

## Summary of Potential Rule Changes

### OAR 690- Division 53 - HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

Rule Draft Date: 9/23/11/19/2025; Summary Date: 9/23/11/19/2025

V2 changes highlighted in yellow. See rule changes for more specific information.

\*Items in italics are intended to provide a quick grounding for RAC members and whether a rule change is implementing legislation, a rule update or clarification, a process improvement or some other substantive policy change. OWRD acknowledges that there may be different opinions as to whether an item is a substantive policy change or a rule update and encourages RAC members to review all materials. OWRD has done an initial rough cut in an attempt to assist RAC members per request at the first RAC meeting. Due to the short turnaround to fulfill this request, OWRD cannot assure accuracy.

\*\* Or Laws 2025, ch 282 = House Bill 3342 (water rights transactions); Or Laws 2025, ch 575 = House Bill 3544 (contested cases), ORS 183 = Oregon Administrative Procedures Act (APA).

OAR 690-053-0001	This rule has been amended to provide that the rule changes to Division 53 will apply to amendment applications filed on or after April 1, 2026. <i>Rule update.</i>
690-053-0010 Amendment Application Form	<del>Because use within the past five years does not, on its own, establish that the water right is not subject to forfeiture and can be transferred, this rule has been amended to align with ORS 540.610 to make it clear that the right involved in the hydro amendment cannot be subject to forfeiture. This rule has been amended to better align with ORS 540.610.</del> <i>Policy: conform to water law on forfeiture.</i>
690-053-0015 Notice Requirements	This rule is amended to implement Or Laws 2025, ch 282, section 7, by removing newspaper notice requirements and by requiring weekly public notice for hydroelectric application amendments; this rule amendment also implements Or Laws 2025, ch 282, section 2, by allowing electronic notice in lieu of mail, unless mailed notice has been requested. <del>The rule amendment also sets deadlines for Hydroelectric Application Review Team comments to be received.</del> Adjusts reference to “agency” to reduce confusion and reorders sentences for clarity. <i>Specified by 2025 legislation: electronic notice, public notice. Process efficiency.</i>
690-053-0030 Public Hearing	This rule amendment implements Or Laws 2025, ch 282 section 2 by allowing electronic notice in lieu of mail, unless mailed notice has been requested. <i>Specified by 2025 legislation: electronic documents.</i>
690-053-0035 Issuance of Proposed Final Order	This rule amendment implements Or Laws 2025, ch 282, section 2, by allowing electronic notice in lieu of mail, unless mailed notice has been requested. The amendment also requires mailed notice to applicant pursuant to the Oregon Administrative Procedure Act (ORS 183) and additional language changes have been made for consistency purposes related to orders. <i>Specified by 2025 legislation: electronic documents. Contested case standardization and conformance to APA notice.</i>
690-053-0040 Protests	<del>This rule is amended to clarify that the requirements for the form and content of certain types of protests stated in OAR 690-002-0030 do not apply to protests of proposed final orders on applications for amendments to hydroelectric licenses, power claims or certificates to make it consistent with existing Chapter 690, Division 2 rules; Additional</del> language changes made for consistency purposes related to orders. <i>Contested case standardization/efficiency (APA):</i>

<p>690-053-0045 Contested Case Hearings</p>	<p>This rule is amended to remove the reference to OAR 690-310-0170, which is being repealed consistent with Or. Laws, Ch 575 modifications to ORS 537.153 and 537.621. <u>It is replaced with somewhat similar language related to next steps following a protest (issuance of order or contested case).</u> This rule also is amended to recognize that these contested case hearings are governed by OAR 690, division 2 as well as OAR 137, division 3.</p> <p><i>Conforming to 2025 legislation. Contested case standardization/efficiency (APA).</i></p>
<p>690-053-0049 Exceptions to the Administrative Law Judge Proposed Order; Director's Final Order</p>	<p>The procedure for filing exceptions is addressed in OAR 690-002-0175. This rule clarifies what occurs after the Administrative Law Judge issues a proposed order. This rule is also amended to conform to OAR 137-003-0655.</p> <p><i>Contested case standardization/efficiency (APA): rule clarity and conform to APA.</i></p>
<p>690-053-0050 Final Order on Default</p>	<p>This rule implements ORS 183, which allows the agency to define when a proposed final order will become final. The rule states that the order will become final as a result of (1) no protest being filed, (2) the withdrawal of protests, (3) or default of protestants. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.</p> <p><i>Contested case standardization/efficiency (APA): final orders.</i></p>

