

Division 380 WATER RIGHT TRANSFERS - Revision Tracker

Changes made between v2 and v3 RAC version. Changes are highlighted in the v3 RAC version of the rules for RAC member convenience. V3 is the same as the public comment draft except no highlights.

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
Various	OWRD Staff	<ul style="list-style-type: none"> -Updates applicability section -Add email address to -2340. -Remove some language in -2130 related to references to -6010 which has now been deemed out of scope and reverted. -Removes notice of other state agencies for historical POD changes in -2120 because OWRD is the holder not the other state agencies. Further, states that the application is the notice to OWRD. -Reversion to existing rule language, which is correct in -2410 -Restores language requiring “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)” in -3000 -Modifies language related to consent to injury for proper interdivisional workflows in -4000(8)(a). -Adjust language in -4010(1) for editorial/grammar purposes. -Correction of numbers to letters and grammatical corrections in 4200; change pursue to request. -5030 and 5050 – change pursue to request -5050 – add statutory language regarding consultation with tribes. -7030 – restores “owned” which appears to have been accidentally deleted -7100 - Make clear that a tribal government is not a local government. 	Complete. Change made in v3.
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	OWRD does not believe we have authority.	Complete. No change.

	<p>suggest something more substantial.)</p> <p>Can we also include passage here?</p>		
<p>Combined comments on land use compatibility issue</p> <p>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)</p>	<p>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).”</p> <p>RACM RECOMMENDATION - Retain original language in 3000(19) and use similar language in 7100(14) and 8003(2)(d).</p>	<p>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p> <p>RE: the comments about transfers to and from land zoned EFU or within irrigation districts, this language comes from OAR 690-005-0025(3). Any concerns about this language could be part of a future discussion about updates to Division 5.</p>	<p>Complete. Some changes made. V3 draft.</p>
<p>Land Use</p> <p>690-380-3000(19)</p>	<p>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 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>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p> <p>RE: the comments about transfers to and from land zoned EFU or within irrigation districts, this language comes from OAR 690-005-0025(3). Any concerns about this language could be part of a future discussion about updates to Division 5.</p>	<p>Complete. Some changes made. V3 draft.</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> <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</p>	
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	<p>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> <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</p>		
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	regulations” to clarify that those apply as well.		
<p>Land Use</p> <p>690-380-3000(19), -7100(14), -8003(2)(d)</p> <p>12/5</p>	<p>RACM - See comments to Div 310 related to land use compliance.</p> <p>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 above on OAR 690-310-0040(1)(a)(L) and OAR 690-310-0270(2)(d). OWRD should incorporate similar language here to what has been proposed for Div 310, and that was shared with the RAC on Nov 24th. Further, and as stated above, the rule language should require a final land use decision from a local government before OWRD can approve a proposed transfer. This includes exhaustion of the administrative appeal process for a land use approval.</p> <p>In addition, as we commented on in our October 31 letter, this rule division also includes an exception to the Land Use Information Form requirement for transfers that meet four specified criteria. While LandWatch recognizes that this exception exists in the current rules, we nonetheless question its merits and ask OWRD to reconsider retaining this in rule.</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</p>	<p>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p> <p>RE: the comments about transfers to and from land zoned EFU or within irrigation districts, this language comes from OAR 690-005-0025(3). Any concerns about this language could be part of a future discussion about updates to Division 5.</p>	<p>Complete. Some changes made. V3 draft.</p>

	<p>these lands are excepted from the otherwise applicable requirement for land use compatibility for water right transfers.</p> <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, nonexcepted situations.</p> <p>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</p>		
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	exception to this showing for certain lands.		
Land Use 690-380-7100(14) 12/4	<p>RACM - Same comments as V1. 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> <p>RACM - See comments on OAR-690-380-3000(19) above.</p>	<p>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p> <p>RE: the comments about transfers to and from land zoned EFU or within irrigation districts, this language comes from OAR 690-005-0025(3). Any concerns about this language could be part of a future discussion about updates to Division 5.</p>	Complete. Some changes made. V3 draft.
Land Use 690-380-8003(2)(d) 12/6	<p>RACM - See comments on OAR-690-380-3000(19) above.</p>	<p>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p> <p>RE: the comments about transfers to and from land zoned EFU or within irrigation districts, this language comes from OAR 690-005-0025(3). Any concerns about this language could be part of a future discussion about updates to Division 5.</p>	Complete. Some changes made. V3 draft.

