

Proposed Rule Revision Tracker**Division 18 – Allocation of Conserved Water**

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

Response to Groundwater Comments:

OWRD Response: The rules were intended to provide transparency on current practice. In 1987, the Oregon Legislature passed SB 24 (conserved water statute). Section 3 stated that “[a]ny person holding a water right certificate issued under ORS 537.260 [surface water certificate], 537.630 [ground water certificate] or 539.140 [certificate issued pursuant to a decree] may submit a conservation proposal to the Water Resources Commission for approval.” While OWRD believes it has authority to process these types of applications, given the interest and desire for more discussion on this matter, OWRD is removing specific references to groundwater in this rulemaking and replacing with reference to applicable statute on the state’s portion of the right - ORS 537.470(3). This will leave the Department with flexibility as it considers implementation of the statutes. Complete. Change made in v3.

Table of Groundwater Comments received:

Section / Version comment	Issue
690-018-0050(5)(c)(C)(i), (c)(D)(ii) -0065(2)(c)(C) 12/5	<p>RACM - Without a mechanism to protect the state’s portion of a groundwater right, we strongly recommend that OWRD remove all proposed rules related to groundwater projects in Division 18. While we are firm advocates for water conservation, the ability to protect the public’s benefit from these projects is critical. We know from experience that, in over-appropriated basins, saved surface water left instream will only be withdrawn by other water users unless it has formal, legal protection under an instream water right. Without this protection, the public will not realize the benefits intended from the ACW program. Groundwater is no different. Until legislation is passed to enable the protection of the state’s portion of saved water in the aquifer, we fear that an expansion of the ACW program to groundwater via rule would merely enable water spreading without any public benefit. Finally, the statutory language of the ACW program is clear in its contemplation of “instream” benefits; if we are to expand this program to groundwater, it should be done via legislation, not this rules advisory process.</p> <p>OAR-690-018-0050(5)(c)(D)(ii): As stated above, CTUIR requests that OWRD remove this section.</p> <p>OAR-690-018-0065(2)(c)(A): As stated above, CTUIR requests that OWRD remove this section.</p> <p>RACM – Re: 690-018-0050 (7)(c)(C) (and possibly other sections that also relate to groundwater, numbering appears to have been muddled in V2): We strongly oppose the expansion of conserved water projects to groundwater via rule. Unless legislation is passed to allow state protection of saved groundwater in the ground, then this new provision is simply allowing increased consumptive use (via water spreading) with no public benefit. The language of the statute is very clear that public benefits of the ACW are “instream” benefits, rules cannot expand the scope of the statute to this degree. While we understand select legislators have expressed an interest in expanding the use of the ACW in this way, the appropriate way to achieve that is to pass legislation not insert into rule a pathway that is not supported by statute. Long story short, this proposed change in rule is not directed by HB 3342, HB 3544, or the ACW statutes. It is a wholly new concept that is significantly outside the scope of this rulemaking, and existing law. It should be struck.</p>
690-018-0050(5)(c)(C)(i)	RACM - no instream water right shall be issued...” should also reference “groundwater rights.”

9/18

RACM - OWRD shared during the RAC meeting that if a groundwater right goes through the ACW program, the state's portion of conserved water is just left in the aquifer without protections. Without a mechanism in place to protect the state's portion of the groundwater right, strongly recommend that OWRD remove all proposed rules related to groundwater projects in Div 18.

RACM - Without a mechanism to protect the state's portion of a groundwater right, we strongly recommend that OWRD remove all proposed rules related to groundwater projects in Division 18. While we are firm advocates for water conservation, the ability to protect the public's benefit from these projects is critical. We know from experience that, in over-appropriated basins, saved surface water left instream will only be withdrawn by other water users unless it has formal, legal protection under an instream water right. Without this protection, the public will not realize the benefits intended from the ACW program. Groundwater is no different. Until legislation is passed to enable the protection of the state's portion of saved water in the aquifer, we fear that an expansion of the ACW program to groundwater via rule would merely enable water spreading without any public benefit. Finally, the statutory language of the ACW program is clear in its contemplation of "instream" benefits; if we are to expand this program to groundwater, it should be done via legislation, not this rules advisory process.

RACM - DRC strongly supports all water conservation efforts. However, this does not seem to follow the intent of Division 18. With new groundwater allocation rules and low availability of groundwater in many basins, how will it be assured that the conserved groundwater is not withdrawn/pumped by another water user or won't result in another water user pumping water that may not have been available prior to the conservation? If the groundwater conservation cannot improve aquifer conditions, it should not be included for allocations of conserved water.