V1=9/2/2025

V2=11/19/2025=track changes in yellow

### Division 53

## HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

690-053-0001

### Purpose and Applicability

(1) The purpose of this division is to establish procedures to be used by the Water Resources Department in evaluating applications for amendments to hydroelectric licenses, power claims or certificates. These rules do not apply to new project proposals. These rules describe the type of amendments that may be considered; the process that must be followed to approve amendments; and what steps must be taken to avoid injury to other water users, prevent undesirable impacts to natural resources, and to appeal Department decisions.

(2) These rules do not apply to:

- (a) A change in point of diversion.
- (b) A change in point of appropriation.
- (c) New uses unrelated to the hydroelectric generation use.
- (d) The construction of a new dam in a location where there is no existing dam or diversion.
- (e) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the surface area or elevation of an existing impoundment.
- (f) Any modification to an existing hydroelectric project (including the replacement of existing turbines) which would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more or would result in an increase in the project's nameplate capacity of 2 megawatts or more as defined in regulations of the Federal Energy Regulatory Commission (FERC), 18 CFR 11.1(i).

(3) Meeting the terms and conditions of a hydroelectric license, water right permit or certificate is considered a beneficial use of water.

(4) These rules apply to amendment applications filed on or after April 1, 2026. Applications submitted before this date shall be subject to the rules in effect at the time of submittal.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule has been amended to provide that the rule changes to Division 53 will apply to amendment applications filed on or after April 1, 2026.

**690-053-0005****Definitions**

The following definitions apply to the rules in this division:

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the director of the Water Resources Department.
- (4) "Augmentation of a hydroelectric water right" means diverting more water beyond the volume provided in the applicable hydroelectric water right over a calendar year. Augmentation does not include rescheduling or redistributing water use within a calendar year or installing more efficient generation equipment that allows the use of the same amount of water to produce more power.
- (5) "Final Unified State Position" means the formal state comments described in ORS Chapter 543A.115 that are forwarded to the Federal Energy Regulatory Commission (FERC) by the Hydroelectric Application Review Team (HART) in response to an applicant's final license application with FERC.
- (6) "Applicable hydroelectric water right" means a license issued under ORS Chapter 543, a power claim or certificate issued under Chapters 537 or 543A for the generation of hydroelectric power, a decreed right issued according to Chapter 539 or pre-1909 uncertificated claim.
- (7) "Injury to an existing water right" means a situation where the holder of a valid water right is prevented from receiving the water to which he/she is legally entitled.
- (8) "Redistribution" means varying the amount of water over the seasons of a calendar year but not exceeding the total amount allowed for the year. The total yearly amount is computed by multiplying the daily rate by 365 days.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**690-053-0010****Amendment Application Form**

An amendment application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information:

- (1) Applicant's name, mailing address, and telephone number.
- (2) Name appearing on permit, certificate or license, if different.
- (3) Type of change proposed.