<p>690-380-6010</p> <p>12/5</p>	<p>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 response to our V1 comment on this was that it was outside the scope of this rulemaking. We disagree. One of the purposes of this rulemaking was to clean up rules that are not aligned with statute; this is not authorized by statute and should be removed. Transfers should not allow loopholes to the newly passed laws that limit extensions significantly.</p> <p>RACM - As noted in V1, we urge the OWRD to send the notice of cancellation if the COBU is not filed within the time required in the transfer. We see no one year grace period in the governing statute.</p> <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 now (7) which directs 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.</p> <p>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.</p>	<p>OWRD has authority to set time limits per 540.530. OWRD declines to make these changes as this topic requires more research and discussion than can be accomplished in this rulemaking effort. OWRD has reverted 6010 to existing rule. Out of scope.</p>	<p>Complete. Rule changed in v3.</p>
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<p>Enlargement</p> <p>690-380-0100(2)(c)</p> <p>12/15</p>	<p>RACM - Under the definition of “Enlargement”, we thank you for being responsive to our earlier comments and inserting the proposed addition (underlined) to (2)(c), such that it reads:</p> <p>(c) Failing to keep the original place of use from receiving water from the same source under the same water right;</p> <p>The ambiguity in the original rule, which lacked the underlined language above, has created issues for watermasters, who have been unclear as to which acres are eligible for transfer.</p> <p>In some basins, this has been interpreted 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>However, the water right holder obviously has been diverting and applying water to this POU—otherwise they would not have needed a water right in the first place! As such, when the water right holder stops diverting and applying their water right to the POU, the full water right should be eligible for transfer regardless of whether or not groundwater sub-irrigates the POU.</p> <p>We think the more likely actual intent of the original rule language</p>	<p>OWRD realized the changes to the rule created other unintended consequences and reverted to current language. The language was also ambiguous because staff would still likely find that a particular place of use is not eligible for transfer because the lands have not benefited from the application of water under the water right itself, as the lands are instead sub-irrigated or inundated with naturally occurring water. OWRD believes this topic needs further conversation both internally and externally.</p>	<p>Complete. Rule changed in v3.</p>
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	<p>was to prevent the enlargement of a water right that would arise from the same source water being diverted and applied under the same water right 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.</p> <p>Specifying that a POU may not be transferred if it continues receiving water from the same source and under the same water right should alleviate this ambiguity. We thank you for adding this clarification, which should resolve the issue going forward.</p> <p>RACM - TU shares the concerns elaborated in the letter submitted by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) dated 11/5/25. We see that WRD subsequently revised the clause to add "under the same water right" and TU appreciates that clarification.</p> <p>RACM RECOMMENDATION - Keep the new language "under the same water right" or add CTUIR's proposed "diverted and applied" language.</p>		
<p>Consent to Injury</p> <p>690-380-4000(8)</p> <p>12/5</p>	<p>RACM - This is a new section that allows the consent to injury process to begin at the IR stage. This relates directly to the consent to injury provisions found in 690-380-5050. In our V1 comments to –5050, WaterWatch suggested a robust and transparent process for consent to injury. We also made the point that the rules need to make crystal clear that consent to injury is an entirely</p>	<p>The rules and the statute already make it clear that consent to injury is discretionary and 690-380-5050 (see v3 draft; changed shall to may) is similar to the statute. Applicants already receive notice in the DPD today (which is becoming the IR) that their proposed change(s) in POD/POA are resulting in injury to an instream water right and that they may request to pursue consent to injury. The new process outlined in the draft proposed rules is actually more</p>	<p>Complete. Partial changes made. v3 draft.</p>

	<p>discretionary process, meaning ODFW does not have to consider, let alone approve, a consent to injury request. OWRD also has the discretion, per statute, to deny a request even if ODFW approves.</p> <p>OWRD's response to our comments was that they appreciated the comments, but that the topic requires a broader discussion and is outside of the scope of the rulemaking. If that is the agency's decision, then any changes to consent to injury should be put on hold until that broader discussion is held, including this new section that would insert the process at the IR stage. As such, we would suggest deleting this in whole.</p> <p>If the OWRD denies our suggested edit, then this section needs to be amended significantly to reflect the statutory language. For example, 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 process. The agency that requested the instream water right at issue can opt to not to consent to injury for any reason. 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".</p> <p>See our comments to V1 related to OAR 690-380-5050 for more detail. Moreover, any request would need to address timelines. But again, we would urge that, if the OWRD is not</p>	<p>transparent than today's process, as it eliminates situations where the Department issues a PFO to deny and then goes through the consent to injury process, then issues a FO to approve. It also eliminates unnecessary work to pull back and re-issue a PFO should the Department not decide to go straight to FO. OWRD has made some changes to address some components of comments.</p> <p>Further, OWRD identified a need to modify OAR 690-380-4000(8)(a) and OAR 690-380-5030(1) to ensure that internal cross-divisional processes continue to be accomplished in the most efficient manner possible.</p> <p>Additionally, related to RACM comments pertaining to the align terminology in the rules with the statutes – OWRD modified language in OAR 690-380-4000(8) to replace, "...if the applicant intends to pursue approval of the injurious transfer..." with "...if the applicant intends to request consent to the injurious transfer..."</p>	
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	<p>going to consider broader consent to injury changes, that this section be struck. This is a wholly new section that was not mandated by HB 3342, is not outlined in the existing statute and is not within the scope of the rulemaking.</p> <p>RACM - Two RAC members noted that many of their written comments related to the consent to injury process were not incorporated and that those sections still need a lot of work.</p>		
690-380-7300	<p>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 since the permit will surely expire during that time.</p> <p>RACM RECOMMENDATION - 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 #1 comments - OWRD appreciates the comment, but for processing efficiency will not be adding steps to the permit amendment process at this time as that is a restructure of the current process that OWRD does not have capacity to undertake in this rulemaking effort and would require further conversations. We may have an interest in revisiting at some point. As a reminder, the permit amendment does not result in a new completion date – therefore it is important for these to be timely. Further, an entity can ask for reconsideration to get items fixed.</p> <p>OWRD did 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 – While not exactly as suggested, OWRD did modify OAR 690-380-7300(1)(h) to clarify that any other requirements that are applicable to water right permit amendments must be met in order for OWRD to approve the application.</p> <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.</p>	Complete. Partial changes made. v2 draft.

