

Division 52
DECOMMISSIONING RULES FOR NON-FERC PROJECTS

Amend
690-052-0000

Purpose and Applicability

- (1) The purpose of this division is to establish a process, create definitions, standards, procedures, filing requirements, and appeal rights for the decommissioning of hydroelectric projects operating solely under state authority and not under the authority of the Federal Energy Regulatory Commission.
- (2) These rules apply to projects where the holder of a license, certificate, or claim, operating solely under state authority:
 - (a) Voluntarily requests to decommission; or
 - (b) Fails to advise the Department regarding project reauthorization, according to ORS 543A.300.
- (3) These rules shall apply to decommissioning processes where the public notice of decommissioning is filed on or after July 1, 2026. Decommissioning processes where the public notice of decommissioning was filed before this date shall be subject to the rules in effect at the time of the public notice.
- (4) Other rule divisions and statutory chapters may also apply to the decommissioning of a hydroelectric project subject to these rules.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: This rule has been amended to provide that the rule changes to Division 52 will apply to public notices of decommissioning filed on or after October 1, 2026; to remove an applicability provision that is no longer relevant.

Amend
690-052-0010

Definitions

As used in OAR 690-052-0020 to 690-052-0160:

- (1) "Dam" means an artificial barrier constructed above ground to impound or divert the natural flow of water in a river, stream or intermittent drainage, or to otherwise create by artificial barrier constructed above ground a pool for storage of water regardless of purpose or intent in creating the artificial barrier.
- (2) "Director" means the Director of the Water Resources Department.

- (3) "Injury" has the meaning given in OAR 690-380-0100.
- (4) "Instream water right" has the meaning given that term in ORS 537.332.
- (5) "Operator" means a person who owns or operates a hydroelectric project under the authority of a time-limited water right or a certified water right, including a registered claim for hydroelectric purposes that has a pre-1909 priority date.
- (6) "Project" has the meaning given that term in ORS 543.010(2).

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: Updates referenced rule which was renumbered in 2003 to 690-380-0100 but never corrected in this rule.

690-052-0020

Initiation of Decommissioning Process

- (1) If an operator does not submit a notice of intent to reauthorize under ORS 543A.030, the Department shall within 60 days after the deadline for filing the Notice of Intent, request from the operator information regarding the decommissioning of the project pursuant to 543A.030(2), if the information has not already been filed. If the Department is unable to contact the operator, the Department may proceed with the decommissioning process, complying with the provisions of this chapter, as practical, in the absence of the operator.
- (2) The Department does not have to initiate the decommissioning process upon receipt of the information requested in subsection (1) of this section. However, the Department shall initiate the decommissioning process at least one year prior to the expiration of the project's license.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0030

Public Notice and Comment

(1) After contacting the operator pursuant to OAR 690-052-0020 above, or if the Department is unable to contact the operator, the Department shall issue, in its weekly public notice, a public notice of the decommissioning of the project.

(a) The public notice shall include:

(A) The name of the operator;

(B) The county, basin and stream, and the township, range and section, within which the project is located;

(C) The license number of the project;

(D) A brief description of the project and the action prompting the decommissioning; and

(E) Information on submitting comments and on receiving notices in the future.

(b) The public notice shall be provided to:

(A) The operator;

(B) The Department's weekly public notice;

(C) The watermaster's office in the district where the project is located; and

(D) Natural resource and other appropriate agencies.

(2) Within 60 days of the issuance of the public notice, any person interested in the decommissioning of the project may submit written comments to the Department and may request future notices about the project.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: The rule has been amended to create consistency across processes to align with changes made to other programs by Or Laws 2025, chapter 282 related to default to weekly public notices and removal of newspaper notice.

690-052-0040

Process Determination

(1) After the close of the comment period in OAR 690-052-0030, the Department shall determine whether the decommissioning plan will be developed through a standard or expedited process. In making the determination, the Department shall consider any information received from the operator, comments received from agencies and the public pursuant to 690-052-0030, and the following guidelines:

(a) The expedited process shall be used for projects without dams or other permanent structures in the stream, projects which use pipes or other easily removable works to divert or withdraw water from the stream.

(b) The standard process shall be used for projects using dams or other large permanent structures in the stream to create a reservoir or divert water.

(2) Notwithstanding subsection (1) of this section, upon good cause, the Department may deviate from the guidelines in subsection (1) of this section when determining which decommissioning process to use.

(3) The Department shall promptly notify the operator and any person who provided comments, of its process decision.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0050

Expedited Process

If the Department decides to conduct the decommissioning using the expedited process, within 120 days of making that decision, the Department shall develop an initial draft plan considering available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0060

Standard Process; Decommissioning Application Review Team

(1)(a) If the Department decides to conduct the decommissioning using the standard process, the Department shall establish a Decommissioning Application Review Team (DART). The Department shall participate in and invite to the DART, representatives of the Departments of Environmental Quality, Fish and Wildlife, and any other agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the project.

