

Division 380 WATER RIGHT TRANSFERS - Revision Tracker

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
690-380 General	RACM - contested case portions of the proposed rules that connect back to Division 2 also incorporate other provisions and those should be referenced as well,	OWRD is not clear on what the ask is for changes.	Complete. No change made.
Combined comments on land use compatibility issue 690-018-0040(22)(a), - 018-0050(3)(c), - 310-0040(1)(a)(L), - 380-3000(19), - 380-7100(14), - 380-8003(2)(d), -382-0400(12)	RACM – See detailed comments from Leah Cogan (several paragraphs so not pasting here). RACM Recommendation - For the provisions relating to application requirements (690-018-0040(22)(a), 690-310-0040(1)(a)(L), 690-380-3000(19), 690-380-7100(14), 690-380-8003(2)(d), and 690-382-0400(12)): “A Land Use Information Form completed by the affected local government as outlined in the Department’s Land Use Planning Procedures Guide described in OAR 690-005-0035(4).” RACM RECOMMENDATION - Retain original language in 3000(19) and use similar language in 7100(14) and 8003(2)(d).	Under Review - Pending final language on land use.	Under review - No changes made at this time.
690-380-0100	RACM – Do Division 300 definitions apply to Division 380?	Yes. Please see OAR 690-300-0010 for applicability of Div. 300 definitions.	Complete. No change made.
690-380-0100(2), (3); 690-380-4000(3)(d), (e)	RACM - Injury and enlargement review and losses through a reach for instream transfers are very thoroughly outlined in 690-077-0075(3) but are not outlined for a change in	OWRD reduces the amount of water that may be transferred to account for known areas of natural loss of streamflow or to account for the loss of known return flows to the source. Requiring more stringent requirements for instream	Complete. No change made.

	<p>POD for water users. Instream has more stringent measurement requirements and reach loss tracking. These should be the same for both instream and POD transfers.</p> <p>RACM - Consider that injury and enlargement reviews and reach loss reviews should be consistent for transfers under Division 380 and Division 77.</p>	<p>measurements and for reach loss tracking, is outside of the scope of this rulemaking effort. No change made.</p>	
690-380-0100(2)(c)	<p>RACM - The ambiguity in this language has created inconsistencies in the administration of water right transfers across the state. Some watermasters have interpreted this as disqualifying any place of use (POU) transfer if a field is within the same floodplain as its surface water source stream. The rationale has been that these fields continue to receive shallow groundwater that sub-irrigates the place of use, and that this shallow groundwater is the same “source” as the surface water diverted to irrigate those fields, thereby precluding them from transfer eligibility.</p> <p>This interpretation is problematic in that it has allowed Oregon Water Resources Department to inappropriately bias the ways in which a water right holder may put their water to legal beneficial use, which clearly is not the agency’s place. For instance, if a water right holder is approaching five</p>	<p>The Department’s view as it relates to this comment is that when a water right’s authorized place of use is being sub-irrigated, then the land is not benefitting from the application of water from the source allowed by the water right. In other words, beneficial use of the water right is not occurring on the place of use that is naturally wet/sub-irrigated. This is supported by ORS 540.610(1) which states, “<i>Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state...</i>” Allowing the transfer of sub-irrigated lands to different lands that are not sub-irrigated essentially results in an increase of the acreage irrigated under the water right, which is not allowed because that is enlargement [please see OAR 690-380-0100(2)(b)].</p> <p>When there are known areas of sub-irrigation located on the authorized place of use, transfer caseworkers are alerted by the local watermaster that based upon their on-the-ground knowledge of the local area it is believed that the authorized place of use is incapable of receiving water for beneficial use under the subject water right because the place of use in question is inundated with water via sub-irrigation. There are often subsequent site visits by the local watermaster to confirm and establish</p>	<p>Complete. Change made; however, the recommended changes were not used. v2 draft.</p> <p>Will include for discussion at RAC Mtg.</p>

	<p>consecutive years of non-use, an instream lease is a convenient way in which a water right holder may put their water right to legal beneficial use and reset the five-year “forfeiture clock.” However, if the agency refuses to recognize the transfer eligibility of a water right in the floodplain of the source stream, then the water right holder has had the legal beneficial uses available to them inappropriately proscribed by the agency, which, again, is not the agency’s place. In such an instance, the water right holder would be forced to divert and apply the water right to their place of use or otherwise face forfeiture for non-use. This interpretation clearly creates a double standard, but because of the ambiguity in the rule language, it is one that is encountered all too often. We think the more likely actual intent of this language is to prevent the enlargement of a water right that would arise from the same source water being diverted and applied to both the original POU and the new POU to which the right is being transferred. Such a practice would indeed result in more water being diverted from the stream than the water right holder is legally entitled to, thereby enlarging the right and depriving others of water to which they are legally entitled. The addition of “diverted and applied” to the definition would resolve</p>	<p>the number of acres that are sub-irrigated.</p> <p>Changes made in OAR 690-380-0100(2)(c) to provide more clarity; however, the recommended changes were not used.</p>	
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	<p>this problematic ambiguity and clarify that acres are eligible for a POU transfer if water can be kept from being diverted and applied from the same source.</p> <p>RACM RECOMMENDATION - Under the definition of “Enlargement”, we ask for the following (underlined) addition to (2)(c):</p> <p>(c) Failing to keep the original place of use from receiving water <u>diverted and applied</u> from the same source;</p>		
690-380-0100(3)	<p>RACM - We do not agree that the statutory meaning of “injury” is as limited as the definition in this rule. The definition should also include, at least, any impairment of access to the previously available water or any impairment of the beneficial use served by a water right.</p>	<p>OWRD believes the definition of “injury” in the v1 draft proposed rules is sufficient. OWRD’s regulatory operations are tied to the authorized POD/POA from the SW/GW source. If water is available at the source but there is some issue in accessing the POD/POA or running water down a ditch, then that is not injury and is outside of OWRD’s purview. It is the water right holder’s responsibility to build the infrastructure, obtain easements, etc. that are necessary in order to convey the water from the authorized POD/POA at the source to the water right holder’s place of use.</p>	Complete. No change made.
690-380-2110(2) 9/29-	<p>WRD - Rule does not point to a specific definition of “aquifer.” At least 2 definitions exist in rule.</p> <p>STAFF RECOMMENDATION - GW’s preference would be to include a reference to the definition of “aquifer” in 690-200-0050(9) as the most specific, protective, and technically defensible definition already in rule. Alternatively, add an identical definition to OAR 690-380-0100.</p> <p>“...A change in point of appropriation under a water</p>	Change made.	Complete. Change made. v2 draft.

	right or certificate of registration is restricted to the same aquifer <u>as defined in OAR 690-200-0050(9).</u>		
690-380-2110(3); 690-380-2120(5)(b)	<p>RACM - Support the addition of (3) and the language clarifying OWRD's ability to condition a water right transfer to protect against injury and enlargement that may occur. As discussed in the RAC, also support removing "the potential for".</p> <p>RACM RECOMMENDATION - This should be evident with "that may occur".</p>	Changes made to address comments. See OAR 690-380-2110(3) and OAR 690-380-2120(5)(b).	Complete. Changes made. v2 draft.
690-380-2110(3)	<p>RACM (#1)- We strongly support the addition of language that clarifies the OWRD's ability to condition the transfer to protect against potential injury and enlargement.</p> <p>RACM (#2)- One RAC member noted that injury is more explicitly called out in statute than enlargement and asked if enlargement can cause injury.</p> <p>RACM (#3)- One RAC member noted that referencing "enlargement" explicitly in rule is not a larger standard, requiring protection of the public; rather the focus is on injury to junior users.</p> <p>RACM (#4)- One RAC member noted that conditioning a transfer to protect against "enlargement" is not in statute and asked about the reasoning for its inclusion in the rules.</p>	<p><u>OWRD RESPONSE DURING RAC:</u></p> <p>RACM comments #2 & #3 – The Department responded that it was possible. One scenario might be when a senior user enlarges to the detriment of a junior user.</p> <p>RACM comments #4 – The Department is clarifying its current practice in rule. The Department explained that it considers both; authority to include enlargement along with injury comes from the doctrine of prior appropriation where users are allocated a certain amount water for beneficial use, and that amount cannot be enlarged through a transfer.</p> <p>RACM comments #5 – The Department will review but notes that federal (Clean Water Act) implementation through state statute and rule differs from water rights conditioning because the latter is based on state prior appropriation law implemented through state statute.</p> <p>RACM comments #6 – The Department noted that "potential" enlargement or injury is mitigated</p>	<p>Complete. Partial changes made. v2 draft.</p> <p>Will include for discussion at RAC Mtg.</p>