	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.		
690-380-3400 12/5	<p>RACM - : 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 - TU shares the concerns elaborated in the letter submitted by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) dated 11/5/25.</p> <p>RACM RECOMMENDATION - Revert the edits to the introductory language in this rule provision, so that Director shall waive \$100 or 50% of the application fee, whichever is greater.</p>	OWRD modified the language in OAR 690-380-3400 to revert back ..	Complete. Partial change made. v3 draft.
690-380-4000(12) 12/5	RACM - : We support the new language in V2 that provides that if the applicant amends the application, the OWRD will re-issue a superseding IR and re-notice the application for comment. That said, we are still concerned with the rule language that states "or incorporate the amendments into the proposed	OWRD declines to make the requested changes. The rule is modified to say: If the applicant amends the application or provides additional information in support of approval of the application, the Department may either revise the initial review and give notice of the revised initial review in the manner set forth under OAR 690-380-4005 or incorporate the amendments into the proposed final order. This allow the agency	Complete. Partial change made. v3 draft.

	final order”. This would give OWRD the discretion to go straight to proposed final order, at which point the only option for the public would be to protest. It might be cleaner to split into two sections, one to address a revised application, and another to address additional information. The concern is that an application that the OWRD IR initially determines would result in a “denial” could turn into an “approval”, which is a huge change that should be noted in an IR so the public can weigh in via comments.	to balance the need for public process with the need for efficiency and to assess the specific facts.	
690-380-7300 12/5	RACM - Same comment as V1: 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 dam or diversion structure being built in a Scenic Waterway.	While not exactly as suggested, OWRD did modify OAR 690-380-7300(1)(h) to clarify that any other requirements that are applicable to water right permit amendments must be met in order for OWRD to approve the application.	Complete. Partial change made. v3 draft.
690-380-4200(2) 12/5	RACM #1 - We strongly support the consolidation of forfeiture claims into the cc hearing as it creates process efficiencies; that said the response to comment noted no changes have been made but V2 does have changes. RACM #2 - Considering OAR 690-380-4200(2) (both current and as proposed), I'm trying to figure out what specific statute gives the Department the authority to begin cancellation proceedings on a water right simply based on an assertion of forfeiture made in a protest of a transfer application. I have reviewed the statutory authority listed at the end of the rule section, but I just don't see where action on a simple assertion of forfeiture is mentioned. Can you give me some clarification on the relevant statutes for these rules?	<u>Response to RACM #1 comment:</u> Our recollection is that OWRD made changes in response to OWRD staff review and discussion outside of comment, which is why the response was drafted in the manner it was. We apologize for any confusion or if we unintentionally omitted information. We compared the v1 draft proposed rules in OAR 690-380-4200(2) against the v2 draft and found the following changes were made in the v2 draft proposed rules in OAR 690-380-4200(2): <ul style="list-style-type: none"> - Throughout this rule, the phrase “...notice of proposed cancellation...” was replaced with “...notice of cancellation proceeding...” - The citation “...in accordance with OAR 690-017-0400(6)...” was replaced with “...in accordance with ORS 540.631...” - The phrase “...shall also include the notice and procedures...” was changed to remove “notice and” so 	Complete. No changes made.

		<p>that it reads “...<i>shall also include the procedures...</i>”</p> <p><u>Response to RACM #2 comment:</u> The Department believes the authority really lies with the Administrative Law Judge (ALJ), who has the authority to resolve issues that come before the ALJ during these transfer protest proceedings. Forfeiture/nonuse is often alleged during the proceedings, so the ALJ has discretion to adjudicate the issue and will do so. You cannot transfer a water right that has been forfeited and in fact that is part of the criteria for a transfer. The problem is that the statutes requiring notice about forfeiture don’t neatly tie to the statutes on transfers. If a transfer proceeding could result in forfeiture, we believe that they should be receiving the same notice as in the forfeiture statutes. While someone may assert forfeiture during the ALJ proceedings, ultimately that party still will have to meet the evidentiary standards required by the APA. The proposed rules are designed to be efficient and not require multiple hearings on the issue of forfeiture in the context of transfer protest proceedings.</p>	
<p>Consent to injury</p> <p>690-380-5050 General</p> <p>(see also -- 5050(8) comments and Appendix to comment letter)</p> <p>12/5</p>	<p>RACM - 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> <p>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</p>	<p>OWRD has previously responded to this comment and declines to make the change as this topic requires a broader discussion and is outside the scope of this rulemaking effort.</p> <p>See also other responses regarding consent to injury in this document.</p>	<p>Complete. No changes made.</p> <p>Consent to injury</p>