(b) Within 60 days of establishing the DART, the Department shall enter into an initial consultation with the operator and the DART to gain information about the project, evaluate possible decommissioning methods, and identify potential environmental impacts of a project decommissioning.

(2) Following the consultation, the Department shall develop an initial draft plan considering the information gathered during the consultation and any available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0070

Decommissioning Plan; Standard for Review

(1) When developing an initial draft plan under OAR 690-052-0050 or 690-052-0060, or a draft decommissioning plan under 690-052-0090, the Department shall include terms and conditions in the plan to protect the public health and safety and the environment.

(2) In developing the terms and conditions of the decommissioning plan, the Department shall consider impacts to the items listed below if they are identified by comments or otherwise identified in the Department's record for the project:

- (a) Fish and wildlife during and after decommissioning;
- (b) Water quality;
- (c) Water use and the disposition of the water right for the project;
- (d) Wetlands;
- (e) Geohazards;
- (f) Dam safety, including the protection of the public health and safety from the failure of any hydraulic works during and after decommissioning;
- (g) Other resources including recreation; scenic and aesthetic values; historic, cultural, and archaeological sites; and botanical resources; and
- (h) Instream water rights.
- (i) Federal and local plans, including the plans of local watershed councils;
- (j) Economic costs to the operator;
- (k) Local and community economics;
- (l) Tribal issues; and
- (m) Overall environmental impact.

(3) The Department shall consider all other relevant issues raised by comments received.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0080

Agency Comments

(1) Upon development of an initial draft plan under either OAR 690-052-0050 or 690-052-0060, the Department shall distribute the plan to the DART, if created, appropriate natural resource

agencies, and any other agencies that provided comments under 690-052-0030, for a 60-day review and comment period.

(2) The Department shall consider all comments received under subsection (1) of this section and determine if the initial draft plan needs to be revised.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2),

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0090

Draft Decommissioning Plan

Upon completion of the agency review process and any revisions, the Department shall issue the plan, as a draft decommissioning plan, for public notice and comment according to OAR 690-052-0100. The terms and conditions of the plan shall satisfy the standard set forth in 690-052-0070.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0100

Public Notice and Comment for Draft Decommissioning Plan

(1) Department shall give public notice of the draft decommissioning plan in its weekly public notice, and shall notify any person who requested notice under OAR 690-052-0030(2). The public notice shall include information on obtaining a copy of the draft decommissioning plan, on commenting on the draft plan, and on receiving notices in the future. The Department shall supply the operator, each member of the DART, and any agency supplying comments under 690-052-0080, with a copy of the draft decommissioning plan.

(2) Within 60 days after the public notice given under subsection (1) of this section, any person may submit written comments to the Department and may request future notices about the project.

(3) The Department shall consider any comments received under subsection (2) of this section and may revise the draft decommissioning plan.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: The rule has been amended to standardize language across rules to refer to the weekly public notice.

Amend

690-052-0110

Proposed Final Order: Findings and Criteria; Protests

(1) Within 90 days of the close of the comment period in OAR 690-052-0100, a proposed final order, containing the draft decommissioning plan, shall be prepared by the Director. The plan shall comply with the standard set out in 690-052-0070.

(2) The proposed final order shall:

(a) Cite findings of fact and conclusions of law;

(b) Include a brief statement that explains the issues considered relevant to the development of the decommissioning plan; and

(c) Contain the date by which protests to the proposed final order must be received by the Department.

(3) The Department shall mail copies of the proposed final order to the operator, the DART if established, agencies providing comments, and to persons who have requested copies and paid the fee required under ORS 536.050(1)(e). The Department shall also give public notice of the proposed final order in the Department's weekly public notice.

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

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order 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 proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order 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; and

(f) The protest fee required under ORS 536.050.

(5) Protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly public notice published by the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050(1)(e), unless the person has previously requested copies and paid the required fee.

(6) If a protest was timely submitted, the Water Resources Director shall:

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

(b) Schedule a contested case hearing.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: This rule has been amended to (1) remove the current inefficient process requiring applicants to request a hearing after the close of the protest period and instead requires, applicants to request a hearing during the protest period; (2) remove provisions related to time periods pertaining to scheduling contested case hearings that are impractical; and (3) modify the rule with respect to assessing significant disputes as it pertains to final order issuance and contested cases by acknowledging that an operator is entitled to a hearing. In addition, the proposed rule changes will improve efficiency by removing the requirement for issuance of a final order without a protest; the proposed final order now will become final automatically unless protested. The rule amendments also standardize language by referring to weekly public notice and replaces applicant with operator for rule consistency. Finally, the proposed rules have been updated to align with statute and agency practice regarding collection of protest fees from both project operators as well as third parties.