	<p>RACM (#5)- A RAC member recommended looking at DEQ's conditioning of NPDES Permits, to see if that approach could work here.</p> <p>RACM (#6)-RAC members discussed inclusion of the word "potential" when evaluating and conditioning a transfer to protect against enlargement. Some suggested either removing the word entirely or using "likely" instead to make it clear that the Department is looking at direct enlargement resulting from the proposed change. A RAC member also noted that sometimes applications cannot be approved without conditioning to mitigate for injury or enlargement. Another RAC member noted the similarity with how DEQ conditions NPDES permits.</p> <p>RACM (#7)- A RAC member noted that some of the proposed rule language was not appropriate for rules and suggested it could remain in a checklist for efficiency.</p> <p>RACM (#8)- One RAC member asked for an example of conditioning to protect from injury or enlargement.</p>	<p>by conditions. Conditions are side boards to ensure that enlargement or injury do not happen are often included so that the Department can approve an application. The Department will evaluate whether likely would be a good replacement.</p> <p>RACM comments #7 – The Department will review this recommendation.</p> <p>RACM comments #8 – Examples of conditions include restrictions on how much water can be diverted. Conditions on existing permits get carried over with the transfer.</p> <p><u>OWRD POST RAC:</u> RACM comments (#2, #3, #4 – Response provided during RAC Mtg is adequate.</p> <p>RACM comment #5 – Thank you for this comment. OWRD has made note of it.</p> <p>RACM comment #6 – Change made in OAR 690-380-2110(3).</p> <p>RACM comment #7 – Transfer review checklists already incorporate items/questions to check for likelihood of injury and enlargement.</p> <p>RACM comment #8 – Other examples of conditions included in Transfer final orders to prevent injury or enlargement include:</p> <ul style="list-style-type: none"> • Requiring FROM lands to be "dried up" so that they no longer receive water from the same source under the same water right. • Requiring installation of a totalizing flow meter (may apply to both FROM & TO PODs/POAs) 	
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		<ul style="list-style-type: none"> Reducing the quantity of water that may be transferred to account for loss of return flows of losing reaches in a stream (if moving a POD downstream). 	
690-380-2120 Title	<p>RACM - One RAC member noted that the addition of “appropriation” in the rule title was potentially out of scope for the rule section and not in alignment with ORS 540.532.</p> <p>Another RAC member inquired as to whether groundwater point of appropriations (POA) received adequate review.</p>	<p>RACM comments related to inclusion of groundwater in this rule – Based on the statutory language and requirements throughout ORS 540.532, it appears the statute is solely focused on historic surface water point of diversion changes. Changes made throughout OAR 690-380-2120 to remove groundwater.</p> <p>RACM comments related to adequate review of Historic GW POAs – As noted during the RAC, past practice was to include GW point of appropriation under the Historic Transfer process and as part of the evaluation, the proposed change was reviewed by the Department’s Groundwater Section to ensure the wells (original and historic) develop the same aquifer.</p>	Complete. Changes made. v2 draft.
690-380-2120 General 9/29	<p>RACM - The OWRD is proposing to expand this section to allow for changes in “point of appropriation” to reflect historical use. WaterWatch strongly opposes this suggestion. The statute governing these changes is very clearly limited to surface water diversions. See ORS 540.532. Not only is the language limited to “diversions”, but the context of the entire section of law supports this point in that every request has to go to ODFW to determine whether it is equipped with a proper screening device or</p>	<p>RACM comments related to inclusion of groundwater in this rule – Based on the statutory language and requirements throughout ORS 540.532, it appears the statute is solely focused on historic surface water point of diversion changes. Changes made throughout OAR 690-380-2120 to remove groundwater.</p> <p>RACM comments related to reservoir water rights – OWRD added language in OAR 690-380-2120(1) to address this comment.</p>	Complete. Changes made. v2 draft.

	<p>is on the priority list of screening projects. ORS 540.532(3) and (4). Groundwater wells do not have fish screens. As discussed in the RAC, expanding to groundwater will open a huge loophole that could encourage illegal use of groundwater. The statute allows changes absent going through the transfer statute after only 10 years, meaning someone could purposefully engage in illegal use and, if not caught during that time by the very understaffed OWRD field division, could use this rule to get around transfer statutes. The OWRD noted that the body of the existing rule already allows this; this fact does not change the fact it is very clearly not allowed by law. One purpose of this rulemaking is to ensure that existing rules are compliant and aligned with their governing statutes, we urge the OWRD to narrow the rule to provisions allowed in governing statute so that the rule applies to surface water only.</p> <p>RACM - LandWatch does not support including points of appropriation to reflect historic use in this rule section. While we recognize that the existing rule includes language related to point of appropriation, this language is not supported by statute. For example, ORS 540.532 does not use the term “appropriation.”</p>		
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	<p>Further ORS 540.532(3) – ORS 540.532(6) relates to OWRD’s obligation to consult with ODFW on fish screening or bypass devices on surface waters. No analogous consultation provisions related to points of appropriation or groundwater are discussed.</p> <p>RACM RECOMMENDATION</p> <p>- We recognize that this rule change is being driven in part by the Department’s current practices. However, given the inconsistency with current statute, we recommend that references to point of appropriation be removed from this rule section.</p> <p>RACM - New section: please clarify that this section does not apply to reservoir permits so that on channel dams (instream POD) cannot somehow use this as a loophole.</p> <p>RACM - We are concerned with the proposal to expand this section to groundwater via this Rules Advisory Committee. The statute enabling a point of diversion (POD) change under ORS 540.532 appears to very specifically apply only to surface water rights. If it is the will of the Legislature to extend this authority to groundwater rights, we believe the change should be made in the enabling statute via legislation, not here in the rulemaking process. We continue to see excessive groundwater use</p>		
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	<p>deplete aquifers and the springs and surface waters that depend on them; we should not create a loophole that encourages illegal groundwater use and risks exacerbating this problem.</p> <p>RACM RECOMMENDATION</p> <p>- As such, we ask that you remove the language pertaining to groundwater and historic points of appropriation throughout this section</p>		
690-380-2120(1)	<p>RACM - We request the OWRD delete “or appropriation” in the first sentence and remove the proposed addition of “/Appropriation” in the second sentence to ensure the rule is consistent with statute.</p>	<p>RACM comments related to inclusion of groundwater in this rule – Based on the statutory language and requirements throughout ORS 540.532, it appears the statute is solely focused on historic surface water point of diversion changes. Changes made throughout OAR 690-380-2120 to remove groundwater.</p>	<p>Complete. Change made. v2 draft.</p>
690-380-2120(2), (2)(a)	<p>RACM - We urge the OWRD to delete the word “or appropriation” from these sections to ensure the rule is consistent with statute.</p>	<p>RACM comments related to inclusion of groundwater in this rule – Based on the statutory language and requirements throughout ORS 540.532, it appears the statute is solely focused on historic surface water point of diversion changes. Changes made throughout OAR 690-380-2120 to remove groundwater.</p>	<p>Complete. Changes made. v2 draft.</p>
690-380-2120(2)(b)	<p>RACM - The rule proposes to delete the mapping requirements and instead relies on -3100, which in turn relies on Div 305. The proposed deletions reflect language specifically stated in statute, and require, among other things, “the location of the point of diversion as specified in the water right certificate or decree and the action, current point of diversion”. ORS 540.532. This seems</p>	<p>Changes made to restore this language as it mirrors the language found in ORS 540.532 and includes requirements specific to the Historic Transfer process.</p>	<p>Complete. Changes made. v2 draft.</p>

	an important point to retain here, specifically.		
690-380-2120(2)(c)	<p>RACM (#1) - We support the addition of the instream right notations, as instream water rights are on equal footing with any other right so are already protected, but it is good to call out. That said, as discussed in the RAC meeting, all types of instream water rights (state applied, transfers/leases, hydro conversions, ACW) need to be included so that this language cannot be used to assert that those are not somehow covered.</p> <p>RACM (#2) - Support the language added that references instream water rights granted under ORS 537.336 or 537.346. Propose adding language to cover all types of instream water rights.</p> <p>RACM RECOMMENDATION - The language should also cover instream water from instream transfers/leases ORS 537.348 and allocations of conserved water ORS 537.470-500 which often replace a portion of a more junior state instream water right granted under 537.336 or 537.346.</p> <p>RACM (#3) - One RAC member noted that this rule is missing cross references to ORS 537.348 and 537.465 and suggested either removing all ORS references or including a</p>	<p>RACM comments #1, #2, #3 – OWRD made changes to OAR 690-380-2120(2)(c) to address.</p> <p>RACM comments #4 – OWRD made changes to OAR 690-380-2120(2)(c) to remove the first instance of “validated” (second instance of the word is retained).</p> <p>RACM comments #5 – This rule relates to any existing water right for which a claim of injury could be made.</p> <p>RACM comments #6 – Anyone can make a claim of injury related to an instream water right.</p> <p>RACM comments #7 – Assuming this comment relates to “injury” then yes, including the word “existing” is necessary. Additionally, regardless of the type of application (transfer of a use right vs. an instream transfer) OWRD evaluates for injury to other, existing water rights.</p> <p>RACM comments #8 – This comment is not clear as it seems to be focusing on place of use changes and enlargement. This rule is related to historic POD/POA changes. No change made.</p>	Complete. Partial changes made. v2 draft.

