



Oregon

Tina Kotek, Governor

Water Resources Department

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via E-mail

Subject: Response inquiry related to 2025-26 Water Rights Rulemaking Scope

Dear Water Parties,

Thank you for reaching out to the Department regarding the agency's water rights rulemaking process. As discussed, many factors have led the Department to undertake a serious effort to address processing times to the maximum extent possible with existing resources including: direction from legislators, a signing letter from the Governor, the concerns expressed by parties to the fee shortfall conversations, the prior letter calling for action from water law experts, a recognized need internally for process improvements, and customer demand to improve water right transaction timeliness and customer service outcomes.

Over the last several years large fee revenue shortfalls and longer than desired processing times made it evident that we needed to take urgent action to improve water rights-related processes. During the 2025 session, the legislature further recognized the need for action and improvements and passed House Bills 3342 and 3544, as well as a package to address revenue shortfalls to maintain staffing. Several legislators communicated the need for the agency to immediately improve customer service and water right processing times, while increasing process transparency and predictability. Immediate action is required to demonstrate and assess progress in a manner that timely informs future budget and policy conversations.

The 2025-26 water rights rulemaking is a necessary step for the Department to better serve Oregonians while continuing to steward Oregon's water resources for instream and out-of-stream uses now and for future generations. Additionally, many provisions in the 2025 legislation are effective April 1, 2026. While statute does override rule, many applicants and water right professionals, and Department staff, use the underlying rules as the guide for navigating the water right process. After April 1, 2026, the rules for many divisions impacted by the underlying legislation will be significantly out of date. It is also important to note that several of these rule divisions are already out of alignment with statute. These inconsistencies undercut an overarching goal of the process improvement initiative to make the process more clear and

transparent. Given the Department's limited resources for rulemaking, it is important for the Department to make other rule improvements to the extent possible so that our rules accurately reflect the process and provide applicants and their agents more certainty and predictability, and provide clear direction for staff to expeditiously process applications.

The Department fully acknowledges the significant scope and complexity of this rulemaking. During the RAC meetings, staff did their best to respond to RAC member requests and needs including developing a rule tracker where staff documented and responded to all questions and feedback in writing to help rule advisory committee members track how their input was considered and how the rules changed as a result. Despite the best efforts of staff, we recognize that this was a lot of information to digest. As such, the Department has taken steps to address some of the concerns in a manner that we believe does not undermine the important goals of the rulemaking.

Originally, this rulemaking included eighteen divisions. In response to concerns related to the scope of the rulemaking, the Department will phase public notice, comment, and rule adoption into two separate processes. Thirteen divisions will be noticed in January 2026 and presented to the Commission for adoption in March 2026. You will receive that notice in a separate email. The remaining five divisions will be noticed for comment no sooner than April 2026. The divisions in public comment phase two will include:

- Division 52: Decommissioning rules for non-FERC projects
- Division 53: Hydroelectric license, power claim and certificate amendments
- Division 54: Conversation of a hydroelectric water right to an instream water right
- Division 320: Water right permits
- Division 330: Water right certificates

There was also significant conversation around proposed changes to land use information required at the time of application. In response, the Department has reverted most of the proposed language back to the original language already in existing rule. The Department did retain deletions in the rules that would improve consistency with OAR 690-005-0035(4)(a) by removing language in Divisions 310 and 380 as it pertains to presuming that a land use is compatible if the Department does not hear from the local land use entity. The rule amendments also remove the option for new water right applications to be found complete by only including a "receipt" from a local government official. Further, the Department did maintain the language allowing an administrative hold up to one year to exhaust land use appeals. OWRD believes that the reversions address many of the concerns, but invites further comment. The Department has determined that any broader changes around land use should be addressed at a later time where a more comprehensive review considers other relevant rule divisions and the state agency land use coordination plan.

Finally, the Department appreciates the diligent efforts of the rules advisory committee members which led to significant changes to the rules as a result of their comments. The Department continues to take urgent action to make improvements in the water rights-related program areas. As we have noted throughout the process, delaying everything but the 2025 legislative changes would not be feasible, however, there remains opportunities for additional public comment. As

you know, we consider comments thoroughly and welcome feedback from you on areas of the rules that require further attention. We appreciate your assistance in helping us reach the rulemaking goals of aligning rules with the statutes, providing clarity, certainty and consistency in our processes for the water rights customers.

Thank you for sharing your concerns and for your contributions to this effort.

Sincerely,



Ivan Gall
Director

CC: Representative Emerson Levy
Representative Breese-Iverson
Rules Advisory Committee Members
Laura Hartt, Rules Coordinator
Racquel Rancier, Deputy Director