	<p>consent. All is required is that they tell OWRD it does not consent.</p> <p>Remove statutorily incorrect rule language stating that OWRD “shall” consent if the agency requesting the instream water right recommends consent, which is directly contrary to the statutory directive that OWRD “may” consent (see above).</p> <p>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> <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 injury should be clarified in rule (e.g. ODFW’s internal guidelines should be incorporated for ODFW requested instream water rights).</p>		
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	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. We have offered some initial language for consideration in Appendix A attached to our comments to V1, but these likely need more refinement and discussion.		
Enlargement 690-380-7300(1) 12/5 Submitted late for 10/21 version	<p>RACM – The proposed rules include some criteria for approval of a permit amendment that are not consistent with ORS 537.221.</p> <p>Proposed rule criteria (1)(d), (e), (f), and (g) are consistent with the statute, being ORS 537.221(4)(a), (c), (d), and (e), respectively.</p> <p>Propose rule criteria (1)(c) is not consistent with the requirements for approval of a permit amendment per ORS 537.211. This proposed rule criteria should be removed.</p> <p>Proposed rule criteria (1)(h) is not consistent with the requirements for approval of a permit amendment per ORS 537.211. The only “other” requirement stated in ORS 537.211 for approval of a permit amendment is “Diversion is provided with a proper fish screen, if requested by the state Department of Fish and Wildlife” [ORS 537.211(4)(h)]. Proposed rule criteria (1)(h) should be revised to be consistent with the statute.</p>	<p>The permit amendment statutes are found in ORS 537.211, so it is assumed that all statutory citations made in this comment pertain to ORS 537.211, instead of ORS 537.221.</p> <p>The approval of a transfer application that would result in enlargement of the right proposed for transfer is not in alignment with the doctrine of prior appropriation. To allow such a transfer essentially equates to someone being able to appropriate more water under an existing priority date without having to apply for a new water right with a new junior priority date.</p> <p>Related to the comment pertaining to the proposed rule criteria in OAR 690-380-7300(1)(h), the intent of this rule is to include any other requirements, such as parts of OAR 690-380 that are applicable to specific types of permit amendments. One such example can be found in the draft proposed rules in OAR 690-380-7010 that specify for a change in point of diversion or additional point(s) of diversion, the new diversion(s) must be equipped with a proper fish screen if requested by ODFW. There may also be other rules or requirements, outside of the proposed permit amendment rules that are applicable to permit amendments.</p>	Complete. No changes made.
Enlargement	RACM #1 - We appreciate and support OWRD's V2's amendments to this section of rule.	OWRD Response to RACM #2 comments: It appears that the RACM #2 comments are related to OAR 690-380-2200 (Changes in Place of Use). As with other transfers, when	Complete. No changes made.

<p>690-380-2120 and 690-380-2200</p> <p>12/5</p> <p>(2nd RAC comment, submitted late, for 10/21 version)</p>	<p>RACM #2 - Proposed changes to place of use changes will complicate transfer applications and result in unnecessary subdivision of water rights.</p> <p>In some instances, water rights have complex place of use geometries making detailed tracking of FROM and TO lands acre-by-acre in the context of a transfer cumbersome.</p> <p>Example 1. Center pivots are adjusted slightly result in fractional acres that need to be moved to accurately align POUs with the center pivot circles. For water rights involving 40+ circles, it makes for a simplified transfer to pick up the misplaced circles and to put them back down in the correct location, versus listing 40+ rows of fractional acres of FROM and TO lands in the transfer application and mapping the multiple thin slivers of FROM and TO lands on the transfer map.</p> <p>Example 2. For some nursery use permits, the place of use is complex, with nursery use covering some buildings and loading areas, in addition to container yards and in-ground irrigation area. When certain nursery areas are reworked/renovated, numerous small changes in the POU may occur. Attempting to isolate and move small variations in the POU acres can be time consuming, makes the POU table listing in the transfer application excessively lengthy, makes mapping more difficult, requires tracking of fractional acreages, and creates more opportunity for scrivener errors in the POU listings/maps.</p>	<p>processing a place of use transfer OWRD must, among other things, evaluate enlargement. One element of that is to ensure that the place of use proposed to be moved (i.e., the “FROM” lands) will not continue to receive water from the same source. In other words, the “FROM” lands must be dried up as it relates to the water right involved in the transfer. Allowing a place of use transfer that picks lands up and then puts them back down on the same exact location constitutes enlargement as defined in OAR 690-380-0100(2)(c) because the original place of use continues to receive water from the same source. OWRD believes the v2 and v3 draft proposed rules in OAR 690-380-2200(2) are necessary to prevent enlargement and declines to remove it from the draft proposed rules.</p>	
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	<p>Allowing certain blocks of POU to be picked up, and placed back down in the modified geometry makes the transfer application tables and maps less complex.</p> <p>Example 3. For some water rights, multiple small adjustments to the POU may be required over time, and rather than generating confirming and remaining certificates for each POU change over time (resulting in the subdivision of 1 certificate into many), the applicant may prefer to keep the water right together and include the entire POU so that 1 confirming certificate results from the transfer.</p> <p>Recommend not adding the proposed language.</p>		
<p>690-380-4010(2)(f)</p> <p>12/5</p>	<p>RACM - Again, we believe the better standard is “any other requirements set forth in applicable law and rule”. The new V2 language does not address our concerns about general laws/rules that do apply but are not specific to transfers. The language presented here is too narrow and could lead to litigation if the OWRD applies other applicable laws outside the transfer statutes.</p>	<p>OWRD has previously responded to this comment and declines to make the change at this time.</p>	<p>Complete. No change made.</p>
<p>690-380-2260</p> <p>12/5</p>	<p>RACM - In our V1 comments we recommended new rule language that 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 is limited to “any person” who holds a water right. Our suggestion would bring the rules into alignment with Oregon’s APA, which defines “person” as any</p>	<p>Since the exchange statutes in ORS 540.533 do not provide a specific definition of the term “person”, OWRD then refers to the definition of “person” as specified in OWRD’s general provisions found under ORS 536.007(6), which states, “<i>“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.</i>” Because the definition in ORS 536.007(6) includes, “<i>...the state and any</i></p>	<p>Complete. No change made.</p>