	<p>complete list of ORS references for clarity.</p> <p>RACM (#4) - One RAC member noted that “validated” is not used elsewhere in the rules; he also suggested that if retained, only the second use of the term was appropriate.</p> <p>RACM (#5) - One RAC member asked about the reference to instream rights and if this standard applied to all junior rights.</p> <p>RACM (#6) - One RAC member asked who was responsible for submitting claims of injuries for instream water rights.</p> <p>RACM (#7) - One RAC member asked if the language specifying “existing” rights was necessary and if the Department considers changes to instream rights that injure other rights.</p> <p>RACM (#8) - In echoing the concerns raised above with respect to the definitions under 690-380-0100(2)(c), we ask that you revise the new language in paragraph (2) to reflect the following: (2) For water rights with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that</p>		
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	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 <u>diverted and applied</u> from the same source.		
690-380-2120(3)(a)(E)	<p><i>Previously provided comment: Any instream water rights should be provided if they are not already.</i></p> <p>ODFW is not readily following the intent here and would love to discuss before the RAC.</p> <p>(E) What if there is a MF that is a point and not a reach? Does the language “upstream into or through the designated reach” cover a scenario where a POD is moved from below the point to above the point?</p> <p>(i) Why are they given the agency contact and not WRD as holder? Trying to understand how the process fits together with injury. Is this prep for CTI before WRD makes an official determination? How/when does it fit in with our transfer review? What is the applicant supposed to do with the contact info at this point? I really just want them to know early that there is potential for injury.</p>	<p>ODFW comments – OWRD made changes in 690-380-2120(3)(a)(E) to address comments. Additionally, OWRD anticipates further discussions with ODFW and DEQ related to this process.</p> <p>RACM comments - OWRD made changes in 690-380-2120(3)(a)(E) to address comments.</p>	Complete. Changes made. v2 draft.

	<p>(ii) There are pollution abatement MFs in addition to aquatic life (e.g., MF 102, so DEQ should be listed as well).</p> <p>ODFW RECOMMENDATION - (E) Any instream water right granted pursuant to a request under ORS 537.336 or any instream water right created pursuant to ORS 537.346 and held in trust by the Department if the request moves the proposed point of diversion upstream into or through the designated reach of the instream water right. The list provided to the applicant identifying an affected instream water right under this subsection shall identify for:</p> <p>(i) Instream water rights granted pursuant to a request under ORS 537.336, the state agency(ies) that requested the instream water right as well as the name and mailing address of the appropriate contact for the state agency(ies); and</p> <p>(ii) Instream water rights created pursuant to ORS 537.346, the Oregon Department of Fish and Wildlife <u>and/or Department of Environmental Quality</u> as well as the name and mailing address of the appropriate contact;</p> <p>RACM - We support the addition of instream water rights but urge the OWRD to take out “upstream”.</p>		
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	<p>While rare, we have seen changes to downstream points of diversion changes that cause injury to instream rights. The statute does not limit injury considerations to upstream movement of a POD so neither should the rules. Again, all types of instream rights should be noted.</p> <p>RACM - This should not be limited to instream water rights created by just ORS 537.336 or 537.346. The language “upstream into or through” could be a bit more clearly stated</p> <p>RACM RECOMMENDATION</p> <p>- Include all instream water rights, including those created under ORS 537.348 and 537.470-500. Propose clarifying the reach so it does not read as potentially limited to upstream transfers. This might be achieved by flipping the language to “into a reach, through a reach, or upstream.”</p> <p>RACM - One RAC member noted that the cross references to statutes appear to be missing (ORS 537.348 and 537.465), so the suggested removing ORS references or including a complete set of references.</p>		
690-390-2120(3)(b)	RACM - A RAC member asked what happens if someone refuses certified mail.	The way we’ve written the draft rule, hand-delivery of the notice (even if hand-delivered by the watermaster) will not be possible. If someone refuses to accept the notice by certified mail, then the applicant will	Complete. No change made.

		be unable to comply with the requirements of OAR 690-380-2120(4) and the application would be considered incomplete. Since the notice is incomplete, OWRD would move forward with denial of the application, similar to any other application deficiency.	
690-380-2120(3)(d)	RACM - Amend to state: "Provide notice of the application in the weekly notice published by the Department that includes the deadline and methods for submitting public comment." Instream water rights are held by OWRD in trust for the people of Oregon, thus OWRD must provide an opportunity for the public to weigh in on proposed changes to reflect historical use that will impact those instream water rights. As written, only those notified by the applicant are granted that right.	As written in v2 690-380-2120(3)(d), OWRD's weekly public notice provides an opportunity to any interested party to submit a comment. No change made.	Complete. No change made.
690-380-2120(5)	RACM - The rules should be clear that, if approved, the OWRD will condition to require screening and fish passage in accordance with ODFW's fish passage law (e.g. a change in permit status is considered a trigger for fish passage, and this is not a "transfer" so is not subject to that exemption).	The v1 & v2 draft proposed rules under OAR 690-380-2120(3)(c) already provide for OWRD consultation with ODFW as it relates to fish screens. No change made.	Complete. No change made.
690-380-2120(5)(a)	RACM - Suggest the condition to comply with fish screen requirements be more clearly stated. RACM RECOMMENDATION - Reference compliance with ORS 509.585.	The v1 & v2 draft proposed rules under OAR 690-380-2120(3)(c) already provide for OWRD consultation with ODFW as it relates to fish screens. No change made.	Complete. No change made.
690-380-2120(5)(b)	RACM - Extra comma after "May." RAC RECOMMENDATION - Remove comma	OWRD made changes in ORS 690-380-2120(5) to address these comments.	Complete. Change made. v2 draft.

	<p>RACM - A RAC member stated that the language as written, suggests an “intent” to enlarge.</p> <p>RACM - A RAC member suggested addition of “potential for injury” language.</p>		Will include for discussion at RAC Mtg.
690-380-2130(2)(a)	RACM - Please add ORS 540.520 and 540.530, which is required by statute.	OWRD agrees with this comment. Change made in OAR 690-380-2130(2)(a) and (3)(b).	Complete. Change made. v2 draft.
690-380-2130(3)(d)	<p>WRD - Rule states “...The Department may not require [emphasis added] that the use of the new point of diversion affect the surface water source similarly...” The difference between “may” and “shall” has caused some confusion in recent years, with some interpreting “may not require” to mean the Department is forbidden from requiring such; others interpret as the Department having the discretion to require such.</p> <p>WRD STAFF RECOMMENDATION - Perhaps “may not require” could be replaced with “may choose whether or not to require” or, conversely, “shall not” - depending on the intended interpretation. Regardless, GW desires to clarify the “may” statement. “...The Department may <u>choose whether or</u> not <u>to</u> require that the use of the new point of diversion affect the surface water source similarly...”</p> <p>OR “...The Department <u>may shall</u> not require that the use of</p>	The language “...may not require...” is a prohibitive term. Cannot change.	Complete. No change made.

	the new point of diversion affect the surface water source similarly...”		
690-380-2130(8)	RACM - : It is unclear what OWRD is trying to achieve here. This seems like it could result in non-use for over 5 years between the two changes requested and then the reversion back; in which case the OWRD should proceed with cancellation proceedings.	OWRD’s intent is to link this rule to already existing rules in OAR 690-380-6010 that allow a non-completed point of diversion or point of appropriation change to revert to the last authorized location prior to the transfer. Additionally, OWRD has not made any changes related to 5 years of non-use and cancellation proceedings, because ORS 540.530(1)(f) specifies that the time allowed for completion of a transfer :...may not be used when computing a five-year period of nonuse under the provisions of ORS 540.610 (1).” As this appears to give OWRD discretion, OWRD believes it is important to provide this flexibility. No changes made at this time.	Complete. No change made. Will include for discussion at RAC Mtg.
690-380-2200(1)	RACM - : Support, this just clarifies existing law/practice. RACM - Support language added that clarifies current practices.	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-2200(2)	RACM (#1) - Strongly support. This is in fact the statutory requirement, but we have seen applications that do not ascribe to this. Making this clear in rule will save state/applicant/third party time and resources. RACM (#2) - A RAC member asked if enlargement occurs when a change in place of use occurs moving water “from” lands that are inundated with water to a proposed place of use, when the water rights holder has not irrigated the full acreage.	Related to RACM #2 - The Department responded that it would be enlargement because the original place of use was not benefiting from irrigation due to the inundation. Related to RACM #3 - The Department does not allow the portion to be leased instream or moved to new lands. Known return flows and evaporative losses are always subtracted out. RACM #1 – OWRD acknowledges support of this change. Related to RACM #4, changes recommended here for OAR 690-380-	Complete. No change made.

	<p>RACM (#3) - Another RAC member asked if transferring instream, can those users transfer the full amount? I.e., is there differences between instream and out of stream?</p> <p>RACM (#4) - RACM RECOMMENDATION: In echoing the concerns raised above with respect to the definitions under 690-380-0100(2)(c), we ask that you revise the new language in paragraph (2) to reflect the following:</p> <p>(2) For water rights with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380 0010(2)(c), the lands from which the water right is removed do not continue to receive water <u>diverted and applied</u> from the same source.</p>	0100(2)(c) not made, however, the Department did make other changes to that rule.	
690-380-2240	<p>RACM - Support proposed changes related to layered rights.</p> <p>RACM - Support the modifications that clarify notifications regarding layered water rights.</p>	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-2240(1)	RACM - Why is “certificate of registration” deleted?	OWRD believes the v1 proposed draft rule language is correct. OAR 690-380-2240(1) is specific to place of	Complete. No change made.