Amend

690-052-0120

Contested Case Hearings

Contested case hearings will be conducted according to OAR chapter 137, division 3 and OAR chapter 690, division 2.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2), ORS 183

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: The rule has been amended to update references to rules pertaining to Protests and Contested Cases (OAR chapter 690, division 2) and Oregon Department of Justice Model Rules of Procedure for Contested Cases (OAR chapter 137, division 3).

Amend

690-052-0130

Exceptions to the Administrative Law Judge's Proposed 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 an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

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

Statutory/Other Authority: ORS 536.027, 543A.300(2), ORS 183

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

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Rule Summary: This rule is amended to remove redundant language concerning the procedure for filing exceptions to the administrative law judge's final order. 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 its language with OAR 137-003-0655 and to reflect the repeal of OAR 690-052-0110(6).

690-052-0140

Final Order Needed to Decommission

An operator of a hydroelectric project operating solely under the authority of the State of Oregon may not make physical changes to decommission the project except in accordance with a final order issued by the Water Resources Director under OAR 690-052-0130, and shall decommission the project according to such order. This section does not prohibit the operator from complying with the requirements of other state agencies.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0150

Disposition of the Water Right

The hydroelectric water right for a project is subject to the provisions of ORS 543A.305 regarding the conversion of a hydroelectric water right to an instream right. Nothing in these rules or in 543A.305 prevents the operator from transferring a hydroelectric water right to an instream right according to 540.505 through 540.530, prior to conversion.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0160

Modification of Time Limits

The Department, for good cause, may extend the time limits set forth in this division for a reasonable period of time.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Adopt

690-052-0170

Final Orders on Default

- (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.
- (4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 536.027, 543A.300(2)

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

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. The rule specifies that proposed final orders become final 33 days after the end of the time for filing protests if no protest is timely filed within 33 days and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

Division 53

HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

Amend

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 October 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, 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 has been amended to provide that the rule changes to Division 53 will apply to amendment applications filed on or after October 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

Amend

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, or the right 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: This rule has been amended to point to the option of demonstrating that it is not subject to forfeiture under ORS 540.610.

Amend

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.

(2) 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 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.

(3) 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. Notice shall be sent by electronic means unless the recipient has requested that the notice be sent by regular mail. Comments 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 , ORS 536.045

History:

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

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

Rule Summary: The rule has been amended to (a) implement ORS 536.045 provisions concerning allowance for electronic documentation, and (b) create consistency across processes to more closely align with changes made to other programs align by ORS 543.220 related to the weekly public notices and removal of newspaper notice. The rule amendment also adjusts reference to “agency” to reduce confusion, reorders sentences for clarity, and reorganizes the rule.

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

Amend

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.

Statutory/Other Authority: ORS 543.092, ORS 536.027

Statutes/Other Implemented: ORS 543.092, ORS 543A, ORS 536.045

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 ORS 536.045, by allowing electronic notice in lieu of mail, unless mailed notice has been requested.

Amend

690-053-0035

Issuance of 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. The Department shall send copies of the proposed final order 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, ORS543A, ORS 183.415, ORS 536.045

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 ORS 536.045, by allowing electronic notice in lieu of mail, unless mailed notice has been requested. The amendment also requires mailed notice to the applicant pursuant to the Oregon Administrative Procedure Act (ORS 183). Additional language changes have been made for consistency purposes related to orders.

Amend

690-053-0040

Protests

(1) Any person may submit a protest against a proposed 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) The protest fee required under ORS 536.050.

(2) 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.

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

(4) 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, ORS 536.050

History:

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

Rule Summary: Language changes made for consistency purposes related to orders. The proposed rules have been updated to align with statute and agency practice regarding collection of protest fees from both project operators as well as third parties.

Amend

690-053-0045

Contested Case Hearings

(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.

(2) 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, ORS 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 has been repealed. Rule language is updated to outline next steps following a protest (i.e., issuance of order or contested case). This rule also is amended to recognize that division 53 contested case hearings are governed by OAR chapter 690, division 2 as well as OAR chapter 137, division 3.

Adopt

690-053-0049

Exceptions to the Administrative Law Judge's Proposed 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) 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.

Amend

690-053-0050

Final Order on Default

(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.