RACM – Note Groundwater conservation is also mentioned in -018-0065(2)(c)(A) and (3)(b). RACM Recommendation - Unless there is a way to protect the conserved groundwater in the aquifer, there would or may be no public benefit or improvement of the status of the aquifer. Consider removing groundwater conservation from Division 18 unless or until methods are established to protect the conserved water from further withdrawal.

RACM - We strongly oppose the expansion of conserved water projects to groundwater via rule. Unless legislation is passed to allow state protection of saved groundwater in the ground, then this new provision is simply allowing increased consumptive use (via water spreading) with no public benefit. The language of the statute is very clear that public benefits of the ACW are "instream" benefits; groundwater was not contemplated at time of the law's passage.

RACM - OEC strongly opposes proposed language in 690-018-0050-(5)(c)(C)(i) and (D)(i)(ii). Groundwater should not be included in Division 18 rules. Expanding conserved water projects to groundwater by rule without assurances provided by legislation that the state will protect saved groundwater from subsequent withdrawals is not acceptable. Until such legislation is passed, the allocation of conserved water should be applied only to surface water

**690-018-0050
(5)(c)(D)(ii)**

9/18

RACM – Similar to comment re: -0050(5)(c)(C)(i), recommends that OWRD remove this section. Without a mechanism in place to protect the state's portion of the groundwater right, strongly recommend that OWRD remove all proposed rules related to groundwater projects in Div 18.

RACM - As stated above, CTUIR requests that OWRD remove this section. (see comment re: - 0050(5)(c)(C)(i))

	<p>RACM – see comment for -018-0050(c)(C)(i) RACM Recommendation – see above.</p> <p>RACM -: We strongly oppose the expansion of conserved water projects to groundwater via rule. Unless legislation is passed to allow state protection of saved groundwater in the ground, then this new provision is simply allowing increased consumptive use (via water spreading) with no public benefit. The language of the statute is very clear that public benefits of the ACW are “instream” benefits; groundwater was not contemplated at time of the law’s passage.</p> <p>RACM - OEC strongly opposes proposed language in 690-018-0050-(5)(c)(C)(i) and (D)(i)(ii). Groundwater should not be included in Division 18 rules. Expanding conserved water projects to groundwater by rule without assurances provided by legislation that the state will protect saved groundwater from subsequent withdrawals is not acceptable. Until such legislation is passed, the allocation of conserved water should be applied only to surface water</p>
<p>690-018-0050(7)(c)(C) 12/5</p>	<p>RACM - We appreciate that OWRD has added language that formally addresses the protection of groundwater for groundwater rights that are subject to the ACW process. As you know, OWRD has previously processed groundwater rights under the ACW program. The ACW program is a crucial tool to encourage conservation and on-farm efficiency, and we encourage OWRD to retain this language to ensure groundwater rights are clearly included in Division 18.</p>
<p>690-018-0050(7)(c)(C), (D)(ii) Groundwater conservation is also mentioned in 690-018-0065(2)(c) and (3)(b) 12/5</p>	<p>RACM - TU raised our concerns about using the Allocation of Conserved Water program for groundwater in verbal comments during RAC meetings # 3 and 9. We renew those here. WRD staff confirmed in RAC meetings that, in the groundwater context, the State's portion of conserved water is simply available to other users for appropriation and there is no legal mechanism for protecting it in situ (and therefore, no perceptible public benefit served by the state's portion).</p> <p>RACM RECOMMENDATION - Delete these provisions and do not include specifics in the administrative rule on using the Allocation of Conserved Water program for groundwater.</p> <p>RACM - There appear to be some number sequencing issues in 690-018-0050 with a 4,5,6,7,6,7,8. [OWRD RESPONSE: Changes made to address incorrect number sequencing. See OAR 690-018-0050(4), (5), (6), (7), (8), (9) and (10).]</p> <p>The comments here relate to the first (7). DRC strongly supports all water conservation efforts. However, this does not seem to follow the intent of Division 18. With new groundwater allocation rules and low availability of groundwater in many basins, how will it be assured that the conserved groundwater is not withdrawn/pumped by another water user or won't result in another water user pumping water that may not have been available prior to the conservation? If the groundwater conservation cannot improve aquifer conditions, it should not be included for allocations of conserved water.</p> <p>RACM - Unless there is a way to protect the conserved groundwater in the aquifer, there would or may be no public benefit or improvement of the status of the aquifer. Consider removing groundwater conservation from Division 18 unless or until methods are established to protect the conserved water from further withdrawal.</p>
<p>690-380-0065(2)(c), (3)(b)</p>	<p>RACM - TU raised our concerns about using the Allocation of Conserved Water program for groundwater in verbal comments during RAC meetings # 3 and 9. We renew those here. WRD staff confirmed in RAC meetings that, in the groundwater context, the State's portion of conserved water is simply available to other users for appropriation and there is no legal mechanism for</p>