	RACM RECOMMENDATION - Why is “certificate of registration” deleted?	use (POU) and character of use (USE) changes involving applications proposing to transfer a water right certificate or amend a water use permit. An application proposing to change the POU or USE of a groundwater certificate of registration is filed under OAR 690-382 (GW Registration Modifications). No change made.	
690-380-2260 General	RACM - Proposed New Requirement: “Any water right acquired by a public agency for a public purpose shall not be eligible to participate in an exchange under this section.”	Exclusion of a particular type of water right holder from the Exchange process would need to be legislated. The v1 draft proposed rules are consistent with ORS 540.533. No changes made.	Complete. No change made.
690-380-2260(5)	RACM - A RAC member asked the Department to review the rule language to ensure it aligns with both Division 2 and ORS 183	OWRD reviewed and it appears consistent. OWRD added requests for party status consistent with other divisions.	Complete. Change made in v2.
690-380-2260(7)	RACM - Support this language, though it raises the question of whether it should be incorporated into all other sections that allow protests to make clear what happens upon a filing of a petition for reconsideration. The OWRD should also provide notice of petitions for reconsideration, so the public is aware that an OWRD decision is being challenged.	OWRD acknowledges the comment. No change is necessary because similar language was already included in the v1 draft proposed rules under OAR 690-380-5000(3).	Complete. No change made.
690-380-2330 Title	RACM - The title here is confusing. The statute allows a holder of primary surface water right to substitute it for a supplemental groundwater right, but the title, grammatically speaking, signals the opposite.	When read together with the qualifying language in OAR 690-380-2330(1), the title is clear. No change made.	Complete. No change made.
690-380-2330(2)	RACM (#1) - “Expansion” is not a defined term and is not necessary. Enlargement is already defined as	RACM #1, #5, and #6 comments – Change made. OWRD will rely on existing definition of “Enlargement.”	Complete. Partial changes made. v2 draft.

	<p>“expansion of a water right” with additional Examples. RACM RECOMMENDATION - Remove “or expansion”</p> <p>RACM (#2) - The standard should include “injury”, see ORS 540.524(2).</p> <p>RACM (#3) - The statute is clear that the substitution only goes one way (SW to GW); given that we would suggest the rules retain the qualifier.</p> <p>RACM (#4) - Suggest including “or injury” after enlargement per ORS 540.524(2)</p> <p>RACM (#5) - A RAC member asked if “expansion,” was defined.</p> <p>RACM (#6) - Another RAC member noted that the definition of “enlargement” references “expansion.” (OAR 690-380-0100(2)).</p>	<p>RACM #2 and #4 comments – Change made.</p> <p>RACM #3 comments – OWRD appreciates the comment, however, we intend to mirror the language used in statute (ORS 540.524(1)). No change made.</p>	
690-380-2330(4)	<p>RACM - Please consider inserting an IR process; it is difficult to comment on an application absent knowing what the OWRD will be recommending.</p>	<p>ORS 540.524(4) requires the Department to issue a final order on Substitutions within 90 days of receiving the application. Including an initial review, as well as the proposed final order (added in the v1 draft proposed rules under OAR 690-380-2330(5)) would further affect OWRD’s ability meet this quick turnaround time. No changes made.</p>	Complete. No change made.
690-380-2330(5)	<p>RACM - Please include “petitions for party status.”</p>	<p>Change made as well as to 690-380-4030(1). Requests not petition.</p>	Complete. Rule changed in v2
690-380-2330(8)	<p>RACM (#1) - WaterWatch supports the newly added language in (8).</p> <p>RACM (#2) - A RAC member noted that the new language appeared to add extra</p>	<p><u>OWRD RESPONSE DURING RAC:</u> This language comes from ORS 540.524(1). The intent was not to overcomplicate the process. The Department will review.</p>	Complete. No change made.

	<p>process to revert original water use, apply for a transfer, and then reapply for a substitution. He noted that he frequently works with clients who have held a groundwater right for years, who own a well that has become less efficient over time, and who would like to transfer their groundwater right to a new well. He further noted that the proposed process could take 5 years, and during that time, some of his clients would be unable to use their groundwater source over that time, which seems unreasonable. He also questioned if there was any point in doing a change in historical Point of Diversion/Point of Appropriation, given the timeline.</p> <p>RACM (#3) - A RAC member noted ORS 540.524(2) also references the injury review and recommended incorporating that into the rules.</p> <p>RACM (#4) - A RAC member asked if well drillers could be fined for drilling without notification to OWRD. A RAC member responded that there are penalties for poor construction.</p>	<p>Yes, there are civil penalties for failure to file a start card with the Department.</p> <p><u>OWRD POST RAC:</u></p> <p>RACM #1 – Comments are in support of v1 draft proposed rules. No change made.</p> <p>RACM #2 – OWRD appreciates the comment, however, the Department believes the statute in ORS 540.524(1) is clear that no other type of change can be made in conjunction with a new proposed Substitution or an existing Substitution. No changes made.</p> <p>RACM #3 – Statutory language found in ORS 540.524(2) related to the injury evaluation was already included in the v1 draft proposed rules under OAR 690-380-2330(3). No change made.</p> <p>RACM #4 – Explanation provided during the RAC related to civil penalties for failing to file start cards is sufficient. No change made.</p>	
690-380-2340(1)	<p>RACM: We urge OWRD to include a timing requirement to this section of the rule. The statute requires submission of the quantity used. For some industrial uses, quantity can vary by season; this should be a</p>	<p>Changes made in OAR 690-380-2340(3)(d) and (4) to address these comments.</p>	<p>Complete. Changes made v2 draft.</p>

	<p>consideration for the OWRD to ensure against enlargement.</p> <p>We urge the OWRD to require proof that the permit was used in accordance with the terms and conditions of the water right.</p>		
690-380-2340(3)(d)	<p>RACM - There is no basis for limiting industrial or any other type of water right to a five-year average of past use. Many older rights don't require a meter and water use reporting. System capacity could be used as a proxy where measurement and reporting were not Required.</p> <p>RACM RECOMMENDATION - "Water use measurement, system capacity information, or other data acceptable to the Department regarding the maximum instantaneous rate and annual volume of the quantity of water diverted to satisfy the authorized specific use under the original water right; and"</p> <p>RACM – A RAC member noted that a 5-year period average may not be consistent with statute and suggested "maximum used in the last five years" instead.</p>	Changes made in OAR 690-380-2340(3)(d) and (4) to address these comments.	<p>Complete. Changes made. v2 draft.</p> <p>Will include for discussion at RAC Mtg.</p>
690-380-2410(1)	<p>RACM- : add the term "municipal" before beneficial use.</p>	The language in the v1 draft proposed rules for OAR 690-380-2410(1) mirrors the statutory language in ORS 540.510(3). OWRD believes that language, along with the definition of "beneficial use" in OAR 690-300, is sufficient. No change made.	Complete. No change made.

690-380-2410(3)	RACM - change “prior vested water rights” to “water rights vested prior to the use of water under subsection 1(b) of this rule.” This clarification tracks the transfer requirements that one can not injure uses vested prior to the change.	Changes made to provide greater clarity.	Complete. Changes made. v2 draft.
690-380-3000	<p>RACM (#1) - Please add language making clear that an application can only include one water right per application.</p> <p>RACM (#2) - Support additional clarifying language.</p> <p>RACM (#3) - RAC members discussed how applications requesting multiple changes should be handled. One RAC member suggested that the rules clarify that an application may only request multiple changes if they are related.</p>	<p>RACM #1 & #2 comments – Changes made in OAR 690-380-3000 to address these comments.</p> <p>RACM #3 comments – OWRD believes that more than one change can be proposed for the same water right as part of the same transfer application. To require otherwise would be administratively and logistically challenging for the Department as well as water users. This would also create issues with instream transfers which involve both a place of use change and a character of use change in order to create the instream use. No changes made.</p>	Complete. Partial changes made. v2 draft.
690-380-3000(8)	<p>ODFW – approves of change.</p> <p>RACM - LandWatch supports the proposed rule language requiring applications to provide information regarding fish screens and passage at the proposed point of diversion.</p> <p>RACM - We strongly support the additional requirements here. The water user community has testified in front of the legislature that they are concerned about timely processing of applications. This information will enable ODFW to be more efficient in their review. While some</p>	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.