(4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 543.092, ORS 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 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. The rule specifies that proposed final orders become final 33 days after the end of the time for filing protests if no protest is timely filed within 33 days and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

DRAFT

Division 54**CONVERSION OF A HYDROELECTRIC WATER RIGHT TO AN INSTREAM WATER RIGHT****Amend****690-054-0000****Purpose and Applicability**

These rules establish definitions and procedures for the conversion of a Hydroelectric Water Right to an Instream Water Right in accordance with ORS 543A.305. The conversion process is for Hydroelectric Water Rights beneficially used and which ceased beneficial use within 5 years of October 23, 1999, or later. Conversion of a Hydroelectric Water Right to an Instream Water Right is not a new allocation of water within a stream basin. A Hydroelectric Water Right subject to these rules shall be considered for conversion to an Instream Water Right prior to any forfeiture proceeding under ORS 540.610. These rules do not apply to Projects on boundary waters that operate with water rights issued by the State of Oregon and by any other state, except upon the written request of the water right holder. These rules apply to instream conversion processes where a proposed final order is issued on or after October 1, 2026. The rules in effect prior to October 1, 2026, apply to instream conversion processes where a proposed final order was issued prior to October 1, 2026.

Statutory/Other Authority: ORS 536.027**Statutes/Other Implemented:** ORS 543A.305**History:**

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Rule Summary: This rule is amended to state that the rule changes in Division 54 apply to instream conversion processes where a proposed final order is issued on or after October 1, 2026.

690-054-0010**Definitions**

Unless the context requires otherwise, the following definitions apply in OAR Chapter 690, Division 54:

(1) “Actual Use” means:

(a) For a Project, the maximum amount of water, expressed in cubic feet per second (cfs), legally diverted through the hydroelectric turbine to produce electricity for each month of the year, including those months in which no water was used, pursuant to a Hydroelectric Water Right, based on documents available to the Department; or

(b) For Other Existing Water Right(s) as of October 23, 1999, the amount of water, expressed in cfs, legally diverted and beneficially used, based on documents available to the Department;

(2) “Continuation of Authorized Water Uses” means that Other Existing Water Right(s) as of October 23, 1999, shall not be required to curtail Actual Use under their existing water rights as a result of the conversion of a Hydroelectric Water Right to an Instream Water Right;

- (3) “Department” means the Oregon Water Resources Department;
- (4) “Director” means the Department Director or staff authorized by the Director to administer these rules;
- (5) “Holder” has the meaning given that term in ORS 543.075;
- (6) “Hydroelectric Water Right” is a water right issued and used for hydroelectric purposes including: hydroelectric licenses containing time-limited water rights issued under ORS 543; water right certificates issued under ORS 543A; water right permits or certificates issued under ORS 537; and power claimants under ORS 543.705 to 543.730 whether certificated or uncertificated;
- (7) “Injury” means the proposed conversion of up to the full amount of a Hydroelectric Water Right associated with a Project to an Instream Water Right would result in Other Existing Water Rights as of October 23, 1999 not receiving previously available water, based on the Actual Use of both the Project and the Other Existing Water Right(s) as of October 23, 1999, to which the Other Existing Water Right(s) as of October 23, 1999 are legally entitled, pursuant to the considerations of OAR 690-054-0040(6);
- (8) “Instream Water Right” means a water right held in trust by the Department for the benefit of the people of the State of Oregon to maintain water in stream for public use. An instream water right does not require a diversion or any other means of physical control over the water;
- (9) “Mitigation Measures” means conditions to the Instream Water Right that avoid, abate, minimize, rectify, reduce, or compensate for impacts of the conversion in order to avoid Injury and to ensure the Continuation of Authorized Water Uses;
- (10) “Other Existing Water Right(s) as of October 23, 1999” means a decreed, certificated, or permitted water right(s) issued on or before October 23, 1999, or a determined claim established on or before October 23, 1999, using water from the same water source or tributary as the Hydroelectric Water Right proposed for conversion;
- (11) “Project” means any hydroelectric power project;
- (12) “Reauthorized” has the meaning given the term “reauthorize” in ORS 543.075; and
- (13) “Subordinated” means a condition of a water right that expressly makes it inferior in right and subsequent in time to any appropriation of water upstream for beneficial use.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0020

Notice of Consideration for Conversion: Eligibility Determinations and Preliminary Findings of Fact

For the purposes of a notice of consideration for conversion to an Instream Water Right, the Director shall make the following eligibility determinations and preliminary findings of fact:

(1) The Director shall determine whether a Hydroelectric Water Right associated with a Project is eligible for conversion to an Instream Water Right. A Hydroelectric Water Right is eligible for conversion if one of the following criteria is met:

- (a) Use of water under the Hydroelectric Water Right has ceased for a period of five years;
- (b) A time-limited Hydroelectric Water Right has expired and has not been extended or Reauthorized;
- (c) The Hydroelectric Water Right was transferred under ORS 540.520 and 540.530 and has expired; or
- (d) The Director has received written consent of the Holder;

(2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right associated with the Project that is eligible for conversion to an Instream Water Right. The amount of a Hydroelectric Water Right eligible for conversion is subject to the following limitations:

