-382.	Kimberley Priestley (RAC; WW) - In our V2 comments we noted that this section needs to be expanded to include the new transfer denial standards in HB 3342 (17)(5) that apply to some transfer applications to change groundwater points of appropriation. We did not see the change to this section, or to the PFO section, of the hearing draft rules (V3). The OWRD response to our comment was that this section needs more discussion. While it might need more discussion, the OWRD at the very least should simply insert the language of the statute into the rule so that caseworkers have all the information in one place. The noted provision is in fact the law; regardless of any potential controversy around the statutes' existence, this language needs to be in the rules.	HB 3342 (17) is specific to permit amendments (ORS 537.211(5)), while HB 3342 (19) pertains to groundwater registrations (ORS 537.610(5)). HB 3342 (24) pertains to transfer applications under ORS 540.505 to 540.585 (ORS 540.586). They provide that OWRD may deny a change in point of appropriation under certain circumstances. OWRD has included a similar change with differences between the statutory references depending on the applicable ORS: "The Department may deny a change in the point of appropriation pursuant to [fill in the correct statute]." The change is included in the following rule divisions: 690-380-2110, 690-380-7010, 690-382-0300.	Change made to 690-380-2110 and -7010; also 690-382-0300.

<p>Initial review; consent to injury -4000</p> <p>Comment on - 4000, change made to -5050</p>	<p>Kimberley Priestley (RAC; WW) - Additional comments related to consent to injury: We appreciate the changes made to the V3 version that alter the wording to clarify that transfer applicants can “request” a consent to injury but there is in fact no “approval process” as earlier iterations stated. Consent to injury is wholly discretionary; there is no mandate that the agencies must consider consenting nor are there standards that result in approval if they are met. In other words, there is no obligation to approve a consent to injury request in any instance.</p> <p>If OWRD is going to allow a request for CTI at the IR stage, there likely needs to be adjustments to the processing clock for the agency evaluation of the request (if the agency chooses to evaluate the request). Absent that, the rules should make clear that the default for no action/response on the request is that there is not consent to injury</p>	<p>OWRD agrees that the state agency that requested the instream water right has the discretion to recommend or to not recommend OWRD consent to the injury to the instream water right. Any request from OWRD to the state agency for a recommendation of whether or not OWRD consent to the injury will occur after issuance of the Initial Review, provided the applicant meets the requirements outlined in OAR 690-380-4000(5). Not only did OWRD have to move the consent to injury evaluation to earlier in the process (i.e., from after issuance of the proposed final order to after issuance of the initial review) to accommodate statutory changes under Or Laws 2025 c.575 §3, 3a [ORS 536.077], but we believe this new process will also provide more transparency.</p> <p>To ensure clear communication between state agencies occurs, OWRD does not move forward with processing a “consent to injury” transfer without first receiving a written statement from the state agency indicating that they either recommend or do not recommend OWRD consent to the injury. OWRD believes that the concern is better addressed by adding the following to -5050(1)"...the Department shall seek a recommendation <u>on whether to consent or not consent</u> from the agency..."</p>	<p>Change made to 690-380-5050.</p>
<p>Initial review; ready, willing, able -4000(3)(d)</p>	<p>Kimberley Priestley (RAC; WW) - We strongly support the inclusion of the requirement that the applicant be ready, willing and able to put the water to full beneficial use. This is an important requirement to protect against speculation</p>	<p>Comment in support</p>	<p>No change made.</p>

Initial review; applicability -4000(3)(g)	Kimberley Priestley (RAC; WW) - As we have stated previously, this section should be replaced with the broader “any other requirements of law and rule are met” and/or simply cross out “for water right transfers”. As noted in our V1 and V2 comments, there are other laws that restrict what can be done under transfers. As an example, the Scenic Waterway Act states: “No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways.” ORS 390.835. Any water allocation or reallocation request is subject to this mandate, transfers cannot be used as a loophole to get around this. Similarly, there are rules that restrict transfers as well, such as basin plans. Transfers cannot be used as a loophole to get around other rules and laws. To allow such would encourage all manner of gamesmanship to Oregon’s water permitting and reallocation structure. By limiting legal application only to “for water right transfers”, the OWRD is offering a loophole to other laws rather than protecting against them. This qualifier should be struck.	This matter was important to many members of the RAC with different perspectives. OWRD believes the language, as drafted in the proposed rules, best addresses the RAC’s diverse views; therefore, OWRD declines to make further changes. OWRD would consider the scenic waterway example to be included within the Department’s authorities and covered by the existing rule language. Our perspective is that this is rather broad. Even then, OWRD rules cannot confine statute. Note that OWRD does not typically apply basin plans to transfers; though 2025 legislation has included specific authority to deny points of appropriations in certain instances related to critical groundwater areas.	No change made.
Initial review -4000(9)	Kimberley Priestley (RAC; WW) - please insert “permanently” before “close application”. While OWRD has note this is redundant, we feel it prudent to insert here so a user cannot come back later and argue that they want to “reopen” it because it was not permanently closed (and thereby retain their priority date).	OWRD has made the change.	Change made.
Initial review; amendment -4000(12)	Kimberley Priestley (RAC; WW) - The applicant should not be able to amend the application after the IR stage. They should have to reapply. That said, if the OWRD keeps this section, we urge language that notes that if the information/amendment changes a “denial” to an	The draft proposed rules align with Or Laws 2025 c.575 §§20, 20a [ORS540.520(6)], which specify that upon notice of the initial review (i.e., issuance of the IR), the applicant has 30 days to notify the Department to continue processing	No change made.