	<p>RAC members asserted this was not needed because OWRD would determine this anyway, it is important to note that ODFW and OWRD review concurrently not sequentially, so this information will in fact result in more efficient processing.</p> <p>RACM - Support additional clarifying language.</p>		
690-380-3000(8)a)	<p>RACM (#1) - One RAC member asked whether the new requirements proposed in this section are required by the recent legislation.</p> <p>RACM (#2) - Other RAC members suggested that the requirements appear to be overly burdensome and, perhaps redundant for the caseworkers.. It was suggested that this information could be contained in an application checklist.</p> <p>RACM (#3) - One RAC member noted that required items should be in rule so that the Department can process the application quickly.</p> <p>RACM (#4) - Another RAC member asked whether the language conflicted with ODFWs stream program language.</p>	<p>Some of these items have been added to ensure that the Department has the necessary information to process the application, at the time of receipt so that it can be processed as efficiently as possible. The Department will review.</p> <p>ODFW has reviewed this language so there should not be any conflicts.</p> <p>RACM #1 & #2 comments – While not directly required by recent legislation, OWRD believes this information will be helpful to its evaluation process and anticipates it could be accomplished by simply adding check boxes indicating “upstream” or “downstream” to the transfer application form for surface water POD changes. It also helps the applicant ensure they submit a transfer application and map that accurately requests what they wish to accomplish, which streamlines agency processing times by reducing the need for back-and-forth communication between the agency and the applicant to correct discrepancies. No changes made.</p> <p>RACM #3 – The information listed in OAR 690-380-3000(8)(b) related to fish screens is structured that it</p>	Complete. No changes made.

		<p>only needs to be provided if it is known by the applicant. The application will not be considered deficient if not provided. No change made.</p> <p>RACM #4 comment – OWRD response provided during RAC is sufficient.</p>	
690-380-3000(12)	OWRD staff – need to reformat; remove (a), b/c there is no (b); then convert (A) to (a); (B) to (b); (C) to (c)	Slightly different changes made but did address comment by ensuring that there is an (a) and a (b) under (12).	Complete. Changes made. v2 draft.
690-380-3000(12)(a)	<p>RACM - Delete the words “such as” at the end of the paragraph and then specify what information must be filed. Consider requiring more detailed statements as to the specific times of water use (e.g., months of the year, by year) and specific amounts of water use that were used. Consider requiring any metering records to be provided. In general, the rules should make clear that the applicant has to provide the OWRD with enough evidence to prove use in compliance with the terms and conditions of the right in order for the OWRD to make a determination.</p> <p>RACM RECOMMENDATION - - Suggested language (12): “Such affidavits shall state the specific grounds for the affiant’s knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation including but not limited</p>	These comments are outside the scope of this rulemaking.	Complete. No changes made.

	<p>to:(A) Dated satellite imagery or dated aerial photographs of the lands, with the locations of asserted water use, point(s) of diversion or appropriation, and water conveyance indicated on the image or photo;</p> <p>(B) Other photographs with the date and location of each photograph provided by camera stamp. If providing this information by camera stamp is not feasible, then by otherwise by providing GPS locations or a map showing the specific location and date of each photo.</p> <p>(C) Available copies of dated receipts from sales of irrigated crops or for expenditures relating to use of water that are clearly marked by the issuer of the receipt with information that ties the receipt to the authorized place of use and use allowed under the water right;</p> <p>(D) Any available records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or</p> <p>RACM - Additional comments: (12) needs to be broadened to require water use information for the full forfeiture look back period (20 years) to aid OWRD in the determination it must make –see e.g. OAR 380-4000(3)(c).</p>		
690-380-3000(12)(a)(A)	RACM – Some RAC members discussed whether the	OWRD RESPONSE DURING RAC: This language is largely tied to the evidence that the Department	Complete. No change made.

	receipt requirements were too stringent, e.g., providing records of electricity use.	receives, and the intent is to provide more clarity on this type of evidence. The Department will review. Similar to OWRD's response during the RAC, applicants are not required to submit receipts as supporting documentation for demonstrating evidence of use. Rather, if an applicant chooses to submit receipts, OWRD is simply seeking information that adequately supports the evidence of use affidavit. No change made.	
690-380-3000(12)(a)(C)	RACM - Don't need "or" at the end of the sentence anymore since (b) is being deleted. RACM RECOMMENDATION - Replace ", or" with "."	Change made.	Complete. Change made. v2 draft.
690-380-(12)(b)(proposed for deletion)	RACM – One RAC member asked if the removed language is also going to be removed from the affidavit template.	OWRD RESPONSE DURING RAC: Yes. The language is duplicative in rule, but the policy still stands. OWRD plans to maintain the following language on the Evidence of Use Affidavit when it is updated in preparation for implementation of HB 3342 on April 1, 2026: <i>"The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached."</i>	Complete. No change made.
690-380-3000(13)(a)(A)	RACM - Please remove "or appropriation" for reasons outlined earlier in these comments.	Change made in OAR 690-380-3000(a)(A)&(B) to address this comment.	Complete. Change made. v2 draft.
690-380-3000(19)	RACM - Like draft language in other divisions the RAC has considered, this rule imposes a similar requirement for compatibility between the proposed water transfer and the local land use regulations. See LandWatch's comments	Under Review - Pending final language on land use.	Under Review - No changes made at this time.

	<p>above on OAR 690-310-0040(1)(a)(L) and OAR 690-310-0270(2)(d). OWRD should add the language “local land use regulations” in addition to “acknowledge comprehensive plans” in order to ensure that proposed water permits are reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1). Further, if applicable, OWRD should require land use approval from local government before approving the proposed transfer.</p> <p>This rule, however, also includes an exception to that requirement for transfers that meet four specified criteria. While LandWatch recognizes that this exception exists in the current rules, we nonetheless question its merits.</p> <p>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 the most controversial and complicated land use disputes arise. Those factors lead us to question why these lands are excepted from the otherwise applicable requirement for land use compatibility for water transfers.</p>		
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	<p>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.</p> <p>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 responsibilities under ORS 197.180 in this scenario than other, non excepted situation.</p>		
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	<p>RAC RECOMMENDATION - 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.</p> <p>RACM - OWRD must comply with ORS 197.180. The language provided does not appear to go as far as ORS 197.180. We would suggest the rule either mimic language from the statute and/or simply refer to the statutory cite. Importantly, the use must comply with land use provisions, it cannot be awaiting compliance in our read of the statute.</p> <p>RACM - There might be a local land use development code that allows the change outright. Missed this before for Division 18, but some county land use codes (e.g. Deschutes) allow piping outright and they may allow other changes outright as described in county land use codes as Well.</p> <p>RACM RECOMMENDATION - Add clarifying language that may include listing a local land use code identifying that the use or activity is allowed outright.</p> <p>RACM – One RAC member suggested including “local land use regulations” to clarify that those apply as well.</p>		
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680-380-3100(2)(a)	<p>RACM – One RAC member suggested including language that allows the CWRE signature to be electronic to clarify that both can be digital.</p>	Change made in OAR 690-380-3100(2) to address comment.	Complete. Change made. v2 draft.
690-380-3220(3)	<p>RACM - Does adding “or” indicate that a transfer application won’t be accepted if more than one of the listed circumstances applies? They should not all need to apply, but more than one should still be acceptable.</p> <p>RACM RECOMMENDATION - Remove “or” from (3) and at the top (before (1)) change the last phrase from “except under the following circumstances” to “except when one or more of the following circumstances applies” or something similar.</p> <p>RACM – One RAC member asked if “or” implied that that only one criterion can be met. She recommended clarifying the language “except under the following circumstances” to indicate that only one criterion needs to be met.</p>	Change made in OAR 690-380-3220 to provide more clarity.	Complete. Change made. v2 draft.
690-380-3400	<p>RACM (#1) - We oppose the proposed mandatory waiver of fees for transfers that result in instream water rights.</p> <p>RACM (#2) - One RAC member requested that the Department checks into what happens for fee waivers when credit/debit cards start to be accepted.</p>	<p>RACM #1 and #4 comments related to replacing “shall waive” with “may waive” – The language in the v1 draft proposed rules reflects existing statutory language found in ORS 536.050(5) and was proposed to bring the rules into alignment with statute. No changes made</p> <p>RACM #2 comments – This comment is out of scope at this time.</p>	Complete. No change made.