- (a) Any portion of a Hydroelectric Water Right transferred under ORS 540.520 and 540.530 is not eligible for conversion to an Instream Water Right, except upon expiration of that time-limited water right;
- (b) Any portion of a Hydroelectric Water Right for which hydroelectric production is not the sole beneficial use authorized by the right is not eligible for conversion to an Instream Water Right;
- (c) Any portion of a Hydroelectric Water Right authorized in conjunction with another water right pursuant to ORS 543.765, or that is part of a larger distribution system for municipal, irrigation, or other beneficial purposes is not eligible for conversion to an Instream Water Right; and
- (d) Any portion of a Hydroelectric Water Right authorized in conjunction with multi-purpose dam releases including flood control, irrigation, municipal, or other beneficial uses, is not eligible for conversion to an Instream Water Right. Conversion to an Instream Water Right may not require release of water stored for other beneficial purposes. An Instream Water Right resulting from conversion under these rules shall not have priority over waters legally stored or legally released from storage;

(3) The Director shall make a preliminary finding on Injury. In making such finding, the Director shall consider:

- (a) The Actual Use of the Project. To make a preliminary finding on the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project.

(b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To make a preliminary finding on the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999; or

(D) Any other available evidence that may assist the Director to make a preliminary finding on Injury.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0030

Notice of Consideration for Conversion: Requirements and Comment Period

(1) The Director shall prepare a notice of consideration for conversion with a 30 calendar day comment period. The notice shall include the following information:

(a) The eligibility determinations and preliminary findings of fact identified in OAR 690-054-0020;

(b) The county or counties in which the Project is located;

(c) The Project file number, permit, certificate, or decree volume and page;

(d) The name of the surface water source(s);

(e) The location of the point of diversion used for the Project; and

(f) A request for comments on the proposed conversion, including the date by which comments must be received.

(2) The Department shall provide a copy of the notice to the Holder and publish the notice in the Department's weekly notice publication with information about how interested persons may comment, obtain future notices about the proposed conversion, or obtain a copy of the final proposed order.

(3) If the Hydroelectric Water Right is not Subordinated to Other Existing Water Rights as of October 23, 1999, then the notice shall provide a 30 calendar day opportunity for any interested

person to propose Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses.

(4) At the discretion of the Director, if the Hydroelectric Water Right was Subordinated to Other Existing Water Rights as of October 23, 1999, then the first public notice may be given at the time of the proposed final order describing the conversion to an Instream Water Right under OAR 690-054-0040 to 690-054-0050.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

690-054-0040

Proposed Final Order: Final Determinations and Findings of Fact

Following the close of the comment period under OAR 690-054-0030, the Director shall prepare a proposed final order. The proposed final order shall recommend either to approve or to deny the conversion of the Hydroelectric Water Right to an Instream Water Right. The Director shall make the following determinations and findings of fact for inclusion in the proposed final order:

- (1) The Director shall determine whether the Hydroelectric Water Right is eligible for conversion to an Instream Water Right pursuant to the preliminary eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (2) The Director shall determine the amount, expressed in cfs, of the Hydroelectric Water Right that is eligible for conversion to an Instream Water Right pursuant to the eligibility determination of OAR 690-054-0020 and the requirements of ORS 543A.305;
- (3) If the full amount of the Hydroelectric Water Right is not proposed for conversion to an Instream Water Right, the Director shall include an explanation of how the amount proposed for conversion was determined;
- (4) The Director shall determine the priority date of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (5) The Director shall determine the point of diversion of the Instream Water Right, in accordance with the requirements of ORS 543A.305;
- (6) The Director shall determine whether conversion of a Hydroelectric Water Right to an Instream Water Right will result in Injury. In making this determination, the Director shall consider:
 - (a) The Actual Use of the Project. To determine the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project;

(b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To determine the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

(A) Whether Other Existing Water Rights as of October 23, 1999 are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999. If Subordinated, there is a rebuttable presumption that no Injury will occur and that no Mitigation Measures are required to ensure the Continuation of Authorized Water Uses; or

(D) Any other available evidence that may assist the Director to make a finding on Injury;

(7) In order to avoid Injury and to ensure the Continuation of Authorized Water Uses the Director may include Mitigation Measures as a condition to the Instream Water Right. In determining whether to include Mitigation Measures the Director may consider:

(a) Whether Mitigation Measures were proposed during the comment period pursuant to OAR 690-054-0030, and if so, may:

(A) Share Mitigation Measures proposed by interested persons during the comment period of OAR 690-054-0030 with other interested persons who responded during the comment period;

(B) Meet and confer with those interested persons who proposed Mitigation Measures during the comment period;

(C) Extend the comment period of OAR 690-054-0030, via notice in the Department's weekly notice publication, to allow discussion of Mitigation Measures, if interested persons demonstrate reasonable progress towards agreement on Mitigation Measures; or

(D) Obtain affidavits consenting to the relevant Mitigation Measure from each holder of an Other Existing Water Right as of October 23, 1999 that is potentially subject to new regulation under Chapter 690, Division 250; and