	<p>“approval” the OWRD must issue a new IR, and not proceed to PFO. As is, the rules provide that if the applicant amends the application, the OWRD has discretion to reissue an IR or “or incorporate the amendments into the proposed final order”. This would give the OWRD the discretion to go straight to proposed final order, at which point the only option for the public would be to protest. At the very least, if a change alters the OWRD determination from “denial” to “approval” the rules should note that it will be re-noticed</p>	<p>the application and provide any outstanding information to the Department, including amending the application to address any issues or deficiencies identified by OWRD in the initial review. If necessary, the applicant can request an additional 60 days (not to exceed a total of 90 days from date of IR issuance) to provide any outstanding information. In general, individuals interested in applications should weigh in during the comment period if they have an interest in an application, regardless of whether it is to approve or deny, as that is the opportunity to provide the department with information on the application. In the interest of maintaining proposed rule language aimed at application processing efficiencies while still allowing OWRD certain discretion, because there is a wide range of circumstances and degree of complexity that may change a “denial” to an “approval,” OWRD declines to require all changes of this nature be re-noticed to open up a second 30-day comment period.</p>	
<p>Timeline to provide outstanding info -4000 and -4005</p>	<p>OWRD staff proposed change: Revisions are needed to more accurately align this rule with the proposed rule language in OAR 690-380-4000(5) and (10). As written, it could be misconstrued as allowing the applicant more time to notify OWRD that they wish to continue processing the application. Further, rule language in -4000 could be misconstrued to require closure within 30 days when an exception exists in section (10).</p>	<p>Moved and modified the text, "or an additional time period allowed under OAR 690-380-4000(10)" that was immediately following “OAR 690-380-4000(5)” to make it clear that the additional time under OAR 690-380-4000(10) only applies to the time allowed for the applicant to provide the additional information; it does NOT apply to the deadline for the applicant to affirmatively respond to the IR that they want to continue processing the application. OWRD also added to section</p>	<p>Change made.</p>

		4000(5)(b) and (9) the text, “except as provided in section (10) of this rule,” as this is an exception to the requirement that everything be provided within 30 days.	
PFOs			
PFO -4010(2)(c)	Kimberley Priestley (RAC; WW) - We strongly support the retention of the language that requires a finding that the water right has been used in the past five years and also that it is not subject to forfeiture. That said, we still think it would be clearer if they were split into two different findings.	OWRD believes the language, as drafted in the proposed rules, is clear and declines to make further changes.	No change made.
PFO -4010(2)(d)	Kimberley Priestley (RAC; WW) - We strongly support the retention of the language that requires the applicant be “ready, willing and able”; however, we would suggest that the tie to “the full amount of the right” be changed to “portion of the right to be transferred”, as the “full amount of the right” might not be subject to transfer. This mirrors language in the rest of this section. Regardless, we thank the OWRD for retaining the “ready, willing and able” language.	OWRD replaced the text, “..the full amount of water allowed under the right:” with the “..the portion of the right to be transferred;”	Change made.
PFO -4010(2)(g)	Kimberley Priestley (RAC; WW) - As noted previously, we believe the better standard is “any other requirements set forth in applicable law and rule” and/or simply cut the language “applicable to water right transfers”. While arguably the proposed standards does subject transfers to all laws not just transfer specific laws, it would be clearer to just state this so the Department’s application of all applicable laws (e.g. the State Scenic Waterway Restrictions) do not invite challenge.	Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on - 4000(3)(g) above.	No change made.
Hearings			

<p>Hearings -4200(2)</p>	<p>Kimberley Priestley (RAC; WW) - We strongly support the consolidation of forfeiture claims into the cc hearing as it creates process efficiencies.</p>	<p>Comment in support</p>	<p>No change made.</p>
<p>Hearings -4200(2)</p>	<p>Laura Schroeder (RAC; OGWA) - Proposed OAR 690-380-4200(2) states that the Department will automatically initiate cancellation proceedings if a protest to a transfer asserts forfeiture due to nonuse. This provision is inconsistent with Oregon's existing statutory forfeiture framework for cancellation proceedings that requires evidentiary submissions through notarized affidavits and formal notice before cancellation proceedings may be initiated. This proposed rule encourages unsupported forfeiture claims and impedes due process, leading to increased contested cases and administrative inefficiency. In addition, allowing unsubstantiated claims for forfeiture made in a protest to stop development for decades effectively eliminates water rights of use and impedes the public's use of water. Pursuant to OAR 690-017-0400, the decision to initiate cancellation proceedings shall be based on evidence submitted to the Department in the form of notarized affidavits from two individuals. A mere assertion of forfeiture within a transfer protest does not satisfy this evidentiary requirement. Further, ORS 540.631 requires that upon initiation of forfeiture proceedings, the Department must provide written notice by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. These notice requirements reflect the Legislature's intent that forfeiture proceedings align with full due process protections. Permitting cancellation proceedings to begin based solely on a forfeiture claim asserted in a</p>	<p>If assertions of non-use and forfeiture are made against a water right involved in a transfer application, OWRD must first deal with the forfeiture issue before it can continue processing the transfer application, or the Administrative Law Judge will have to address it as part of the hearing. The Department is attempting to harmonize the laws, though we recognize it is challenging. The language in -4200(2), as drafted in the proposed rules, specifies that any issuance of a notice of cancellation proceeding by OWRD shall be done in accordance with ORS 540.631, and that any hearing held pursuant to 690-380-4200(1) shall also include the procedures described in the Div. 17 Cancellation of Perfected Water Rights rules under 690-017-0600 to 690-017-0900. OWRD has distinguished between notice of proposed cancellation and notice of cancellation proceeding as it recognizes in these instances that it may not agree with the forfeiture matter, but that it must be dispensed of in order to allow the transfer to proceed. It is inefficient to require two separate proceedings to occur, putting the transfer proceeding on hold to address the forfeiture assertion before coming back to the transfer proceeding.</p>	<p>No change made.</p>