	<p>RACM (#3) - One RAC member recommended changing “50 percent of the application fee” to include processing fees.</p> <p>RACM (#4) - Consistent with our earlier comments on Division 18, we oppose removing language that requires the mandatory waiver of fees for transfers that either establish an instream right, are necessary to create a project funded by Oregon Watershed Enhancement Board, or are endorsed in writing by Oregon Department of Fish & Wildlife. These transfers are to restore a public good that has been degraded by the overallocation of our state’s public water resources, not facilitate the further development of our public water supplies for private gain. As such, we strongly oppose the removal of this mandatory fee waiver.</p>	<p>RACM #3 comments – This comment seems to relate to future processing fees associated with when OWRD has the ability to accept payment of application fees via credit/debit card. The processing fee is a separate charge tied to the payment method, not the reason for the payment, and is non-refundable (see Or Laws 2025, ch 282, section 9). No change made.</p>	
690-380-3400(3)	<p>RACM - Please add language “except when this determination is as a result of a request for consent to injury to an instream water right”.</p>	<p>RACM comment – Change made in OAR 690-380-3400(3).</p>	<p>Complete. Change made. v2 draft.</p>
690-380-3410(1)(c)	<p>RACM -- delete (c). We do not support waiving mapping requirements based on an ODFW net benefit determination.</p>	<p>ORS 540.520(3) provides this discretion to the Department. Change not made.</p>	<p>Complete. Change not made.</p>
690-380-4000(2)	<p>RACM - Needs “or” before “fees”</p> <p>RACM RECOMMENDATIONS - “required information or fees, <u>or</u> that the water rights”</p>	<p>Change made in OAR 690-380-4000(2).</p>	<p>Complete. Change made. v2 draft.</p>
690-380-4000(3)(f)	<p>RACM - This is very broad. Suggest restricting additional</p>	<p>Change made in OAR 690-380-4000(3)(f).</p>	<p>Complete. Change made. v2 draft.</p>

	<p>requirements as those set by applicable laws.</p> <p>RACM RECOMMENDATION - Any other requirements as set forth in applicable law for water right transfers are met. Or something that clarifies.</p> <p>RACM – Two RAC members discussed the “any other requirements” language. There were suggestions to add “any other requirements set forth in ORS 540 or Div 380” or “any other requirements set forth in applicable laws”</p>		
690-380-4000(4)(a)	<p>RACM - Suggest a tie to statute/rule for definition of “water use subject to transfer”. Suggest amendment so this section reads:</p> <ul style="list-style-type: none"> ▪ <u>The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-300-0010(59) and, for a right described under 690-300- 0010(59)(d), the proof of completion is approved under OAR 690-380-6040;</u> 	The v1 draft proposed rules under OAR 690-380-4000(4)(a) point to the approval criteria in OAR 690-380-5000(1), which in turn includes a citation to the statutory definition under ORS 540.505(4). Change not made.	Complete. Change not made.
690-380-4000(8)(a), (b)	<p>RACM – One RAC member noted that the consent to injury process historically was discretionary, allowing for consent to injury in order to allow restoration projects to go forward; however, current use of consent to injury in this context seems to have strayed from that intent and is more focused on opposition. She was concerned that the new language may be opening up</p>	Noted, however this is outside the scope of this rulemaking effort.	Complete. No change made.

	more process for those in opposition. The RAC member indicated she will continue to evaluate this section.		
690-380-4000(8)(b); 690-380-5030; 690-380-5050	<p>RACM - Some instream water rights requested under 537.336 are then replaced by more senior water from transfer 537.348 or conservation 537.470-500 projects using public funds and with the expectation that the water will remain permanently instream to benefit fish and wildlife. These instream rights are held in trust by the state.</p> <p>RACM RECOMMENDATION - Interested in assurance that there is no grey area where consent to injury of an instream water right would/could also apply to those created under 537.348 or 537-4700-500. Clarify the authority to not consent to the injury of the instream right.</p>	The statute in ORS 540.530(1)(c) is very clear that the Consent to Injury (for injury to an instream water right) is limited to “...an in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1)...” Likewise, we’ve incorporated reference to the two types of instream water rights (state-agency requested or minimum perennial streamflows) in OAR 690-380-4000(8)(b) and 690-380-5030(2), and OAR 690-380-5050(1) clearly ties back to OAR 690-380-4000(8)(b). No changes made.	Complete. No changes made.
690-380-4000(10)	<p>RACM - Two comments. First, the language should be clarified so that it is clear that the applicant must make this request within the original 30-day time period, not after, and that the additional 60 days will run from day 31 onwards. Second, the appropriate rule reference is 5(b) not 9(b).</p>	Changes made in OAR 690-380-4000(10).	<p>Complete. Changes made. v2 draft.</p> <p>Will include for discussion at RAC Mtg.</p>
690-380-4000(12)	RACM - If the applicant amends the application, the OWRD should issue a superseding IR and renotice the application for comment. As presented, the only option for the public would be to protest.	<p>OWRD appreciates the comment. Changes were made in OAR 690-380-4000(12) to address the comment.</p> <p>A water right’s priority date is not changed as a result of a Division 380 transfer, therefore a revised application does not affect the right’s</p>	<p>Complete. Changes made. v2 draft.</p> <p>Will include for discussion at RAC Mtg.</p>

	The OWRD should also re-endorse the application with the date all information was presented, to ensure fairness as to priority dates to other applicants and to start the timeline restrictions from the date of the new application.	priority date. OWRD does date-stamp and record dates that amendments are received.	
690-380-4005 (1) 9/29	WRD – need to reformat; can’t have a (1) w/out a (2)	Change made in OAR 690-380-4005.	Complete. Change made. v2 draft.
690-380-4010(1)(a)	RACM - Please add “and other applicable rules and laws”. 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, for example, basin plans. Basin plans classify what uses are allowed and/or restricted. Transfers cannot be used as a loophole to get around classifications. To allow such would encourage all manner of gamesmanship to Oregon’s water permitting and reallocation structure. To make this clear, we would request a provision should be added to the 380 rules to require OWRD to make a finding that the proposed use is allowed under a basin plan	OWRD acknowledges this comment, however, it is outside the scope of this rulemaking effort.	Complete. No change made.

690-380-4010(2)	<p>RACM - : We urge amended language so this section reads: The Department's proposed final order shall include an analysis that supports its findings and conclusions, and a conclusion of whether the application is consistent with the following approval criteria</p>	While OWRD restored some of the existing language in OAR 690-380-4010(2), the suggested change was not made because the findings of fact in a proposed final order describe the Department's assessment, which in turn support the conclusions of law.	Complete. No change made.
690-380-4010(2)(b)	<p>RACM – One RAC member suggested that language directly from statute for forfeiture be added.</p>	OWRD appreciates the comment but believes citation of the forfeiture statute (ORS 540.610) in this rule is adequate. Change not made.	Complete. No change made.
690-380-4010(2)(c) (proposed for deletion)	<p>RACM - We strongly oppose the proposed deletion of “the has been used over the past five years according to the terms and conditions of the water right”. This is a critical provision of statute and needs to be retained. We urge OWRD to reverse their proposed deletion, and to make this requirement crystal clear, amend the rules so it is a stand alone section, in addition to the forfeiture language.</p> <p>RACM – One RAC member noted that ORS 540.520(g) includes the deleted language and recommended retaining it.</p>	OWRD restored the language that was proposed for deletion.	Complete. Change made. v2 draft.
690-380-4010(2)(d) 9/29	<p>WRD – need to reformat; there is nothing in (d).</p> <p>RACM - : We opposed the deletion of the existing provisions that require the applicant to show that they are ready, willing and able to use the water.</p>	<p>WRD staff comment – Change made to correct rule structure.</p> <p>RACM comment – OWRD believes the “ready, willing, and able” standard is encompassed by the approval criteria outlined in OAR 690-380-4010(2)(c) stating, “The right is not subject to forfeiture under ORS 540.610.” and that restoring this language would be redundant. No change made.</p>	Complete. Partial change made. v2 draft.

690-380-4010(2)(g)	RACM – Two RAC members discussed the “any other requirements” language. There were suggestions to add “any other requirements set forth in ORS 540 or Div 380” or “any other requirements set forth in applicable laws”.	OWRD made changes in what is now OAR 690-380-4010(2)(f) to address this comment.	Complete. Changes made. v2 draft.
690-380-4030	RACM – One RAC member noted that “standing statement” rule language has been removed but there is no description of party status.	Change made as well as to 690-380-4030(1). Requests not petition.	Complete. Rule changed in v2.
690-380-4030(2)	RACM - We strongly support the OWRD’s new language here. It creates efficiencies in processing, which is aligned with the purpose of this rulemaking	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-4030(3)	RACM - We oppose the suggestions made by a RAC member that the time for this be expanded to 30 days. The user community has testified in front of the legislature and the Commission about their frustration with the time it takes to process transfers, yet they secured 3 months of extra time for their requirements in statute. The rules should not follow suit and add even more time. We urge OWRD to retain the suggested 15 day. RACM - The wording in this section implies that there is an “approval process” that an applicant can pursue. This does not align with statute. Under ORS 540.530, consent to injury is an entirely discretionary	There is no section (3) in 690-380-4030, so it is assumed this comment pertains to draft proposed rules for OAR 690-380-4200 , which relates to the time by which an applicant must respond to a revised PFO following hearing to notify OWRD that they intend to pursue approval of the transfer under OAR 690-380-5030 to - 5050 (consent to injury processes). In the interest of processing efficiency, OWRD believes that 15 days is appropriate. No changes made. Other comments related to the instream water right Consent to Injury process are outside the scope of this rulemaking. No changes made.	Complete. No changes made.