	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	<i>agencies thereof,...</i> , OWRD does not believe the suggested change is appropriate.	
690-380-2340 12/5	RACM - We support the changes made in V2.	Noted.	Complete. No change made.
690-380-3000 General 12/5	RACM - We support additional language in V2 making it clear that an application can only include one water right per application, except in very limited circumstances (e.g. layered rights)	Noted.	Complete. No change made.
690-380-3000(12)(b) 12/5 Submitted late for 10/21 version	RACM – Re: transparency on affidavit form. I understand this has been stricken from rule for duplicity. Please retain this language on the OWRD affidavit form for transparency of options for those applicable	Noted. OWRD’s current evidence of use affidavit form includes information describing options to rebut the presumption of forfeiture under ORS 540.610(2) if the right has not been used during the past five years. OWRD intends to maintain this information on any future updates to the evidence of use affidavit form.	Complete. No change made.
690-380-3000(12), (12)(a)	RACM – We support the few changes made in V2 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. (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).	OWRD has previously responded to this comment and declines to make the change as this topic requires a broader discussion and is outside the scope of this rulemaking effort.	Complete. No change made.
690-380-3000(8) 12/5	RACM - We support the retention of the additional requirements here. See V1 comments for details.	Noted.	Complete. No change made.

690-380-4000(3) 12/5	RACM - 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.	At the onset of this rulemaking, OWRD determined that this part of HB 3342 required a broader discussion than could be accommodated under this rulemaking effort.	Complete. No change made.
690-380-4000(3)(f) 12/5	RACM - This section should be replaced with the broader “any other requirements of law and rule are met.” As noted in our V1 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.	OWRD would consider these examples to be included within the Department’s authorities and covered by the existing rule language (to the extent a basin plan does in fact apply to transfers).	Complete. No change made.
690-380-4010(1)(f) 12/5	RACM - Please rephrase so that the directive is that “other applicable rules and laws are met”. See comment on –0400(3)(f) above	See comment above for 690-380-4000(3)(f).	Complete. No change made.
690-380-4010(2)(c) 12/5	RACM - We support the V2 changes. This is the language in statute. That said, it would be clearer to all if the two requirements were split into two stand-alone sections	OWRD believes the language, as drafted in the v2 proposed rules, is adequate and declines to make further changes.	Complete. No change made.
690-380-4010(2)(d) 12/5	RACM - We continue to oppose the deletion of the existing provisions that require the applicant to show that they are ready, willing, and able to use the water. This is a critical piece of information for determining what	Added back, and updated other sections to reflect.	Complete. Change made.

	amount can be transferred and what should be cancelled. The OWRD response to comments notes that the agency thinks this is covered under OAR 690-4010(2)(c) and that this would be redundant. We disagree; in this particular case we do not think it is redundant. This is a point that causes a lot of confusion; it is better to be clear than silent.		
690-380-5060(2) 12/5 Submitted late for 10/21 version	RACM – Consistency issue. If requested by ODFW, a condition requiring a proper <u>an appropriate</u> fish screen at the new point of diversion shall be attached to any transfer approval order for a change in point of diversion	Depending on the statute, a different term is used. Appropriate or proper are both used in the statutes tied to this rule. OWRD declines to make this change because “proper fish screen” is the specific term used in the transfer statutes at ORS 540.520(4) which state, “ <i>If the application is to change the point of diversion, the transfer shall include a condition that the holder of the water right provide a proper fish screen at the new point of diversion, if requested by the State Department of Fish and Wildlife.</i> ”	Complete. No change made.
690-380-5100(3) 12/5	RACM – We support the proposed deletion.	Noted.	Complete. No change made.
690-380-6020 12/5	RACM - 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.	OWRD has authority to set time limits per 540.530. OWRD declines to make these changes as this topic requires more research and discussion than can be accomplished in this rulemaking effort. OWRD has reverted 6010 to existing rule. Out of scope. If OWRD were to remove the extension provision it would likely extend the time for completion in rule at the same time and likely make other adjustments. This has not been discussed with the RAC or contemplated for this rulemaking, therefore, this is out of scope.	Complete. No change made.
690-380-6030 12/5	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 believes this is already covered with the draft proposed language found in OAR 690-380-6010(3) under the “Failure to Complete a Transfer as Grounds for Cancellation” section of the draft rules, and therefore the suggested change is not necessary in OAR 690-380-6030.	Complete. No change made.
690-380-6060	RACM - The rules limit petitions for reconsideration to landowners,	This is existing rule that is not proposed for changes in this rulemaking. This rule also	Complete. No change made.

12/5	we do not see this in the statute. Aligning rule with statute is within the scope of this rulemaking as we understand it.	matches provisions for 330 that are also not proposed for changes in the near term. OWRD declines to make these changes as this topic requires more research and discussion than can be accomplished in this rulemaking effort. Out of Scope.	
690-380-7030(1) 12/5	RACM - We appreciate the amendments to this section in V2 that utilization of this rule section cannot result in an expansion of acreage.	Noted.	Complete. No change made.
690-380-7100(1) 12/5 Submitted late for 10/21 version	RACM – Consistency issue. RACM RECOMMENDATION - Applicant’s name, mailing address, <u>email address if available</u> , and telephone number	OWRD reviewed the entirety of OAR 690-380 and determined that the format used (i.e., “... <i>email address (if available)</i> ,...”) is consistent throughout. No grammatical change is necessary.	Complete. No change made.
690-380-7100(17) 12/5	RACM - : Same comments as V1. 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.	OWRD has previously responded to this comment and declines to make the change.	Complete. No change made.
690-380-7200 12/5	RACM - Same comments as V1. 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, but we will note that OWRD did change the hydro rules 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.	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. Although OWRD has an interest in this concept, OWRD does not have capacity to take this issue on at this time.	Complete. No change made.
Additional POD	RACM - Permit amendment statutes allow for “a change” in	OWRD interprets the intent of the permit amendment statutes differently than	Complete. No change made.