	<p>transfer protest bypasses required safeguards and eliminates any requirement on the protestant to provide evidentiary support for the forfeiture claim as well as the subsequent review by the Department to evaluate the forfeiture claim.</p> <p>If this rule were adopted, the mere claim of forfeiture by a protestant with its \$1425.00 fee will stop a development worth millions of dollars, force a continued non-beneficial use of the appropriated public use by the applicant or cancel that beneficial, appropriated use because the use cannot continue during the delay caused by the contested case procedure. All of these disastrous outcomes will only increase the Department's failure to meet its budget as stated in this report: Water Rights Transactions.</p> <p>We request the withdrawal of proposed rule OAR 690-380-4200(2) and for a revised rule to be republished that requires 1) any protestant claiming forfeiture to include within their protest the required evidentiary support; 2) an evaluation of the forfeiture claim by the Department within 30 days; and 3) if the claim is unsupported, that the Department proceed with processing the transfer deeming the forfeiture claim resolved. Thus, the Department should proceed immediately to cancellation proceedings incorporated within the protest contested case hearing only if the Department finds that the evidentiary support for forfeiture made by the protestant withstands the clear and convincing standard required.</p> <p>The proposed rule should further clarify that established procedures for cancellation proceedings are to be followed. This approach preserves due process and aligns with previously established Department proceedings pursuant to Oregon laws, protecting</p>		
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	Oregon citizens' access to the continued beneficial use of the appropriated public waters and reducing an unnecessary backlog of contested cases. Additionally, we request that these comments inform that effort.		
Hearings -4200(3)	Kimberley Priestley (RAC; WW) - We support the OWRD's determination to retain the 15-day time period. We would oppose any expansion of that timeline.	Comment in support	No change made.
Transfer Approval			
Transfer approval; forfeiture -5000(1)(c)	Kimberley Priestley (RAC; WW) - We strongly support the retention of the language that requires a finding of use in over the past 5 years and that it is not subject to forfeiture. That said, we still think it would be clearer if they were split into two different findings.	OWRD believes the language, as drafted in the proposed rules, is clear and declines to make further changes.	No change made.
Transfer approval; ready, willing, able -5000(1)(d)	Kimberley Priestley (RAC; WW) - We strongly support the requirement the applicant be "ready, willing and able"; however, we would suggest that the tie to "the full amount of the right" be changed to "portion of the right to be transferred", as the "full amount of the right" might not be subject to transfer and/or have been cancelled as part of the transfer process	OWRD replaced the text, "...the full amount of water allowed under the right:" with the "...the portion of the right to be transferred;"	Change made.
Transfer approval; applicability -5000(1)(f)	Kimberley Priestley (RAC; WW) - Again, we would urge that the OWRD make a finding that any other applicable laws/rules are met. As written, (f) is too narrow and could lead to potential litigation if the OWRD were to apply other applicable laws that are not specifically tied to transfers but apply nonetheless.	Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on - 4000(3)(g) above.	No change made.
Consent to Injury			
Consent to injury -4000(8), -5030, & -5050	Kimberley Priestley (RAC; WW) - Consent to injury— whether to instream or consumptive use water rights— is limited to consent to injury caused by point of diversion changes only. ORS 540.530(b) and (c) limits the ability to consent to injury to surface water "point of	OWRD does not agree with the assertion that ORS 540.530(1)(b) & (c) is limited to only allow consent to injury caused by changes to surface water points of diversion. ORS 537.705 provides OWRD the authority to permanently change the	Change made.

	<p>diversion” changes (sub (b) applies to consumptive use rights, sub (c) applies to instream water rights). Please adjust the introductory language accordingly to make clear that applicants can only request consent to injury if the injury is caused by a “point of diversion” change. Injury caused by changes in point of appropriation, changes in place of use or changes in type of use cannot be “consented” to. The rules need to be crystal clear on this point to avoid misuse of this tool. Please clarify that the request for consent to injury only applies to injury that is caused by proposed point of diversion changes. Please adjust the introductory language accordingly by striking “point of appropriation”.</p> <p>Please amend to limit the language to “point of diversion” changes.</p> <p>Clarification is needed throughout OAR 690-380-5050 to make it plainly apparent that the ability of the agencies to consent to injury to an instream water right only applies injury as a result of proposed “point of diversion” changes as outlined in ORS 540.530(1)(c). Agencies cannot consent to injury for changes in point of appropriation, changes to type of use or changes to place of use</p>	<p>type of use, place of use, or point of appropriation of a groundwater right, provided the proposed change complies, as nearly as possible, with the procedures set forth in ORS 540.520 and 540.530.</p> <p>Further, while the consent to injury process outlined in ORS 540.530(1)(b) & (c) applies to injury resulting from a change in point of diversion or appropriation, OWRD does not believe the statute prohibits other types of changes (e.g., type of use or place of use) from being proposed and considered in the same transfer application as the injury-causing point of diversion/appropriation change, though it is clear the consent to injury statutes do not apply to type of use or place of use changes.</p> <p>That said, OWRD believes revisions to clarify that this rule -4000(8) pertains only to findings of injury caused by changes in point of diversion or appropriation are warranted.</p>	
<p>Injurious transfers -5030(1)&(2)</p>	<p>OWRD staff proposed change – As drafted, the proposed rules do not clearly identify all requirements that must be satisfied before OWRD makes a determination of whether it will consent to injury and approve a point of diversion or appropriation transfer that results in injury to a water right(s) other than an instream water right.</p>	<p>The text “...following the issuance of an initial review pursuant to OAR 690-380-4000...” was removed from -5030(1) and instead placed into the introductory language under 690-380-5030 because this text applies to both -5030(1) & (2).</p> <p>Related to –5030(1): In addition to the requirements already outlined in -5030(1)(a) & (b) for consent to injury to other than an instream water right, the applicant must</p>	<p>Change made.</p>