(b) Whether the conversion of a Hydroelectric Water Right to an Instream Water Right would result in Injury pursuant to the findings in section (6);

(8) If the Director determines Mitigation Measures are necessary to avoid Injury and to ensure the Continuation of Authorized Water Uses, the Director shall condition the Instream Water Right to state: "Authorized water uses by Other Existing Water Rights as of October 23, 1999, shall not be subject to regulation under Chapter 690, Division 250 to satisfy this Instream Water Right." If the Director chooses to include other Mitigation Measures as a condition to an Instream Water Right, the Director shall condition the Instream Water Right according to the Mitigation Measures agreed-upon pursuant to section (7);

(9) No Mitigation Measures other than in section (8) above shall be included as conditions of the Instream Water Right without an affidavit consenting to the relevant Mitigation Measure from each holder of a water right that is potentially subject to new regulation under Chapter 690, Division 250; and

(10) The Director shall determine whether the conversion, together with any recommended Mitigation Measures to avoid Injury and to ensure the Continuation of Authorized Water Uses, is consistent with ORS 543A.305 and shall either approve or deny the conversion. If the Director approves the conversion to an Instream Water Right, then the proposed final order shall include a draft certificate, including any proposed Mitigation Measures.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Amend

690-054-0050

Notice of Proposed Final Order

(1) The proposed final order shall be:

- (a) Distributed to the Holder, in accordance with ORS 183.415, and to all individuals, including all governmental entities, who have filed timely comments with the Department; and
- (b) Published in the Department's weekly notice publication.

(2) The proposed final order shall specify that all protestants have 60 calendar days from the date of the notice to file a protest.

Statutory/Other Authority: ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543A.305, ORS 183.415

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Rule Summary: This rule is amended to clarify that the notice of opportunity to protest and request a hearing is governed by ORS 183.415.

Amend

690-054-0060

Filing of Protests

(1) All protests and comments must be received by the Director within the time specified in the notice of proposed final order. To protest a contested case hearing the fees required under ORS 536.050 must also be submitted by the date specified in the notice.

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

- (a) The name, address, email address, if available, and telephone number of the protestant;
 - (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - (c) A description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
 - (d) A detailed description of how the proposed final order 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; and
 - (f) Statements of facts which support the allegation that the proposed conversion instream should not be acted upon as proposed by the proposed final order.
- (3) Any person may file a petition for party status in any contested case hearing subsequently held on the protested matter, in the manner described in OAR 137-003-0535.
- (4) 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. A failure to raise a reasonably ascertainable issue in a protest with sufficient specificity to afford the department an opportunity to respond to the issue precludes consideration of the issue in the contested case proceeding.
- (5) Upon receiving a protest, the Director shall:
- (a) Send a copy of all protests timely filed to the protestant(s), if any ;
 - (b) If a protest was timely submitted, the Water Resources Director shall:
 - (A) Issue a final order if the holder has not filed a protest and the director finds that there are no significant issues related to the conversion; or
 - (B) Schedule a contested case hearing by referring the proposed final order, with accompanying protest, to the Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing consistent with OAR 690-054-0070, unless all protests have been withdrawn or resolved prior to referral.

Statutory/Other Authority: ORS 536.027, ORS 183

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Rule Summary: This rule is amended to conform the Department's rules to the Department's authority. There is no authority for the agency to require requests for standing and collect fees for such requests for this type of transaction. Instead, individuals interested in participating must follow the process under the model rules of procedure to petition for party status. Retains consideration of "significant issues" but requires referral if the owner of the project protests. Finally, while the rule already requires reasonably ascertainable issues to be raised in a protest,

the rule lacks specificity about what a failure to do so means; this rule is amended to clarify that failure to raise an issue with sufficient specificity in a protest precludes consideration of the issue in the contested case.

Amend

690-054-0070

Time and Place of Hearings, Exceptions, Final Order

(1) The conduct of contested hearings shall be as provided in OAR chapter 690, division 002, and OAR 137-003-0501 to 137-003-0700.

(2) If the proposed conversion is referred for a contested case hearing, a proposed order shall be issued by the Administrative Law Judge (ALJ) after the hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 calendar days of the order. If no exceptions are filed to the ALJ's proposed order within 30 calendar days, the Director shall issue a final order consistent with section (4).

(3) If exceptions are filed to the ALJ's proposed order, the Director may review or hear argument, either written or oral, and make the final determination for the final order.

(4) If, after the contested case hearing or, if a hearing is not held, after the close of the protest period as defined in OAR 690-054-0050, the Director determines the proposed conversion would not comply with ORS 543A.305 and OAR Chapter 690, Division 54, the Director shall:

(a) Issue a final order denying the conversion to an Instream Water Right; or

(b) Modify the proposed order to comply with ORS 543A.305 and OAR Chapter 690, Division 54, and issue a final order approving the conversion to an Instream Water Right.