- (4) Number of the permit, certificate or license.
- (5) Source of water.
- (6) Date of priority.
- (7) The existing points of diversion and points of use located accurately on a map in reference to a public land survey corner.
- (8) A general description of the current facilities, including capacity.
- (9) A statement explaining the reason for the proposed amendment consistent with 690-053-0020 through 0030.
- (10) Evidence that the water has been used within the past five years in accordance with the terms and conditions of the permit, certificate or license, and/or is not subject to forfeiture under ORS 540.610. The evidence may include:
  - (a) Affidavits from knowledgeable persons, such as the owner or operator, a neighbor, power purchaser.
  - (b) Receipts or expenditures related to the use of water.
  - (c) Other records such as dated photographs.
- (11) If for a redistribution or augmentation of water use a letter from the affected wildlife and/or environmental quality agency endorsing the change.
- (12) A listing of all affected local governments, including county, city, municipal corporations, and tribal governments.
- (13) An oath that the information contained in the application is true and accurate.
- (14) The signature of the applicant, and if an entity, the title of the authorized representative signing the form.
- (15) The appropriate fee as required under ORS 536.050(1)(h).

Statutory/Other Authority: ORS 543.092, & ORS 536.027

Statutes/Other Implemented: ORS 543.092, & ORS 543A, ORS 540.610

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** Because use within the past five years does not, on its own, establish that the water right is not subject to forfeiture and can be transferred, this rule has been amended to better align with ORS 540.610 to make it clear that the right involved in the hydro amendment cannot be subject to forfeiture.

**690-053-0015**

**Notice Requirements**

(1) The Department shall give notice of amendment applications received by publication in the Department's weekly notice "Public Notice of Water Use Requests." Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail. Any person interested in an amendment application shall submit written comments to the Department within 30 days of the weekly notice ~~or the last day of the newspaper notice in 690-053-0015(2), whichever is later.~~

~~(2) After notice is published by the Department, the applicant shall arrange for publication of a notice provided by the Department in an appropriate newspaper having general circulation in the area in which the hydroelectric facility is located for a period of at least two weeks and not less than one publication each week. The applicant shall provide the Department with a certificate of publication.~~

(3) The notice must include the following information about the application:

- (a) The application and project file number.
- (b) The county of use.
- (c) The type of amendment proposed.
- (d) The applicants name and address.
- (e) The date by which comments on the amendment application must be received by the Department.
- (f) A statement that upon issuance of a ~~draft~~ proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality.

(4) The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian Tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project. ~~Agency comments must be received within 30 days after the last date of publication shown on the notice to file comments.~~ Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail, or with the consent of the recipient, by electronic means. Agency eComments from these governmental entities must be received within 30 days of issuance of the notice.

Statutory/Other Authority: ORS 543.092, ~~&~~ ORS 536.027

Statutes/Other Implemented: ORS 543.092, ~~&~~ ORS 543A, Or Laws 2025, ch 282

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule is amended to implement Or Laws 2025, ch 282, section 7, by removing newspaper notice requirements and by requiring weekly public notice for hydroelectric

application amendments; this rule amendment also implements Or Laws 2025, ch 282. section 2. by allowing electronic notice in lieu of mail, unless mailed notice has been requested. ~~The rule amendment also sets deadlines for Hydroelectric Application Review Team comments to be received.~~ Adjusts reference to “agency” to reduce confusion and reorders sentences for clarity.

## **690-053-0020**

### **Amendment Criteria**

Under ORS 543.092, upon the request of the hydroelectric water right, and the approval of the Department, a hydroelectric water right or certificate may be amended, provided that the amendment:

- (1) Is consistent with the final unified state position for the project, if one exists;
- (2) Is consistent with the requirements of ORS Chapter 543A;
- (3) Causes no injury to other water rights that cannot be adequately mitigated as determined by the Water Resources Department; and
- (4) Allows for public participation in the amendment process.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

## **690-053-0025**

### **Types of Amendments that Will Be Considered Under These Rules**

All amendments allowed in this section must be consistent with the standards in 690-053-0020.

(1) Hydroelectric water right holders as defined in ORS 543.075(2) may submit amendment applications that allow augmentations or redistribution of the volume of water allowed for diversion in the applicable hydroelectric water right only if the proposed amendments meet management goals of state wildlife or environmental quality agencies and are shown to restore, enhance or improve fish populations and/or water quality within the river systems. This includes:

(a) The rescheduling or redistributing of the total amount of water used over the year so that more water may be diverted during certain times of the year in exchange for reductions of water use during other times.