	<p>process. The agency that requested the instream water right at issue can opt to not to consent to injury for any reason, or no reason at all. OWRD, also, doesn't have to approve consent to injury, even if the requesting agency recommends consent. Better wording would be somewhat akin to "the applicant may file a notice that s/he will request agency consideration of consent to injury to the instream water right ". See OAR 690-380-5050 for more detail</p>		
690-380-4200(2)	<p>RACM – One RAC member noted that process consolidation could allow parties to bog the process down, especially if the Department does not review claims of forfeiture.</p>	<p>OWRD RESPONSE DURING RAC: When a transfer is protested and a claim of forfeiture is filed at the same time, the Department does not have discretion on claims. In this case the ALJ is often compelled to address these topics together so there needs to be a standard process for consolidation. The Department is open to suggestions.</p> <p>No alternatives suggested. No changes made.</p>	Complete. No change made.
690-380-4200(2)	<p>RACM – One RAC member asked if a protest asserting that a water right to be transferred has been forfeited through non-use must rely on the preponderance of the evidence standard.</p> <p>RACM – One RAC member stated that the new rule language allows virtually anyone to assert non-use and force the applicant into a contested case process. He also stated this was lacking in due process.</p>	<p>During RAC meeting, the Department noted it is open to suggestions on how to fix this issue. No alternatives have been suggested.</p> <p>Correction to OWRD Response during the RAC meeting: The Administrative Law Judge's order and Department final order must be based on a preponderance of evidence.</p> <p>OWRD believes the best way to fix this matter would be through legislation. In the interim, this is the best solution the agency has. OWRD also changed from notice of</p>	<p>Complete. No change made.</p> <p>Will include for discussion at RAC Mtg. (RR)</p>

		proposed cancellation to notice of cancellation proceedings, as the Department may not actually agree that forfeiture has occurred, but still believes that a notice under the forfeiture statutes needs to be provided should the court find the right has been forfeited.	
690-380-4200(3)	RACM – One RAC member noted that 15 days is not in the recent legislation and seems too short a period; he recommended a minimum of 30 days.	In the interest of processing efficiency, OWRD believes that 15 days is appropriate. No changes made.	Complete. No change made.
690-380-5000(1)	RACM - proposed new subsection: An additional standard of approval is needed to ensure that the underlying right to be transferred was used in accordance with the terms and conditions of use.	OWRD added language in OAR 690-380-5000(1)(c) to address this comment.	Complete. Change made. v2 draft.
690-380-5000(1)(c)	RACM - We support the inclusion of this new language. RACM - Support addition. Should this also include rights that may be under forfeiture proceedings? RACM – One RAC member noted that the language implies the right must be categorically immune rather than not under forfeiture proceedings.	OWRD added language in OAR 690-380-5000(1)(c).	Complete. Change made. v2 draft.
690-380-5000(1)(e)	RACM - We support the inclusion of this new language.	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-5000(1)(f)	RACM – One RAC member noted that the existing language was too broad and recommended, “any other requirements set forth in	OWRD made changes in OAR 690-380-5000(1)(f) to address this comment.	Complete. Change made. v2 draft.

	ORS 540 or Div 380” or “any other statutes or rules”.		
690-380-5000(2)	<p>RACM - If no protest, the PFO becomes an FO, but the draft certificates don’t become an FO.</p> <p>RACM RECOMMENDATION</p> <ul style="list-style-type: none"> - “the proposed final order shall become a final order, and if applicable the draft remaining right certificate(s) shall become final, on the date.” <p>RACM –</p> <p>One RAC member noted that the language for the “remaining right certificate(s), shall become a final order...” does not read right.</p>	<p>OWRD RESPONSE DURING RAC: The Department noted that “shall become a final order” should read “shall become final.” The Department will revise.</p> <p>Changes made in OAR 690-380-5000(2) to address this comment.</p>	Complete. Change made. v2 draft.
690-380-5050	<p>RACM - 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 they do not consent. • The OWRD also has broad authority not to consent, even if the agency that requested the 	OWRD acknowledges and appreciates this comment, however, this topic requires a broader discussion and is outside the scope of this rulemaking effort.	Complete. No change made.

	<p>instream right recommends consent. This needs to be clear in rule. The rules as drafted currently state “shall” consent; which is directly contrary to the statutory directive that OWRD “may” consent.</p> <ul style="list-style-type: none"> • 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. <p>We also suggest the OWRD consider providing direction on consideration of whether a proposed change is for the purpose of implementing a restoration project.</p> <p>Moreover, if the OWRD is now going to allow a CTI request at the IR stage, the rules need to make clear that (1) the processing clock is tolled and (2) the applicant cannot then also request a CTI after a contested case hearing. There also should be two process sections, one for each on-ramp point.</p> <p>And finally, the factors for an agency to review if they chose to go forward and consider a consent to</p>		
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	<p>injury should be clarified in rule (e.g. ODFW's internal guidelines should be incorporated for ODFW requested instream water rights. And, 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> <p>We have offered some initial language for consideration in Appendix A (attached); but these likely need more refinement and discussion</p>		
690-380-5050(7)	<p>ODFW - Not a big concern, but the use of the word "accept" can be misinterpreted to mean we agree with the public comment.</p> <p>ODFW RECOMMENDATION - (7) Within 90 days of receipt of a written request for a public meeting on the recommendation, the Department and the agency providing the recommendation shall hold a joint public meeting to review the recommendation and to accept<u>receive</u> public comments.</p>	Change made in OAR 690-380-5050(7).	Complete. Change made. v2 draft.
690-380-5060	ODFW approves of changes	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-5100	<p>RACM - LandWatch supports this provision.</p> <p>RACM – One RAC member noted that he will coordinate with</p>	Under Review - Pending final language on land use.	Under Review - No changes made at this time.

	municipal RAC members to improve the language concerning compatibility with comprehensive plans.		
690-380-5100(3)	RACM - We support the proposed deletion. See earlier comments on land use requirements. RACM - Support deletion.	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-6010(2)	RACM - We are unaware of any statutory authority to allow extensions of transfers, as such please strike “or within any extension of time allowed for completion”	OWRD acknowledges this comment, however, this topic requires broader discussion and is outside the scope of this rulemaking effort. Please note that OWRD’s draft rules do not propose to amend this specific rule (-6010(2)) or the rules at -6020 (Extension of Time). No changes made.	Complete. No change made.
690-380-6010(3)	RACM - We urge the OWRD to send the notice of cancellation if the COBU is not filed within the time required in the transfer.	OWRD acknowledges this comment, however, this topic is outside the scope of this rulemaking effort.	Complete. No change made.
690-380-6010 (5) 9/29	WRD – need to reformat outline; nothing after (5)	Changes made in 690-380-6010 to address this comment.	Complete. Change made. v2 draft.
690-380-6010(8)	RACM - See comments in (5). We are unaware of any statutory authority that would direct reversion rather than moving into forfeiture/cancellation proceedings (these are not temporary transfers, which do have statutory direction to revert back to the original use). If there is statutory authority, please provide it to the RAC.	Please note that due to changes made to address WRD comment on 690-380-6010(5), this comment now refers to OAR 690-380-6010(7) in the v2 draft proposed rules. Please note that while OWRD proposes to add more detail to this rule to describe the process, the existing rules already allow for reversion. Further, OWRD acknowledges this comment, however, this topic requires broader discussion and is outside the scope of this rulemaking effort.	Complete. No change made.
690-380-6020 (no proposed changes)	RACM – One RAC member asked where the statutory allowance for an	OWRD acknowledges this comment, however, this topic is outside the scope of this rulemaking effort. Please note that OWRD’s draft rules	Complete. No change made.

	<p>extension on a transfer lies.</p> <p>One RAC member asked if the intent was to provide flexibility for applicants by allowing for extensions on transfers.</p>	<p>do not propose to amend the rules at -6020 (Extension of Time). No changes made.</p>	
690-380-6020(4)	<p>ODFW - ODFW would like to ensure that fish conditions are being pursued as part of the due diligence or have been met if some water is being diverted (similar to the language in Div315-0040(5)).</p> <p>ODFW RECOMMENDATION</p> <p>- Add a new (d) that includes compliance with fish conditions.</p> <p>(4) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-380-5140. Reasonable diligence shall include, but is not limited to:</p> <p><u>(d) Demonstrated compliance with fish-related permit conditions that are required to be met before water use began if all or a portion of water has been used or pursuant of compliance if no water has not been used. These permit conditions include fish screening, fish bypass, fish passage, or any other permit conditions intended to protect fish.</u></p>	<p>OWRD acknowledges this comment, however, this topic is outside the scope of this rulemaking effort. Please note that OWRD's draft rules do not propose to amend the rules at -6020 (Extension of Time). No changes made.</p>	<p>Complete. No changes made.</p>

	RACM - Non-completion should render the water right subject to forfeiture and cancellation. It is unclear why the OWRD is proposing to delete this section. This is not cured by (8) which direct reversion to the original point of diversion. Between these two provisions, the rules appear to set up a pretty significant loophole to forfeiture/cancellation. Please provide statutory authority for the OWRD's proposal.		
690-380-6020	RACM - We are unaware of any statutory authority for extensions of time to complete transfers. This section should be deleted.	OWRD acknowledges this comment, however, this topic requires broader discussion and is outside the scope of this rulemaking effort. Please note that OWRD's draft rules do not propose to amend the rules at -6020 (Extension of Time). No changes made.	Complete. No change made.
690-380-6030	RACM - 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.	OWRD acknowledges this comment, however, this topic involves a broader discussion and is outside the scope of this rulemaking.	Complete. No change made.
690-380-6050	RACM - As we understand it, waiver of proof of completion can only be granted to a limited subset of transfers as outlined in 540.530(2)(b). This needs to be made clear in subsection (1) in order to align with statute and prevent mischief.	OAR 690-380-6050(1)(a) clearly points back to OAR 690-380-3410 which, under subsections (1)(a), (b), and (c) of that rule, includes the same language found in ORS 540.530(2)(b). Changes are not necessary.	Complete. No change made.
690-380-6060	RACM - The rules limit petitions for reconsideration to landowners, we do not see this in the statute.	Change not made; comment outside the scope of this rulemaking. Please note that OWRD's draft rules do not propose to amend the rules at 690-380-6060 (petition for	Complete. No change made.