<p>690-380-7000</p> <p>12/5</p>	<p>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. OWRD response to our V1 comments on this was that this request falls outside the scope of this rulemaking. We disagree. These 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 multiple points of diversion a water right holder ultimately seeks</p> <p>RACM - Please delete “or additional point(s) of diversion” as this practice is not allowed by statute. See argument in –7000.</p>	<p>suggested in this comment. No change made.</p>	
<p>Additional POD</p> <p>690-380-7020(1)</p> <p>12/5</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. We do not believe it is redundant to state this clearly here.</p>	<p>OWRD has previously responded to this comment and declines to make the change.</p>	<p>Complete. No change made.</p>
<p>Enlargement</p> <p>690-380-2110(3), -2120 (various occurrences)</p> <p>12/5</p> <p>Submitted late for 10/21 version</p>	<p>RACM - Proposed change to the rule is not consistent with statute. The proposed rule changes are extending the enlargement concept to other parts of the transfer process that what is stated statute.</p> <p>Enlargement is stated as a criteria in statutes relating to only certain aspects of transfers; specifically, “enlargement” is specified in the following statutes</p> <ul style="list-style-type: none"> • ORS 540.510 (transfer of supplemental water right), 	<p>The approval of a transfer application that would result in enlargement of the right proposed for transfer is not in alignment with the doctrine of prior appropriation. To allow such a transfer essentially equates to someone being able to appropriate more water under an existing priority date without having to apply for a new water right with a new junior priority date.</p>	<p>Complete. No change made.</p>

	<ul style="list-style-type: none"> • ORS 540.523 (temporary transfer of supplemental water right), • ORS 540.524 (substitution of supplemental GW for primary SW), • ORS 540.531 (SW POA to GW POD change), and • ORS 540.570 (temporary transfers within districts) <p>“Enlargement”, however, is not stated in ORS 540.520 as a criteria for change in use, place of use, or point of diversion; nor is it stated in ORS 540.530 regarding issuance of an order approving a change of use, place of use, or point of diversion; nor is it stated in ORS 540.532 for a change in point of diversion to reflect historic use.</p> <p>Inclusion of “enlargement” in the transfer rules should follow the statute and be applied to only the specific transfer process where “enlargement” is referenced.-</p>		
Enlargement 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.	The approval of an application that would result in enlargement of the right proposed for transfer is not in alignment with the doctrine of prior appropriation. To allow such a transfer essentially equates to someone being able to appropriate more water under an existing priority date without having to apply for a new water right with a new junior priority date.	Complete. No change made.
690-380-2410(1) 12/5	RACM - Please add the term “municipal” before “beneficial use” to ensure these exceptions only apply to ordinary municipal beneficial uses, not other water rights that might be held by a municipality. We made this point in our V1 comments but did not see a response.	The phrase “may be applied to beneficial use on...” is from statute at ORS 540.510(3)(a) and has not been modified. OWRD would need to do further research. No change.	Complete. No change made
690-380-3000(12)(a) (A)	RACM - Vague wording, no direction on how to comply.	In response to this comment, OWRD modified the v3 draft proposed rules in OAR 690-380-3000(12)(b)(A) - (C) to provide alternative language that covers various	Complete. Changes made. v3 draft.

12/5 Submitted late for 10/21 version	Is the situs address on a receipt sufficient to comply with the connection of a receipt to an authorized POU? It would be helpful to provide examples on what evidence related receipts would look like to achieve compliance	different types of supporting documentation.	
690-380-3100(2)(a) 12/5 Submitted late for 10/21 version	RACM RECOMMENDATION - Consistency issue. The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp, seal, or signature is acceptable	To align with other rule divisions, OWRD modified the language in OAR 690-380-3100(2)(a) to specify that, "... <i>A digital stamp or seal and signature are acceptable, provided the requirements under OAR 690-014-0050 are satisfied.</i> "	Complete. Changes made. V3 draft.
690-380-7100(20) 12/5 Submitted late for 10/21 version	RACM – Specificity issue. RACM RECOMMENDATION - The Department may require the applicant to provide any additional information it deems necessary in determining whether <u>related to the proposed permit amendment</u> to approve the application.	Changes made in OAR 690-380-7100(20) to address this comment.	Complete. Changes made. v3 draft.
690-380-7110 12/5 Submitted late for 10/21 version	RACM – Consistency issue. RACM RECOMMENDATION For an application made by or on behalf of a public corporation, the Department	Change made in OAR 690-380-7110 to address this comment.	Complete. Changes made. v3 draft.
Enlargement 690-380-2200(2) 12/5	RACM -This provision still needs to be revised to align with the clarification made to the definition of enlargement under 690-380-0100(2)(c). Please add the bolded portion below to the new language in paragraph (2) so that it is consistent with the changes the agency has made under 690-380-0100(2)(c). (2) For water rights with an authorized place of use tied to specific acreage, including but not	OWRD realized the changes to the definition in OAR 690-380-0100(2)(c) created other unintended consequences and reverted that proposed language back to the current language. The language was also ambiguous because staff would still likely find that a particular place of use is not eligible for transfer because the lands have not benefited from the application of water under the water right itself, as the lands are instead sub-irrigated or inundated with naturally occurring water. OWRD	Complete. No changes made.