		<p>also submit to OWRD an affidavit from every holder of the injured. Therefore, -5030(1) is restructured to clarify that, following issuance of the IR but prior to OWRD making a determination of whether it will consent to injury and approve the application, the applicant must do three things:</p> <ol style="list-style-type: none"> 1) Notify OWRD that they intend to request consent to injury; 2) Notify OWRD that they understand that, upon receiving the list of injured water rights/contact info from OWRD, they'll be required to submit an affidavit of consent from every holder of the injured water rights; and 3) Submit affidavits of consent to OWRD that conform to the requirements of 690-380-5040 from every holder of the injured water rights. <p>Related to -5030(2): The structure of -5030(2) for consent to injury to an instream water right was also modified to clearly include the requirement that the applicant, in response to issuance of the IR under -4000, must notify OWRD that they intend to request consent to injury to the instream water right as outlined in 690-380-4000(8)(b).</p>	
Affidavits of Consent -5040	OWRD staff proposed change – Existing introductory language in 690-380-5040 is inconsistent with existing language in 690-380-5040(4), as it relates to proposed changes in point of diversion/appropriation.	Added “or appropriation” immediately following “point of diversion.	Change made.
Consent to injury;	Kimberley Priestley (RAC; WW) - We strongly support the change from “shall” to “may”, as “may” explicitly tracks the governing statute. This is critically important	OWRD agrees that use of the word “may” in the draft proposed rule language, both in -5030 and in -5050(8), clearly conveys that OWRD has	No change made.

<p>instream water rights -5050(8)</p>	<p>because the statute is very clear that even if the recommending agency consents to injury, OWRD still retains the discretion to deny the consent to injury on its own volition. Consenting to injury is wholly discretionary to all agencies involved; the agencies can decline to consent for any reason.</p> <p>In addition to this change, we repeat our comments of V1, which is that this section needs quite a bit of further work to ensure that it is consistent with statute and that there is a robust and transparent process related to consent to injury to an instream water right. The rules need to be reworked to make clear the following provisions of statute are clear:</p> <ul style="list-style-type: none"> • The agency requesting the instream water right has wide discretion to not consent to injury of the instream water right. The statute does not require any findings and/or explanation as to why the agency is choosing not to consent. All is required is that they tell OWRD it does not consent. • The OWRD has a trust duty to the people of the State of Oregon for whose benefit the Department holds in trust the instream water right to maintain water instream for public use pursuant to ORS 537.332(3). The CTI rules need to include a determination (and findings) of whether the OWRD’s decision fulfills its trust obligations. • We also suggest the OWRD consider providing direction on consideration of whether a proposed change is for the purpose of implementing a restoration project; which was the original intent of the statute. • The factors for an agency to review if they chose to go forward and consider a consent to injury should be clarified in rule (e.g. ODFW’s internal guidelines should 	<p>discretion to either approve or deny a consent to injury transfer.</p> <p>Other items raised in this comment require more analysis and more thorough discussion and are beyond the scope and time for this rulemaking.</p>	
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	<p>be incorporated for ODFW requested instream water rights).</p> <ul style="list-style-type: none"> To the extent the requested transfer application is for a larger project, the agency must evaluate all related water rights/applications, transfers/applications and other relevant factors related to the project. <p>We have offered some initial language for consideration in Appendix A (attached to our comments if V1), but these likely need more refinement and discussion.</p>		
Beneficial Use			
Proof of use -6030 Div 14	Kimberley Priestley (RAC; WW) - OWRD should add language that makes clear that if a COBU prepared by a CWRE is not submitted within the time required under Div 14, the water right will be cancelled.	The item raised in this comment requires more analysis and more thorough discussion. Beyond the scope and time for this rulemaking.	No change made.
Permit Amendments			
Permit amendments; type -7000 -7010(1)(c)	Kimberley Priestley (RAC; WW) - The statutes only allow for “change” in point of diversions, not “additional points of diversion”: The permit amendment statutes allow for “a change” in point of diversion; they do not allow for expansion of one point of diversion to allow “additional” points of diversions. A change means a substitution, not an expansion or addition. OAR 690-380-7000, read in conjunction with OAR 690-380-7010, allows “additional” points of diversion, which is not allowed by law. OWRD response to our V1 comments on this was that this request falls outside the scope of this rulemaking. We strongly disagree. The existing rules are in direct conflict with statute; thus the noted language should be removed as part of the OWRD’s efforts to align rules with statute. As is, these rules allow a huge loophole to public interest permitting requirements that would otherwise apply to the	OWRD does not agree with the interpretation that the statutes prohibit additional points of diversion as part of a permit amendment. OWRD does not consider adding a point of diversion through a permit amendment to be an expansion of the right since the total quantity of water that may be diverted under the right is limited by the authorized rate and duty specified in the right.	No change made.