		reconsideration of the content of a proposed certificate).	
690-380-7000 through -7300	PUBLIC - For reasons that follow, we strongly urge the department to revise draft rule OAR 690-380-7300, as presented to the Rules Advisory Committee (“RAC”) on October 21, 2025, to remove subsection (3) pertaining to enlargement and to clarify that the new rules will apply only to applications filed after the effective date of the rules.	Under Review.	Under Review - No changes made at this time.
690-380-7000	RACM - 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. We urge OWRD to clarify this in these rules.	OWRD acknowledges this comment, however this topic falls outside the scope of this rulemaking effort.	Complete. No change made.
690-380-7000 (1) 9/29	WRD – need to reformat; can’t have (1) w/out (2)	Changes made in 690-380-7000 to address this comment.	Complete. Change made. v2 draft.
690-380-7010 (1) 9/29	WRD – need to reformat; can’t have (1) w/out (2). RACM - Reference to (3)(c) should be updated to (4)(c) because that section got renumbered.	Changes made in 690-380-7010 to address this comment.	Complete. Change made. v2 draft.
690-380-7010(1)(c)	RACM - : Please delete “or additional point(s) of diversion” as this practice is not allowed by statute. RACM – One RAC member stated that “or additional point(s) of diversion” is not supported by statute and recommended deleting it.	OWRD acknowledges this comment, however this topic falls outside the scope of this rulemaking effort.	Complete. No change made.

<p>690-380-7020 (1) 9/29</p>	<p>WRD – need to reformat; can’t have (1) w/out (2).</p> <p>RACM - 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 language as written is not clear on this.</p>	<p>WRD staff comment – Changes made in 690-380-7020 to address this comment.</p> <p>RACM comment – Change not necessary. Existing v1 draft proposed rule language refers to requirements outlined in OAR 690-380-2130(2) to (11), which under 690-380-2130(7) clearly specifies that the original surface water point of diversion shall not be retained as an additional or supplemental point of diversion.</p>	<p>Complete. Partial changes made. v2 draft.</p>
<p>690-380-7020(1)(a)</p>	<p>RACM – One RAC member asked if “need not be a water use subject to transfer” was necessary language.</p>	<p>OWRD RESPONSE DURING RAC: Permits are not perfected, non-certificated so they are technically not subject to transfer. The Department will review the language but believes the language should be included.</p> <p>Because some parts of the Division 380 rules apply only to “water uses subject to transfer,” OWRD feels it is beneficial to leave this proposed language in place for clarity. No change made.</p>	<p>Complete. No change made. v2 draft.</p>
<p>690-380-7030(1)</p>	<p>RACM - This section needs to make clear that the change must be changed from one place to another and that the original place of use cannot receive water under the change. In other words, as with the other sections, the statutes limit this allowance to a change, not an expansion.</p>	<p>Changes made in OAR 690-380-7030(3) to address this comment.</p>	<p>Complete. Change made. v2 draft.</p>
<p>690-380-7030(2)(a)</p>	<p>ODFW - Noting that the reference in 315-0010(7)(d) is slightly different.</p> <p>Provided edits to both for consistency. I left in 496.171 here due to the definition of conservation, but you can choose to start at 496.172, if you like.</p>	<p>OWRD appreciates the comment and updates. Changes made.</p>	<p>Complete. Changes made. v2 draft.</p>

	<p>ODFW RECOMMENDATION</p> <p>- a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.19276 and OAR 635-100-0040 or the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C. § 1531), as amended, to 1544), as determined by the listing agency; and</p>		
690-380-7100(1)	<p>RACM –</p> <p>One RAC member noted the requirement to provide an email address was missing</p>	Change made in OAR 690-380-7100(1).	Complete. Change made. v2 draft.
690-380-7100(4)	<p>RACM –</p> <p>One RAC member noted agreement with 120-day timeframe.</p>	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-7100(11)	<p>RACM - Again, the change in place of use needs to make clear that this is a change, not an addition of more lands to the original permit.</p>	No change is necessary because OAR 690-380-7300(1)(e) makes it clear that as part of a permit amendment, among other things, the beneficial use for which the water is used or the number of acres to which water is applied must remain the same.	Complete. No change made.
690-380-7100(14)	<p>RACM - See comments on OAR-690-380-3000(19) above.</p> <p>RACM - This needs to be strengthened to ensure the changes are allowed by land use laws/regulations; see previous comments on reflecting statutory requirements related to land use. Moreover, there is nothing in the permit amendment statute that allows for the exceptions spelled out in (14)(a)-(d).</p>	Under Review - Pending final language on land use.	Under review - No changes made at this time.

690-380-7100(14)(a)	RACM - This section includes language “where existing and proposed water use would be located...” which appears to indicate that the OWRD is contemplating allowing water spreading under these rules. We strongly oppose this. This is not allowed by law, goes against the concept of beneficial use without waste, and sets horrible precedent.	No change is necessary because OAR 690-380-7300(1)(e) makes it clear that as part of a permit amendment, among other things, the beneficial use for which the water is used or the number of acres to which water is applied must remain the same.	Complete. No change made.
690-380-7100(17)	RACM - the OWRD should require a notarized oath, not just an “oath”. Penalties should apply to anyone who makes false statements on an application.	This topic falls outside the scope of this rulemaking effort. No changes made.	Complete. No change made.
690-380-7110	RACM - Missing period at the end of the last sentence.	Change made to OAR 690-380-7110.	Complete. Change made. v2 draft.
690-380-7200	RACM - These rules should include the public process afforded other water right transactions (IR/comment, PFO/Protest, Protest/Petition for party status).	This topic is out of scope.	Complete. No changes made.
690-380-7300	RACM (#1) - Going straight from application to final order is expeditious but gives the applicant no opportunity to provide clarification to OWRD if needed or even fix a typo. Applicants need an opportunity to understand OWRD’s decision (whether through an initial review or PFO) and work with the Department without having to protest a final order and go through a contested case process, especially	<p>RACM #1 comments - OWRD appreciates the comment, but for processing efficiency will not be adding steps to the permit amendment process. OWRD did, however, make changes in OAR 690-380-7300(1) to clarify that any approval of a permit amendment is done through issuance of a final order.</p> <p>RACM #2 comments – This topic is under review. No changes made at this time.</p>	<p>Partial changes made. v2 draft.</p> <p>RACM #2 items still Under Review.</p>

	<p>since the permit will surely expire during that time.</p> <p>RACM RECOMMENDATION</p> <p>- Add a process for an initial review or PFO. At the very least, add a statement that OWRD will issue a final order (current language says the application shall be approved but no mention of actually issuing the order approving it).</p> <p>RACM (#2) - In addition to injury and enlargement, the rules should make clear that the permit amendment must also comply with other laws. For example, OWRD could not approve a permit amendment that would result in a dams or diversion structure being built in a Scenic Waterway.</p> <p>RACM (#3) - One RAC member noted that this section of the rules does not specify how the final order will be issued or distributed to the applicant and asked how electronic notification from HB 3342 will be applied.</p>	RACM #3 - The Administrative Procedure Act establishes how final orders can be distributed, and in this case, require paper mailing and cannot be sent via email. OWRD made changes in OAR 690-380-7300(1) to clarify that any approval of a permit amendment is done through issuance of a final order.	
690-380-8000(1)(b)	<p>RACM –</p> <p>One RAC member asked about the removal of “character of use of a right to store water” and asked if there was ever a time when it could be transferred.</p>	There is allowance for these types of transfers with respect to temporary district transfers (Div. 385). For regular temporary transfers (Div. 380), however, the Department has never had this authority. OWRD is not aware of this ever being used on a temporary basis for a regular Div. 380 temporary transfer, but an exhaustive search has not been undertaken to confirm.	Complete. No change made.
690-380-8003	RACM - See comments on OAR-690-380-3000(19) above	Under Review - Pending final language on land use.	Under review - No changes made this time.

690-380-8003 (and -8002)	ODFW - A renewal should include documentation/verification that fish screening has been maintained and remains in compliance. (This may inherently be included in (h)(D), but we'd suggest something more substantial.) Can we also include passage here?	Under Review.	Under review - No changes made this time.
690-380-9000(1)	RACM – One RAC member noted appreciation for the language clarification.	Comments are in support of the draft proposed language in this rule. No changes necessary.	Complete. No change made.
690-380-9000(5) 9/29	WRD – need to reformat; skips (4)	Changes made in OAR 690-380-9000 to address.	Complete. Changes made. v2 draft.