12/5	<p>protecting it in situ (and therefore, no perceptible public benefit served by the state's portion). RACM - Delete these provisions and do not include specifics in the administrative rule on using the Allocation of Conserved Water program for groundwater.</p> <p>Remove groundwater references until a method to protect the conserved groundwater is determined or until using allocation of conserved water for groundwater can be guided by statute</p>
690-018-0065 (2)(c)(A) 9/18	<p>RACM - Similar to comment re: -0050(5)(c)(C)(i), recommend that OWRD remove this section. Without a mechanism in place to protect the state's portion of the groundwater right, LandWatch strongly recommends that OWRD remove all proposed rules related to groundwater projects in Div 18.</p> <p>RACM - As stated above, CTUIR requests that OWRD remove this section. (see comment re: -018-0065 above).</p> <p>RACM - Remove groundwater references until a method to protect the conserved groundwater is determined.</p> <p>PUBLIC - I support the concerns expressed by Chris, Kimberley and others about the provision in 690-018-0065 (2)(c)(A) of applying the ACW to groundwater but not protecting any conserved water or having a plan beyond leaving it for the next user to access.</p>
690-018-0065(3)(b)	<p>RACM - Similar to comment re: -0050(5)(c)(C)(i), recommend that OWRD remove this section. Without a mechanism in place to protect the state's portion of the groundwater right, LandWatch strongly recommends that OWRD remove all proposed rules related to groundwater projects in Div 18.</p> <p>RACM - Remove groundwater references until a method to protect the conserved groundwater is determined.</p>
General – gw rights and ACW 690-018-0050(c)(C)(i), -0050(7)(c)(D)(ii), -0065(2)(c), -0065(3)(b) 12/5	<p>RACM We remain concerned that if a groundwater right goes through the ACW program, the state's portion of conserved water is just left in the aquifer without protections. The Department has not proposed any new language to address this issue. As such, we resubmit the comments we provided to the Department on Oct 31st, requesting that without a mechanism in place to protect the state's portion of the groundwater right, that OWRD remove all proposed rules related to groundwater projects in Div 18. This includes, but is not limited to subsections:</p> <ul style="list-style-type: none"> • OAR-690-018-0050(7)(c)(C)(i) • OAR-690-018-0050(7)(c)(D)(ii) • OAR-690-018-0065(2)(c) • OAR-690-018-0065(3)(b)

Response to Land Use Comments

OWRD Response:

Due to the high interest in land use amongst the RAC, complexity of the topic, and ability to address this in tandem with future updates to Division 5, the Department has reverted to the original rule language pertaining to land use. Text in OAR 690-018-0040(22), 690-018-0050(3)(c) [formerly (4)(c)], and 690-018-0090(2)(d) [formerly (c)] has been reverted.

Table of Land Use Related Comments

Section / Version comment	Issue
Combined comments on land use compatibility issue 690-018-0040(22)(a), -018-0050(3)(c), -310-0040(1)(a)(L), -380-3000(19), -380-7100(14), -380-8003(2)(d), -382-0400(12)	<p>RACM – See detailed comments from Leah Cogan (several paragraphs so not pasting here). RACM Recommendation - For the provisions relating to application requirements (690-018-0040(22)(a), 690-310-0040(1)(a)(L), 690-380-3000(19), 690-380-7100(14), 690-380-8003(2)(d), and 690-382-0400(12)): “A Land Use Information Form completed by the affected local government as outlined in the Department’s Land Use Planning Procedures Guide described in OAR 690-005-0035(4).”</p> <p>690-018-0050(3)(c): The original rule language was sufficient to allow OWRD to comply with Division 5 and ORS 197.180. Recommend keeping the original language (could make “acknowledged comprehensive plans” lower-case)</p>
Combined comments on land use compatibility issue 690-018-0040(22)(a) 690-018-0050(3)(c) 690-310-0040(1)(a)(L) 690-380-3000(19) 690-380-7100(14) 690-380-8003(2)(d) 690-382-0400(12) 12/5	<p>RACM – See Leah’s detailed comments.</p> <p>RACM RECOMMENDATION - Retain original language at this time. For permit amendments, include language similar to the original language for transfers.</p>
690-018 General	<p>PUBLIC – Comments were submitted emphasizing the interface between OWRD and DLCD and the importance of collaboration in land use/resource planning as manifested in Deschutes County (see comments submitted by Jim Powell, 11/4/25, for more context).</p>
690-018-0090(2)(c)	<p>RACM – Similar to comments re: Div 310, OWRD should add the language “local land use regulations” in addition to “acknowledge comprehensive plans” in order to ensure that proposed water permits are reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1).</p> <p>RACM - Don’t agree with removing</p>