(b) Augmenting or increasing the total yearly amount of water provided that:

(A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.

(B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025; and

(C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.

(D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application.

(2) Hydroelectric water right holders may submit application amendments for the following:

(a) Adding fish protection and/or water quality as a beneficial use.

(b) Changing one or more items in the "water right conditions" section of the applicable hydroelectric water right provided that, after the application has been submitted, the affected state agencies have been consulted by the project owner and agree in writing that the amendment is needed.

(c) Hydroelectric water right holders may submit application amendments altering the date of expiration in the applicable hydroelectric water right to match the period granted by FERC.

(d) Clarifying language or correcting administrative errors.

(3) Other proposed amendments not identified in these rules may be considered by the Department provided that the proposed amendment meets the criteria in 690-053-0020.

Statutory/Other Authority: ORS 543.092 & 536.027

Statutes/Other Implemented: ORS 543.092 & 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

### **690-053-0030**

#### **Public Hearing**

(1) Based on review of the application, public comments received, the size of the project and other pertinent information, the Director will determine whether a public meeting and a request for additional studies or consultation will be required.

(2) The public meeting may be omitted under one or more of the following circumstances:

(a) The project generates less than 100 theoretical horsepower of electricity;

(b) The proposed amendment does not involve a change in the annual amount of water used; or

(c) The proposed amendment is one agreed upon by the Department and the affected resource agencies; or

(d) No public comments were received raising substantial issues.

(3) If the Director determines a public meeting is required, notice will be sent two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment

process. Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail, ~~or with the consent of the recipient, by electronic means.~~

Statutory/Other Authority: ORS 543.092, & ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS & 543A; Or Laws 2025, ch 282

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule amendment implements Or Laws 2025, ch 282, section 2, by allowing electronic notice in lieu of mail, unless mailed notice has been requested.

### 690-053-0035

#### Issuance of ~~Amendment~~ Proposed Final Order

After the close of the public comment periods, or the public hearing if one is held, and upon a finding that the proposed amendment meets standards in OAR 690-053-0020, the Department shall issue a proposed final order within 120 days.

(1) In developing the proposed final order, the Department shall consider all comments received under OAR-690-053-0015 and 0030, but the proposed final order need not separately address each comment received.

(2) The proposed final order shall include findings of fact and conclusions of law that show the standards in OAR 690-053-0020 and 0025 are met.

(3) The Department shall send the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415. ~~by regular mail, or with the consent of the recipient, by electronic means.~~ The Department shall send copies of the proposed final order ~~to the applicant~~ and to persons who have requested copies by electronic means unless the recipient has requested that notice be sent by regular mail. Within 15 days after issuing the proposed final order, the Department shall publish notice of the order in the weekly notice published by the Department.

Statutory/Other Authority: ORS 543.092, & ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS & 543A, ORS 183.415, Or Laws 2025, ch 282.

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule amendment implements Or Laws 2025, ch 282, section 2, by allowing electronic notice in lieu of mail, unless mailed notice has been requested. The amendment also requires mailed notice to applicant pursuant to the Oregon Administrative Procedure Act (ORS 183) and additional language changes have been made for consistency purposes related to orders.

### 690-053-0040

#### Protests

~~(1) OAR 690-002-0030 does not apply to protests under this section.~~

~~(124)~~ Any person may submit a protest against a proposed ~~amendment~~ final order. A protest shall be in writing and include:

- (a) The name, address and telephone number of the protestant.
- (b) A description of the protestant's interest in the amendment and, if the protestant claims to represent the public interest, a precise statement of the public interest represented.
- (c) A detailed description of how the action proposed in the amendment will be detrimental to the protestant's interest.
- (d) A detailed description of how the amendment is in error or deficient and how to correct the alleged error or deficiency.
- (e) Any citation of legal authority supporting the protest, if known.
- (f) For persons other than the applicant, the protest fee required under ORS 536.050.