(5) If, after the contested case hearing or, if a hearing is not held, after the close of the protest period as defined in OAR 690-054-0050, the Director determines the proposed conversion would comply with ORS 543A.305 and OAR Chapter 690, Division 54, the Director shall issue a final order approving the conversion to an Instream Water Right.

(6) A final order may set forth any of the provisions or restrictions to be included in the Instream Water Right.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

Rule Summary: The rule is amended to reference to OWRD rules pertaining to Protests and Contested Cases (OAR chapter 690, division 2).

Adopt

690-054-0075

Final Orders on Default

(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.

(4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 536.027

Statutes/Others Implemented: ORS 543A.305, ORS 183

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. The rule specifies that proposed final orders become final 33 days after the end of the time for filing protests if no protest is timely filed within 33 days and that the Department may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order. This efficiency measure is consistent with changes made in other processes, which also makes for more efficiency in administration.

690-054-0080

Issuance of Instream Water Right Certificate

After the Director issues a final order approving the conversion of a Hydroelectric Water Right to an Instream Water Right, the Department shall issue a certificate for an Instream Water Right. Each Instream Water Right is allocated individually and shall not be additive to other Instream Water Rights. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon. A certificate for an Instream Water Right supplied by stored water shall describe the reservoir.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 543A.305

7/1/26

History:

WRD 2-2022, adopt filed 07/14/2022, effective 07/14/2022

DRAFT

**Division 305
GENERAL MAP CRITERIA**

Amend

690-305-0000

Purpose and Applicability

The purpose of this rule is to establish general criteria for maps submitted to the Department on or after April 1, 2026. Unless otherwise specified in rule, these rules apply to applications submitted under OAR chapter 690, divisions 14, 18, 310, 325, 340, 380, and 382. These rules also apply to maps submitted as part of an application for a reservoir under ORS 537.409. Additional specific mapping criteria may apply as specified in application specific rule divisions.

Statutory/Other Authority: ORS 536.027 & ORS 537.409

Statutes/Other Implemented: ORS 537.140, ORS 537.144, ORS 537.211(4), ORS 537.225, ORS 537.230, ORS 537.252, ORS 537.400, ORS 537.610, ORS 537.615, ORS 537.780, ORS 540.520, ORS 540.523, ORS 540.524, ORS 540.531, ORS 540.532, ORS 540.533, ORS 540.585, ORS 537 & ORS 540

History:

WRD 3-2026, adopt filed 03/20/2026, effective 04/01/2026

Rule Summary: This rule is amended to clarify that OAR 690-305 no longer applies to OAR 690-320 as proposed for revision.

Division 320
MISCELLANEOUS WATER RIGHT PROVISIONS

Repeal
690-320-0010
Extension of Time Limits

Rule Summary: This rule is repealed because it was only effective until July 1, 2001, which predates current extension laws governed by OAR Chapter 690, Division 315.

Repeal
690-320-0020
Cancellation of Permit

Rule Summary: This rule is repealed, readopted and amended as OAR 690-330-0050, as this rule and Division 330 relates to proving up on a water right.

Repeal
690-320-0030
Claims of Beneficial Use for Applications Filed After June 30, 1987

Rule Summary: This rule is repealed, readopted and amended as OAR 690-330-0060, as this rule and Division 330 relates to proving up on a water right.

Repeal
690-320-0040
Incremental Perfection of a Municipal Water Right

Rule Summary: This rule is repealed, readopted and amended as OAR 690-330-0070, as this rule and Division 330 relates to proving up on a water right.

Repeal
690-320-0050
Temperature Control

Rule Summary: This rule is repealed to eliminate duplication with the same rules in OAR 690-330-0030.

690-320-0060
Assignment or Change of Ownership of a Permit or Groundwater Registration

- (1) When a change of interest or ownership occurs in lands covered by a permit or groundwater registration, the record holder may request, in writing, the Director to record the assignment of a new owner.
- (2) Should the record holder of the permit or groundwater registration be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit or registration. The Department shall also record a change in

ownership to an heir or devisee under a will upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (a) A copy of the deed to the land;
- (b) A copy of a land sales contract;
- (c) A court order or decree; or
- (d) Documentation of survivorship of property held jointly.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 537.220 & 537.635

History:

WRD 4-1998, f. & cert. ef. 11-2-98

WRD 1-1996, f. & cert. ef. 1-31-96

690-320-0070

Primary and Supplemental Rights

(1) Cancellation of primary rights:

- (a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;
- (b) If the primary right is determined to have been forfeited by non-use and the supplemental right is not determined also to have been forfeited by non-use, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become the primary right.

(2) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to a supplemental status to allow for a new primary right application from a more dependable source of water.