	reference to Div. 5, but if this stays in, clarify that it's the proposed use that should be allowed under the comp. plan, not the approval itself RACM Recommendation - "The proposed use is allowed under the acknowledged comprehensive plan"
690-018-0050(3)(c) 12/5	RACM - For out of stream uses please see our comments regarding land use in Div 310.
690-018-0050(3)(c) 9/18	RACM - Comments are similar to those for Div 310. RACM Recommendation - OWRD should add the language "local land use regulations" in addition to "acknowledge comprehensive plans" in order to ensure that the proposed allocation of conserved water is reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1). Further, if applicable, OWRD should require land use approval from local government before approving the proposed allocation of conserved water. RACM - Requirement for OWRD to ensure that the local government comprehensive plan and land use classification is consistent to approve a proposed allocation of conserved water rights. The Tribe's understanding of local comprehensive plans is that they are written to conform with the State's Land Use Goals. We disagree that a local comprehensive plan should be able to prevent an allocation of conserved water to the State from being approved, if this is the intent of this statement. If the goal is to ensure that the local government correct any land use classification conflicts, or that the local government becomes aware of the State's intent to enact a water right via the ACW program, then the language needs to be clarified.
690-018-0040(22)(a) 9/18	RACM – Comments are similar to those for Div 310. RACM Recommendation - OWRD should add the language "local land use regulations" in addition to "acknowledge comprehensive plans" in order to ensure that the proposed allocation of conserved water is reviewed for compliance with all relevant local land use regulations, as required by ORS 197.180(1). Further, if applicable, OWRD should require land use approval from local government before approving the proposed allocation of conserved water.
690-018-0025(22)(b) 12/5	RACM - Statute does not direct notifications of local governments along a reach for instream uses. This is also time consuming for the applicants. RACM RECOMMENDATION - Propose removal of this as a requirement or confine to notifying only Tribal entities along a reach, especially if they have flow related treaty rights.
General – land use 690-018-0040(22)(a), -0090(2)(c), -0050(3)(c) 12/5	RACM - OWRD's November Nov 24th email that included potential revised draft rule language related to Div 310, did not include other divisions where similar land use language exists. We strongly recommend the revised language discussed above under Div 310 be incorporated into Div 018, where applicable. This includes, but is not limited to, subsections: <ul style="list-style-type: none">• OAR-690-018-0040(22)(a)• OAR-690-018-0090(2)(c)• OAR-690-018-0050(3)(c)
690-018-0025 12/5	RACM - A RAC member noted that there shouldn't be a responsibility to report to local governments.
690-018-0040(22)(a)(B) 12/5	RACM - OWRD's proposed rule language adds a new requirement for applicants to provide "[d]ocumentation demonstrating that, for the portion of the conserved water being dedicated to an instream water right for instream purposes, the applicant provided notice of the intent to create