~~(232)~~ Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.

~~(343)~~ Protests shall be submitted within 45 days after publication of the notice of the amendment in the weekly notice published by the Department.

~~(454)~~ Within 10 days after the close of the filing period established under Section 3 of this rule, the Department shall send a copy of all protests to the applicant, and the protestant(s), if any.

Statutory/Other Authority: ORS 543.092, ~~&ORS~~ 536.027

Statutes/Other Implemented: ORS 543.092, ~~&ORS~~ 543A

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** ~~This rule is amended to clarify that the requirements for the form and content of certain types of protests stated in OAR 690-002-0030 do not apply to protests of proposed final orders on applications for amendments to hydroelectric licenses, power claims or certificates to make it consistent with existing OAR Chapter 690, Division 2 rules; additional~~ Language changes made for consistency purposes related to orders.

## 690-053-0045

### Contested Case Hearings

~~(1) Within 30 days after the close of the period for receiving protests, the Director shall determine whether to issue a final order or schedule a contested case hearing.~~

~~(2) The determination of whether to conduct a contested case hearing will be made according to the provisions of OAR 690-310-0170.~~ (1) If a protest was timely submitted, the Water Resources Director shall:

(a) Issue a final order if the applicant has not filed a protest and the director finds that there are no significant issues related to the use of water; or

(b) Schedule a contested case hearing.

~~(3)~~ The contested case hearing will be conducted according to OAR Chapter 690, Division 2 and OAR Chapter 137, Division 3.

Statutory/Other Authority: ORS 543.092, & 536.027

Statutes/Other Implemented: ORS 543.092, ORS 543A, ORS 183

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule is amended to remove the reference to OAR 690-310-0170, which is being repealed consistent with Or. Laws 2025, ch 575 modifications to ORS 537.153 and 537.621. It is replaced with somewhat similar language related to next steps following a protest (issuance of order or contested case). This rule also is amended to recognize that these contested case hearings are governed by OAR Chapter 690, Division 2 as well as OAR Chapter 137, Division 3.

#### **690-053-0049**

##### **Exceptions to the Administrative Law Judge Proposed Final Order; Director's Final Order**

(1) If exceptions are timely filed to the proposed order of the administrative law judge, the Director shall consider the exceptions and issue a final order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

(2) ~~Where~~ If no exceptions are filed within the time period allowed in the proposed order of the administrative law judge, the Director shall issue a final order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

Statutory/Other Authority: ORS 543.092, ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543.092, ORS 543A, ORS 183

**Rule Summary:** The procedure for filing exceptions is addressed in OAR 690-002-0175. This new rule clarifies what occurs after the Administrative Law Judge issues a proposed order. This rule is also amended to conform to OAR 137-003-0655.

#### **690-053-0050**

##### **Final Order on Default**

~~(1) If after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed amendment is consistent with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order~~

~~approving the amendment. The approval shall be on such terms and conditions as are necessary to ensure compliance with the amendment criteria in OAR 690-053-0020.~~

~~(2) If the Director finds the proposed amendment does not comply with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order rejecting the application.~~

(1) If no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(2) If all timely filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to the proposed final order, the Department, if the matter has not been referred to the Office of Administrative Hearings, or the assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

(3) If a protestant defaults as provided in OAR 137-003-0672(3)(b) or OAR 137-003-0672(3)(c), the assigned administrative law judge shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

Statutory/Other Authority: ORS 543.092, & ORS 536.027, ORS 183,

Statutes/Other Implemented: ORS 543.092, & ORS 543A, ORS 183

History:

WRD 2-2001, f. & cert. ef. 3-30-01

**Rule Summary:** This rule implements ORS 183, which allows the agency to define when a proposed final order will become final. The rule states that the order will become final as a result of (1) no protest being filed, (2) the withdrawal of protests, (3) or default of protestants. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.