(3) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at time when water is available from the surface water supply.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.650

History:

WRD 1-1996, f. & cert. ef. 1-31-96

Division 330
Proof of Appropriation to Perfect a Water Right

690-330-0010

Proof of Appropriation

(1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be sent by first class mail to the permittee at the last known address, or with the consent of the recipient, by electronic means together with notice that the permittee or landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630(4).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630, 540 & 543

History:

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

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0225

WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0110

WRD 16-1990, f. & cert. ef. 8-23-90

WRD 6-1987, f. & ef. 6-11-87

690-330-0020

Request for Reconsideration of the Contents of a Proposed Certificate

(1) A request for reconsideration of the contents of a proposed certificate may be prepared by the permittee or landowner and submitted to the Department. The requests shall describe any disagreement with the contents of the proposed certificate.

(2) The request for reconsideration may be in the form of a phone call or personal contact, unless the disagreement proposes a change to any of the following:

- (a) The source of water;
- (b) The purpose for which the water is used;
- (c) The quantity of water;
- (d) The location of the points of diversion;
- (e) The location of the use;
- (f) The extent of the use; and
- (g) Any conditions imposed upon the use.

(3) If the disagreement results in a change to any item listed in subsections (2)(a) through (g) of this rule, the request for reconsideration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the final proof map, and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(4) The Director may allow reasonable time beyond the time limit set under OAR 690-330-0010(2) for a permittee or landowner to complete and submit a written request for reconsideration.

(5) Upon receipt of a request for reconsideration, the Director shall:

- (a) Approve the request without verification and issue a certificate with the changes included;
- (b) Schedule field verification of the requested changes; or
- (c) Deny the request by letter from Department staff to the requesting party.

(6) If field verification is scheduled, a new proposed certificate shall be prepared and sent as prescribed by OAR 690-330-0010.

(7) A request for reconsideration resulting from section (6) of this rule shall be approved or denied. If denied, the denial shall be in the form of an Order of the Director. The order shall provide for either issuance of a certificate of water right in conformance with the Director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 2.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630, 540 & 543

History:

7/1/26

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0230
WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0120
WRD 16-1990, f. & cert. ef. 8-23-90

690-330-0030

Temperature Control

Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.170, 537.250, 537.525 & 537.630

History:

WRD 1-1996, f. & cert. ef. 1-31-96

Repeal

690-330-0040

Primary and Supplemental Rights

Rule Summary: This rule is proposed to be repealed as it is duplicative of OAR 690-320-0070.

Adopt

690-330-0050

Cancellation of Permit

The Department may initiate cancellation of a permit pursuant to ORS 537.260 or ORS 537.410 - 537.450.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.260, ORS 537.410 - 537.450, ORS 540, ORS 543

Rule Summary: This rule was formerly OAR 690-320-0020. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new updated rule points to the correct statutory authority for Department initiation of permit cancellation.

Adopt

690-330-0060

Final Proof Survey: Claims of Beneficial Use for Applications Filed After July 9, 1987

(1) Except for applications filed under the provisions of OAR 690-340-0220, all final proof surveys and claims of beneficial use for water right permit applications filed after July 9, 1987, shall be performed by Certified Water Right Examiners in accordance with OAR 690-014.

(2) Applicants prior to July 10, 1987, may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 537.797, ORS 537.798, ORS 537.799

Rule Summary: This rule was formerly OAR 690-320-0030. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new rule specifies proof survey requirements for applications filed through July 9, 1987, as well as those filed after July 9, 1987.

**Adopt
690-330-0070
Incremental Perfection of a Municipal Water Right**

(1) These rules shall apply to requests submitted on or after October 1, 2026, for partial perfection of a municipal water right permit. Requests submitted before this date shall be subject to the rules in effect at the time of submittal.

(2) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:

- (a) Any incorporated city, village, or town;
- (b) A port formed under ORS 777.005 to 777.725 and 777.915 to 777.953;
- (c) A domestic water supply district formed under ORS chapter 264; or
- (d) A water supply authority formed under ORS chapter 450.

(3) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-330-0010.

(4) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

(5) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:

- (a) A claim of beneficial use meeting the standards identified in OAR chapter 690, division 14;

(b) The quantity of water diverted from each point of diversion, by month, for the preceding three years and the maximum rate diverted under the permit to date, including the date; and

(c) A plan of how the municipal supplier intends to develop successive increments of its water right.

(6) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-315 extension of time limits applies to unperfected municipal water rights.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.260, ORS 540

Rule Summary: This rule was formerly OAR 690-320-0040. That rule has been updated and is proposed for adoption here because it is better suited for this division as it pertains to proving up on a water right. The new rule includes an applicability statement for clarity and refers to the submittal of the claim of beneficial use meeting the standards of OAR chapter 690, division 14 as part of the request for incremental perfection.

DRAFT