	<p>multiple points of diversion a water right holder ultimately seeks.</p> <p>Please delete “or additional point(s) of diversion” as this practice is not allowed by statute. See argument in -7000 above.</p>		
<p>Change of source from SW to GW -7020</p>	<p>Kimberley Priestley (RAC; WW) - The language and intent of the governing statute is to allow a surface water right holder to change their source to groundwater, not to allow both. As such, this section needs to clarify that it is a change from POD to POA, not an addition of a POA to the existing POD. The rule language as written is not clear on this. We would suggest the words “instead of surface water” follow “appropriation of groundwater” in the first sentence. We do not believe it is redundant to state this clearly here.</p>	<p>OAR 690-380-7020(1) specifies that this type of change may be allowed, provided the requirements outlined in OAR 690-380-2130(2) to (11) are met. OAR 690-380-2130(7), states that the original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion for the portion of the water right transferred. OWRD added to “instead of surface water” and also clarified that it could be a portion thereof, as the proposed change may only be a portion of the permit.</p>	<p>Partial change made.</p>
<p>-7020</p>	<p>OWRD staff proposed change. -7020 as originally drafted was a very long sentence that was hard to understand.</p>	<p>OWRD made changes to make the rule more succinct and improve readability. OWRD removed rule and statute references to definitions which are unnecessary.</p>	<p>Change made.</p>
<p>Permit amendments; requirements -7100(17)</p>	<p>Kimberley Priestley (RAC; WW) - Same comments as V1/V2: The OWRD should require a notarized oath, not just an “oath”. Penalties should apply to anyone who makes false statements on an application. OWRD response to comments was that this falls outside of the scope of this rulemaking. We feel it does fall within the scope of efficiencies; OWRD wastes time and resources when applicants and/or water right holders make false statements.</p>	<p>This proposed rule language for permit amendments identically matches existing rule language for applications for transfer at -3000. Requiring that an applicant engage the services of a notary public prior to submitting an application would impose an additional burden on applicants without a clear link to reducing the risk of false statements. A notary verifies someone’s identity and that the person is not being coerced into signing a document but does not verify that all statements are true and accurate.</p>	<p>No change made.</p>

<p>Notice of amendment -7200</p>	<p>Kimberley Priestley (RAC; WW) - Same comments as V1/V2: These rules should include the public process afforded other water right transactions (IR/comment, PFO/Protest, Protest/Petition for party status). OWRD said this is out of scope of the rulemaking, but we will note that OWRD did change the hydro rules (Div 53, 54) to allow IR/comment, PFO/protest/party status even though that is not subject to HB 3544. It seems that the same logic would apply here.</p>	<p>OWRD did not change hydro to include IR/comment. Hydro already had a PFO and protest period within the rules. Unlike hydro, this would require significant restructuring of the rule as well as the department’s current process. Further, permit amendments need to be completed timely as it needs to be done within the completion date.</p>	<p>No change made.</p>
<p>Amendment FO -7300(1)(h)</p>	<p>Kimberley Priestley (RAC; WW) - As we noted in comments to V1 and V2: In addition to injury and enlargement, the rules should make clear that the permit amendment must also comply with all other applicable laws; not just those narrowly directed at permit amendments. For example, OWRD could not approve a permit amendment that would result in a dam or diversion structure being built in a Scenic Waterway (which would violate the statutory mandates of the Scenic Waterway Act.</p>	<p>Please see OWRD response to comments provided by Kimberley Priestly (RAC; WW) on - 4000(3)(g) above.</p>	<p>No change made.</p>
<p>Enlargement</p>			
<p>-0100(2)(c)</p>	<p>Anton Chiono (RAC; CTUIR) - Under the definition of "enlargement" in OAR 690-380-0100, we appreciate that you were responsive to our earlier comments and included our proposed insertion (underlined) to (2)(c), such that it read: (c) Failing to keep the original place of use from receiving water from the same source <u>under the same water right</u>: However, in the final proposed rule, this revision was removed. We ask that you please restore this inserted language. Specifying that a POU may not be transferred if it continues receiving water from the same source <u>under the same water right</u> would help clarify what the "same source" entails, i.e., the source listed on the</p>	<p>OWRD continues to have concerns about the requested changes to the rules and does not recommend inclusion. When reviewing a transfer application, OWRD evaluates for both evidence of beneficial water use under the water right proposed for transfer, injury, as well as enlargement. In regards to proposals to make changes to the place of use of water rights, regardless of whether the change is instream or out-of-stream, OWRD has a long-standing practice of requiring the lands from which a water right is removed to be “dried up” following approval of</p>	<p>No change made.</p>