	<p>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 from the same source under the same water right.</p> <p>RACM - TU shares the concerns elaborated in the letter submitted by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) dated 11/5/25. In this clause, WRD has not subsequently revised the clause to add "under the same water right" or similar clarifying language.</p> <p>RACM RECOMMENDATION - Add "under the same water right" or similar language mirroring edit in 0100(2) (c).</p>	<p>believes this topic needs further conversation both internally and externally.</p> <p>Therefore, because OWRD reverted OAR 690-380-0100(2) back to current language, OWRD is not making any changes to the v3 draft proposed language in OAR 690-380-2200(2); thereby keeping the language in the two rules consistent.</p>	
<p>Land Use</p> <p>690-380-5100</p>	<p>RACM - LandWatch supports this provision.</p> <p>RACM –</p> <p>One RAC member noted that he will coordinate with municipal RAC members to improve the language concerning compatibility with comprehensive plans.</p>	<p>See Land Use response in other comments in this document.</p>	<p>Complete. Changes made in v3.</p>
<p>Enlargement</p> <p>690-380-2110(3)</p> <p>12/5</p> <p>690-380-2120(5)(b)</p>	<p>RACM - We strongly support the addition of language that clarifies the OWRD's ability to condition the transfer. That said, as to the proposed change in V2, we urge the OWRD to retain "the potential for injury" rather than "likely" injury. The word "likely" could be asserted by some to raise the level of proof needed if any condition is challenged. For example, OWRD routinely conditions transfers with measurement and reporting</p>	<p>OWRD has updated: The Department may condition the transfer to prevent injury or enlargement resulting from the change.</p> <p>OWRD modified other rule where this similar language appears.</p>	<p>Complete. Changes made in the v3 draft.</p>

	conditions to ensure a water right is used within its rate/duty so as to protect against injury. Whether absent those conditions, injury would be “likely” is an unnecessary analysis that is not required by statute. The language should be whether there would be the potential for injury.		
Historical POD General (also – 2110(3), - 2120, - 3000(12)(b)(A), - 7300) 12/5	<p>RACM - The changes that OWRD is proposing to Division 380 and 382 go beyond the scope of the 2025 legislation mandates, and OAN encourages OWRD to limit the changes it implements to those required by the 2025 legislation. Transfers are a crucial water management tool that enable agricultural water right holders to efficiently and sustainably manage water. OAN is concerned that based on the breadth of proposed changes to the transfer process, the permit amendment process, and the groundwater registration modification process, stakeholders have not had adequate time to fully review and assess the potential impacts of the proposed changes.</p> <p>Below are examples of some, but not all, of the substantive changes that OWRD is proposing that is outside the scope of the 2025 legislation.</p> <p>-OAR 690-380-2110(3). The proposed language provides that OWRD may condition a transfer to protect against the potential for likely injury or enlargement that may occur as a result of the change. The term “likely injury” is not defined in statute or rule, and it is not clear how the addition of this phrase will increase the processing efficiency, as it appears to add additional ambiguity.</p>	<p>Comments related to OAR 690-380-2110(3) as it pertains to “likely injury” addressed: The Department may condition the transfer to prevent injury or enlargement resulting from the change</p> <p>Comments related to OAR 690-380-2120 as it pertains to the proposed removal of groundwater from the process for changing a surface water point of diversion or a groundwater point of appropriation to reflect historical use under OAR 690-380-2120 – OWRD has started a legislative history review of the statute and will complete that review in January. Based on the statute itself as well as research undertaken to date, it appears to focus on surface water. Though there is not conclusive information yet, the conversation about this provision of the bill did not mention groundwater.</p> <p>In response to comments related to OAR 690-380-3000(12)(b)(A) pertaining to receipts submitted as supporting documentation for evidence of use affidavits – OWRD modified the v3 draft proposed rules in OAR 690-380-3000(12)(b)(A) - (C) to provide alternative language that can be applied to various types of supporting documentation. Changes made.</p> <p>Comments related to OAR 690-380-7300 that “enlargement” should not be applied to permit amendments – The approval of a transfer application that would result in enlargement of the right proposed for transfer is not in alignment with the doctrine of prior appropriation. To allow such a transfer essentially equates to someone being able to appropriate more water under</p>	Complete. Changes made in the v3 draft