	<p>water right. This would provide much clearer guidance to watermasters in their transfer reviews and improve the process for all involved. Such a clarification is minor and uncontroversial, and necessary only in 690-380-0100(2)(c) and the newly added rule language in 690-380-2200(2). As transfer applications increase with the dwindling availability of water, this minor-but critical-clarification to Division 380 will forestall considerable problems going forward.</p> <p>Please see full letter for discussion re: “Problem with Current Rules”: (1) groundwater is not the same “source” as surface water; (2) continued sub-irrigation from another “source” is not enlargement; (3) a valid water right is entitled to its full rate and duty at its point of diversion.</p> <p>We think the more likely actual intent of the original rule language in OAR 690-380- 0100(2)(c) was to prevent the enlargement of a water right that would arise if the same source of water specified on the water right were diverted and applied to both the original POU and the new POU to which the right is being transferred. This is a common sense, plain-language reading of the rule. And, indeed, such a practice would 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. Nonetheless, the current lack of clarity on what constitutes "same source" has led to wildly different interpretations of this rule and an unequal application of the law. Thankfully, the remedy is easy, minor, and non-controversial. It is also very compatible with the agency's stated goals for this rulemaking, which included "tak[ing] the opportunity to make other policy and process improvements to impacted rule divisions."</p>	<p>the proposed change. Failing to prevent the original place of use (i.e., the “FROM” lands) from continuing to receive water from the same water source at the same time the water is being used at the new place of use constitutes enlargement.</p> <p>OWRD is interested in continuing discussions with the tribe after this rulemaking is complete as we believe that the rule change is not the proper mechanism to address the concern. We met with Mr. Chiono in early February and we believe that with further discussions with our staff and with Mr. Chiono that there may be other ways to address the concerns we heard that are driving the request for the rule change.</p>	
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-0100(2)(c)	Kimberley Priestley (RAC; WW) - We urge the OWRD to reinsert the qualifier “under the same water right” to the end of subparagraph 690-380-0100 2(c) that was in the V2 version.	Please see OWRD response to comments provided by Anton Chiono (RAC; CTUIR) on - 0100(2)(c) above.	No change made.
-0100(2)(c); -2200(2)	<p>James Fraser (RAC; TU) - Trout Unlimited respectfully requests that WRD revise OAR 690-380-0100(2) (c) and OAR 690-380-2200 (2) by adding a clarification that landowners may transfer water instream from sub-irrigated acres. Please see full letter for background discussion.</p> <p>-0100(2)(c) - Input/Concern: TU shares the concerns elaborated by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in letter dated 11/5/25 and other comments. WRD had subsequently revised the clause to add "under the same water right" and TU appreciated that clarification. Unfortunately this language is now removed in the proposed rule package. Proposed Rule Language/Description of Proposed Fix: Add back the new language "under the same water right" or add CTUIR's proposed "diverted and applied" language. With this edit, the language in the Notice would read (edit in bold): “Failing to keep the original place of use from receiving water under the same water right (alternatively: diverted and applied) from the same source; or”</p> <p>-2200(2) TU commented in our December 5, 2025 letter that WRD should revise 2200 to match the Department's clarification in 0100, but we do not see that edit in the final rule package. Proposed Rule Language/Description of Proposed Fix:</p>	Please see OWRD response to comments provided by Anton Chiono (RAC; CTUIR) on - 0100(2)(c) above.	No change made.

	<p>Add "under the same water right" or similar language to match 0100(2) (c). With this edit, the language in the Notice would read (edit in bold):</p> <p>"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 under the same water right (alternatively: diverted and applied) from the same source.</p>		
<p>-0100(2)(c) -4010(2)(e) (Div 380, 77)</p>	<p>Gen Hubert (RAC; DRC) - 690-380-0100(2) and 4010(2)(e) – review for injury and enlargement should be the same for Division 380 and Division 77. Division 077-0075 provides far more detail regarding this review. We suggest either Division 77 should be updated to the same less descriptive review as Division 380 or Division 380 should be updated to the more descriptive review under Division 77.</p>	<p>Since the same details are considered as part of OWRD’s injury and enlargement evaluation regardless of whether an application for a Div. 380 permanent transfer or a Div. 77 instream transfer is being reviewed, OWRD agrees that consistent criteria between the two rule divisions makes sense. OWRD does not want to remove the detailed review criteria in Div. 77 as it articulates what the department does (both for 77 and 380). The ideal situation would be to add it to 380 so that 380 is more transparent about what we already do. OWRD is concerned that this matter may be outside of the scope of the notice for Div. 380 as it adds review criteria to the rule that was not included in the notice. Therefore, while we think it would be ideal to have consistent language, we believe it to be outside of the scope of the rule notice.</p>	<p>No change made</p>
<p>Land Use Compatibility</p>			

<p>General (Div 380, 310)</p>	<p>Jeremy Austin (RAC; COLW) - As stated in our comments on Div 310, we want to emphasize that in order to comply with ORS 197.180(1), the proposed rule language should require a final land use decision from a local government before approving a proposed transfer. This includes exhaustion of the administrative appeal process for a land use approval. We would recommend this requirement be included as a criteria for approval in the PFO subsection, 690-380-4010, or other subsection that OWRD deems appropriate.</p>	<p>OWRD’s Chapter 690, Division 5 rules define “Land Use Approval” to mean “a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired.”</p> <p>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 began with the February 2026 Commission meeting.</p>	<p>No change made.</p>
<p>Land use -5100(3)</p>	<p>Kimberley Priestley (RAC; WW) - We support the proposed deletion.</p>	<p>Comment in support</p>	<p>No change made.</p>
<p>Land use -3000(19) -7100(14) -8003(2)(d) (Div 380, 310)</p>	<p>Jeremy Austin (RAC; COLW) - See LandWatch’s comments above on OAR 690-310-0040(1)(a)(L). The current 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 rule omits the critical language “and land use regulations.”</p> <p>Further, this rule division includes an exception to demonstrating compatibility with local land use regulations for transfers that meet four specified criteria.</p>	<p>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.</p> <p>OWRD acknowledges that OAR Chapter 690, Division 5 does not contain a definition of</p>	<p>No change made.</p>

	<p>LandWatch questions the merits of the exceptions and ask OWRD to reconsider retaining this in rule. The exception applies to transfers on lands zoned EFU or within irrigation districts. In our experience in the Deschutes Basin, these lands are both where the majority of water rights exist, and also where many of the most controversial and complicated land use disputes arise. Further, there is nothing in the permit amendment statute that allows for these exceptions. These factors lead us to question why these lands are excepted from the otherwise applicable requirement for land use compatibility for water right transfers. We understand that the other three criteria mean the exception does not apply to all proposed transfers in EFU zones and irrigation districts, as some of those transfers involve a change other than in the place of use, a placement or modification of a structure, and do not involve irrigation water uses only. Still, we question how many proposed transfers, and what volume of our basin's precious water resources, are exempt from land use compatibility requirements largely because they are proposed in EFU zones or in irrigation districts. Many lands within Deschutes Basin irrigation districts are not zoned EFU. Some of these lands are inside urban growth boundaries; some are zoned for rural residential use. Transfers of water between these lands should be required to demonstrate compatibility with local land use regulations. As an example, consider a proposed transfer of irrigation water historically applied to rural EFU land to an irrigation use inside an urban growth boundary. A showing of compatibility with local comprehensive plans and land use regulations is likely more important to fulfill the Departments</p>	<p>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 exceptions to providing land use information outlined in the proposed rules under -7100(14)(a)-(d) and -8003(2)(d) for permit amendments and temporary transfer renewals mirror the exceptions specified for other transfer processes in Divisions 380 & 382, including existing rules for new temporary transfers under -8002(1)(a) and -8004(1)(a), for purposes of consistency and efficiency. While none of the transfer statutes – including groundwater registration modifications and permit amendments – specifically call out land use requirements or exceptions to land use, we still require land use compatibility and consistency as part of the applications for these processes. The four specified criteria for an exception are derived nearly verbatim from the Department's Division 5 rules at -0025 and the Department's Land Use Planning Procedures Guide. 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 began with the February 2026 Commission meeting.</p>	
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	responsibilities under ORS 197.180 in this scenario than other, non-expected situations. We recommend the Department require a showing of compatibility with local comprehensive plans and land use regulations for all transfers and not continue to provide an exception to this showing for certain lands, especially absent a rationale for why this exemption supports the State's responsibility to steward our public water resource.		
Land Use -7100(14)	Kimberley Priestley (RAC; WW) - There is nothing in the permit amendment statute that allows for the exceptions spelled out in (14)(a)-(d).	See response to Jeremy Austin above.	No change made.
Other			
General (Div 18, 77, 380)	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.	Comment in support.	No change made.
Div 380; notice of transfer	Richard Smith - The current and proposed notification procedure are both inadequate. By the time a property owner becomes aware that a transfer or new water right have been applied for it is almost always too late to make a public comment. All well owners within a one mile radius of the proposed POA should be notified by usps mail well in advance of the allotted time for comment.	The "notice" process for permanent transfers is outlined in the draft proposed rules under 690-380-4005 (Request for Comments) and 690-380-4020 (Notice of Proposed Final Order). The proposed rules implement the notification requirements in 2025 legislation (HB 3342). Notifying all well owners within a one-mile radius of a proposed POA would add a level of time and cost that would be inconsistent with	No change made.

	<p>I have personally been very negatively affected by the lack of notification and forced to drill a new well.</p>	<p>the rulemaking’s intent to streamline processes. The best way for a landowner to protect their interests is to follow OWRD’s public notice publication. If there are other options that are timely and cost effective, the Department is open to exploring that, but as of now, that is outside of the scope of this rule change.</p>	
<p>Div 380; dam exemption/ data centers; EO</p>	<p>Gordon Jones (Bend Hearing; summarized from transcript) - I just learned that the there's a new Governor's Task Force that's going to be dealing with data centers and energy, and [for] both those, water has historically been used as an energy resource, and data centers require a lot of water used as well. So, I think probably Division 380, the water rights transfers, is my major concern for this rulemaking process.</p> <p>I'm concerned that there's going to be a lot of pressure on Oregon Department of Water Resources for transferring water rights and acquiring water rights and utilizing our rivers and streams as locations for data centers as they have already been used or in the state in many cases.</p> <p>[Page 6 of the Information Handout] clarifies the process applies to surface water now not groundwater, does not apply to changing the location of a dam. At least the word “dam” is in that paragraph for some reason, and I'm not sure why that is. [I have] been involved in the removal of the four dams on the Clackamas River, and I'm a property owner on the Upper Deschutes National Wildlife Refuge. [I have] been involved with OSU a little bit on that dam removal process and [after seeing] how successful it is. I'm an advocate for removing dams, not putting any more dams in.</p> <p>I'm also an advocate for keeping our rivers free flowing and trying to manage our surface water and our</p>	<p>As it relates to the Div. 380 rulemaking, it appears this comment makes reference to the proposed changes to OAR 690-380-2120 (Change in Point of Diversion to Reflect Historical Use). Specifically, the comment mentions changes to clarify that this rule would not apply to groundwater point of appropriation changes and that this rule cannot be used to change the location of an on-channel dam for a water right certificate that authorizes the storage of water. Due to the complex nature of on-channel reservoir permitting, OWRD felt it prudent to clearly identify that on-channel dams cannot be changed through this process; instead, those would need to go through the standard transfer review process.</p> <p>This comment also touches on the potential for transferring water rights so they can be used for data centers. The “historic” transfer process can only be used to administratively change the authorized point of diversion location to the actual, current point of diversion that has been in place for 10 or more years. No change is the character or type of use of a water right is allowed under this rule. Additionally, a fundamental requirement of any water right transfer is that it cannot enlarge the water right</p>	<p>No change made.</p>