	<p>- OAR 690-380-2120. OWRD indicated that it removed references to “point of division or appropriation” to reflect a new belief that the rule only applies to historic surface water point of diversion changes. It is not clear whether OWRD conducted a legislative history analysis to determine the legislative intent of the implementing statute. This language should not be changed until OWRD has clarity on such history.</p> <p>- OAR 690-380-3000(12)(b)(A). OWRD’s rule proposes to update requirements for dated receipts for use of water or sales of irrigated crops. The new language provides that such receipts must be marked by the issuer of the receipt with information that ties the receipt to the authorized place of use of the water right. It is unlikely that crop sales receipts or receipts for use of water (i.e. power bills) will mark the specific location of the place where crops were grown or water was used, and OAN requests that OWRD remove this proposed language.</p> <p>- OAR 690-380-7300. OAN appreciates that OWRD is formalizing some longstanding components of the permit amendment process in rule. However, permit amendments are authorized under a single statute, ORS 537.211, that is different from the statutes that apply to the transfer process. Notably, ORS 537.211 does not mention the enlargement standard. OWRD should revise this section, including removing the reference to enlargement, to ensure that the</p>	<p>an existing priority date without having to apply for a new water right with a new junior priority date. No changes made.</p>	
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	applicable standards align with the provisions of ORS 537.211.		
690-380-2120(3)(a)(E) 12/5	RACM - One RAC member noted that the removal of “upstream” causes problems and is a departure from the existing process	OWRD changed the language in OAR 690-380-2120(3)(a)(E) from “... <i>upstream into or through the designated reach...</i> ” to “... <i>upstream in the designated reach...</i> ” to address this comment.	Complete. Change made. v3 draft.
690-380-5060(1) 12/5 Submitted late for 10/21 version	RACM – Grammar issue. Pursuant to ORS 540.525, when an application for a change in point of diversion is received, the Department shall consult with the ODFW to determine whether a fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion	OWRD modified the language in this rule so that it now reads, “... <i>the Department shall consult with ODFW...</i> ”	Complete. Change made. v3 draft.
Consent to Injury 690-3800-5050(8) 12/5	<p>RACM - The OWRD has stated that our broader comments are outside the scope of the rulemaking. We disagree because our comments would provide rules for OWRD to follow in order to comply with relevant statutes.</p> <p>However, at a bare minimum, OWRD needs to at least make the following change which is needed to amend existing rule language that is directly out of compliance with the statute. This is clearly within the scope of the rulemaking and warranted.</p> <p>(8) The existing “shall” needs to be changed to a “may”. The statute explicitly states that if the agency that requested the instream water right “does not withdraw its recommendation to consent to the change, the department may approve the change consistent with the paragraphs (b) and (c) of this subsection.” ORS 540.530(1)(e)(A) (emphasis added.). Thus, it is very clear that even if the recommending agency recommends consenting to injury, the OWRD retains the discretion</p>	<p>In order to align with ORS 540.530(1)(c) and (e), OWRD concurs that it is appropriate to change OAR 690-380-5050(8) from “...<i>the Department shall issue a proposed final order...</i>” to “...<i>the Department may issue a proposed final order...</i>”</p> <p>Upon reviewing the statute, OWRD also noticed another inconsistency: the statute specifies that OWRD will consult with affected tribes. OWRD has added to the rules.</p>	Complete. Change made. v3 draft.

	to deny the consent to injury. OWRD may not waive away the authority, discretion and responsibility that the legislature entrusted to it by promulgating rules that ignore the statute. The current rule is in conflict with statute and needs to be fixed. This is within the scope of this rulemaking.		
Consent to Injury 690-380-4200(3) 12/5	RACM - We support the OWRD's determination to retain the 15-day time period.	RACM comment is noted. OWRD also identified that it was necessary to modify the language in the v2 draft proposed rules in OAR 690-380-4200(3) from "...pursue approval of the transfer..." to "...pursue consent to the injurious transfer..." in order to coincide with changes made in the v3 draft rules in OAR 690-380-4000(8).	Complete. Change made. v3 draft.
Land Use Combined comments on land use compatibility issue 690-018-0040(22)(a) 690-018-0050(3)(c) 690-310-0040(1)(a)(L) 690-380-3000(19) 690-380-7100(14) 690-380-8003(2)(d) 690-382-0400(12) 12/5	RACM – See Leah's detailed comments. RACM RECOMMENDATION - Retain original language at this time. For permit amendments, include language similar to the original language for transfers.	Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use. OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.	Complete. Change made in V3. Land Use

<p>Land Use</p> <p>690-380</p> <p>General/land use</p> <p>12/5</p>	<p>RACM - OWRD's November Nov 24th email that included potential revised draft rule language related to Div 310, did not include other divisions where similar land use language exists. We strongly recommend the revised language discussed above under Div 310 be incorporated into Div 380, where applicable.</p> <p>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>Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has partially reverted to the original rule language pertaining to land use.</p> <p>OAR 690-380-3000(19) reverted. Original OAR 690-380-3000(19) language now used in the permit amendment and temporary transfer renewal rules. Rule summary for OAR 690-380-5100 updated.</p>	<p>Complete. Change made in V3.</p> <p>Land Use</p>
<p>Historical</p> <p>POD</p> <p>690-380-2120</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 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. As such, we ask that you remove the</p>	<p>OWRD Response to RACM #3 comments: RACM comments related to the inclusion of groundwater under OAR 690-380-2120 – Based upon prior RAC Member feedback on the v1 draft proposed rules, OWRD reviewed the statutory language and requirements throughout ORS 540.532 and determined that it appears that the statute is solely focused on historic surface water point of diversion changes. Changes to remove groundwater were already made throughout OAR 690-380-2120 as part of the v2 draft proposed rules. Therefore, no changes are necessary in this v3 draft proposed rules.</p> <p>See further discussion of this matter elsewhere in this doc.</p>	<p>Complete No change made.</p>

12/22/25

	language pertaining to groundwater and historic points of appropriation throughout this section.		
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