	<p>groundwater as carefully and diligently as we possibly can, so that we can preserve the waterways as free flowing. And being waterways that [were] before salmon runs and free flowing arteries, if you will, for the whole state not utilized so much as cooling systems for data centers is one of my main concerns.</p> <p>And I also would like to that's [what my concern is. I think a little more explanation on that particular policy and process, and how it relates to the Governor's Task Force would be interesting.</p>	<p>being transferred and it cannot result in injury to other, existing water rights.</p> <p>The remainder of this comment focuses on issues and policies that fall outside the scope of this rulemaking effort.</p>	
Minor			
-0090	OWRD Staff Proposed Change - The rules in this division apply to applications submitted on or after April 1, 2026...not just after April 1.	Based on the language in Section 21b, ch 575, Oregon Laws 2025, it should state "...on or after April 1, 2026..."	Change made.
Copy/paste error -2330(2)	OWRD Staff Proposed Change – Delete “or expansion.”	This is a copy and paste error. Expansion is the same as enlargement. Delete expansion.	No changes made.
-3410	OWRD Staff Proposed Change - Remove this rule from the notice.	The only change needed was a statutory minor correction to update a statutory number reference. Staff already took care of the minor correction, so no further change needed. It will not be included in the final rule filing.	To be removed from filing.
Grammar/word omission -4000(8)(b)	OWRD Staff Proposed Change: grammatical error and missing word identified.	Deleted an extra space between the words “to” and “request.” Inserted the word “right” between the words “water” and “pursuant.”	Changes made.
Out of Scope (not included in notice)			
Municipal -2410(1)	Kimberley Priestley (RAC; WW) - (1): Please add the term “municipal” before “beneficial use” to make clear these exceptions only apply to ordinary municipal beneficial uses, not other water rights that might be held by a municipality.	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. -2410 was not included in the notice.	No change made.

	<p>Please return the V2 provision making clear the change cannot injure other water rights.</p> <p>Either in this section, the Div 380 definitions, or the Div 300 rules the OWRD needs to insert a definition of “municipality”. The allowances noted in OAR 690-380-2410, are governed by ORS 540.510(3)(b), which defines and limits municipality to:</p> <ul style="list-style-type: none"> • As used in this subsection, “municipality” means a city, a port formed under ORS 777.005 (Definitions for ORS 777.005 to 777.725 and 777.915 to 777.953) to 777.725 (Borrowing money to pay bonus), 777.915 (Definitions for ORS 777.915 to 777.953) to 777.953 (Annexation) and 778.010 (District known as Port of Portland), a domestic water supply district formed under ORS chapter 264, a water supplier as defined in ORS 448.115 (Definitions for ORS 448.115 to 448.285) or a water authority formed under ORS chapter 450. 		
Municipal -2410 ; definitions in 380 or 300.	<p>Kimberley Priestley (RAC; WW)</p> <p>Either in this section, the Div 380 definitions, or the Div 300 rules the OWRD needs to insert a definition of “municipality”.</p>	<p>Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. -2410 was not included in the notice. See response in regards to 690-300. In addition, the definition of municipality varies across statutes (ORS 537.260(4) and ORS 540.510(3)) and rule divisions. Harmonizing these definitions and ensuring there are no unintended consequences is beyond the scope of this rulemaking effort.</p>	No change made.
Time for completion -5140(2)	<p>Kimberley Priestley (RAC; WW) - Please strike. The transfer statutes do not allow for extensions of time.</p>	<p>Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.</p>	No change made.

Failure to complete/ cancellation -6010	Kimberley Priestley (RAC; WW) - We strongly support the OWRD's V3 reversion to the original language in rule; the language changes proposed in V2 were not supported by statute.	Comment in support. Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.	No change made.
Time extension -6020	Kimberley Priestley (RAC; WW) - We are unaware of any statutory authority for extensions of time to complete transfers. This section should be deleted. One purpose of this rulemaking is to align old rules with statute, given that there is no statutory authority for this deleting it is within the scope of the rulemaking. That said, if the OWRD allows this to remain, it should be modified so that any extension must align with the standards in OAR 690-315 (e.g. good cause, etc); absent that, transfers can be used as loopholes to extension laws that were meant to curb speculation.	Outside the scope of this rulemaking. The Department cannot make changes to rules that were not included in the notice of proposed rulemaking. This rule section was not included in the notice.	No change made.
-0010	OWRD staff proposed change. Permit amendment rules were added to this division but are not identified in the purpose of the rules in 0010(1). This rule also references "temporary change in characters of use of a right to store water" which incorrect.	Added: These rules also establish requirements for changes to a water use permit pursuant to ORS 537.211(4). This rule is amended to remove temporary change in character of use of a right to store water because ORS 540.523 does not provide this authority.	Change made.
-3000 (12)(c)	OWRD staff proposed change. Rule division does not reflect division 17 rules related to forfeiture and new exemptions in statute.	OWRD incorporated statutes that have been added to the Division 17 rules as exemptions from forfeiture. "If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2), or is exempt under ORS 540.610(3)-4 or 540.612. "	Change made.