	<p>an instream water right under an allocation of conserved water to each affected local government along the proposed instream reach.”</p> <p>This obligation is onerous and potentially impracticable for irrigation and nursery use water right holders who would like to undertake the ACW process. It is not realistic to assume that the applicant can identify the “affected local governments” that will be impacted by a new instream water right for the portion of the applicant’s conserved water. The ACW program is a critical conservation tool, and water users should not be disincentivized from participating as a result of additional application requirements not required by the authorizing statute.</p> <p>RACM - OWRD’s proposed rule language adds a new requirement for applicants to provide “[d]ocumentation demonstrating that, for the portion of the conserved water being dedicated to an instream water right for instream purposes, the applicant provided notice of the intent to create an instream water right under an allocation of conserved water to each affected local government along the proposed instream reach.”</p> <p>This obligation is onerous and potentially impracticable for irrigation and nursery use water right holders who would like to undertake the ACW process. It is not realistic to assume that the applicant can identify the “affected local governments” that will be impacted by a new instream water right for the portion of the applicant’s conserved water. The ACW program is a critical conservation tool, and water users should not be disincentivized from participating as a result of additional application requirements not required by the authorizing statute.</p>
<p>690-018-0040(22)(a)(B), (22)(b) 12/5</p>	<p>RACM - We continue to oppose any provision to provide advance notice to local governments of the intent to create an instream right for instream purposes under the ACW. There is nothing in statute that requires this. This language is not needed to comply with ORS 197.180, as land use regulations to not curb the creation of instream water rights through the ACW or otherwise. Authority for this is not provided for in HB 3342, HB 3544 or the ACW statutes. This is a new concept that is wholly outside the scope of this rulemaking and will only serve to compromise instream projects. This language should be struck</p>
<p>690-018-0040(22)(b) 12/5</p>	<p>RACM - We ask that you remove the provision directing the applicant to provide notice to each affected local government along the instream reach. This provides an added burden and cost to those of us focused on instream restoration. We are not aware of any statutory requirement to this end, and the lack of any similar requirement for Allocation of Conserved Water (ACW) projects that dedicate a portion of the saved water to other uses creates an unfair bias against projects that dedicate all saved water instream. Finally, water flowing in a streambed should not come as a surprise to local governments. This provision gets us further, rather than closer, to the agency’s goals of increased administrative efficiency and provides little actual benefit to local jurisdictions that expect water in waterways. We ask that you remove this provision.</p> <p>RACM - Statute does not direct notifications of local governments along a reach for instream uses. This is also time consuming for the applicants.</p> <p>RACM RECOMMENDATION - Propose removal of this as a requirement or confine to notifying only Tribal entities along a reach, especially if they have flow related treaty rights.</p>
<p>690-018-0040(22)(b) 9/18</p>	<p>RACM - What is the current practice with respect to land use review; is an application to put 100% of a water right instream needed a land use review to ensure alignment with Division 310. RACM – recommend OWRD remove this section. It is not clear why this rule requirement is needed.</p> <p>RACM - We ask that you remove the provision directing the applicant to provide notice to each affected local government along the instream reach. This provides an added burden and cost to</p>

	<p>those of us focused on instream restoration. We are not aware of any statutory requirement to this end, and the lack of any similar requirement for Allocation of Conserved Water (ACW) projects that dedicate a portion of the saved water to other uses creates an unfair bias against projects that dedicate all saved water instream. Finally, water flowing in a streambed should not come as a surprise to local governments. This provision gets us further, rather than closer, to the agency's goals of increased administrative efficiency and provides little actual benefit to local jurisdictions that expect water in waterways. We ask that you remove this provision</p> <p>RACM - Statute does not direct notifications of local governments along a reach and this is not a requirement for out of stream uses, only for instream and as such, is an inequitable additional requirement. This also time consuming for the applicants.</p> <p>RACM Recommendation - Propose removal of this as a requirement or confine to notifying only Tribal entities along a reach.</p> <p>RACM - OEC recommends removing 690-018-0040(22)(b), as there is no direction in statute requiring this and no clear need has been shown for requiring it in rule.</p> <p>RACM - Requiring applicants to notify affected local governments along the stream reach of the intent to allocate 100% of conserved water to an instream water right. The Tribe disagrees with the addition of this requirement. It is overly burdensome to the applicant and is not required by statute. OWRD has procedures for digital notifications to interested agencies or groups that are satisfactory for this purpose.</p>
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Table of Other Comments

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
690-018 (General) 12/5	RACM - The Allocation of Conserved Water ("ACW") process is a critical tool to encourage conservation and increase flexibility for water users. As we move into a future where new water rights are not available, this program will become increasingly valuable. OWRD should ensure that any new proposed language does not disincentivize willing ACW applicants by creating new burdensome processes or requirements. OAN has identified various specific comments and changes that should be made, set forth below.	OWRD appreciates this general comment and has responded to the comments related to specific proposed rules (below).	Complete. No change made.
690-018-0040(15)	RACM - OWRD's proposed rule language provides that applicants would be required to provide a	The current ACW Div. 18 rules in effect at this time already requires under OAR 690-018-0040(15) that the application	Complete. No change made.

12/5	<p>description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants' portion of conserved water right would be located and used for beneficial out-of-stream uses. The underlined language is an unnecessary addition. An applicant who is undergoing the ACW process is modifying an existing water right certificate that was authorized for beneficial use. Once the ACW process is complete and finalized, the applicant will continue to be subject to the existing and well-established Oregon requirement of beneficial use of water. By adding the proposed language underlined here, the rule appears to be establishing a special standard for the ACW process beyond what is already required by Oregon water law.</p>	<p>must include: “<i>A description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants' conserved water right would be located.</i>”</p> <p>An ACW applicant can choose a broad boundary within which they can use their conserved water for typical out-of-stream beneficial uses, such as irrigation, nursery operations, industrial, municipal use, etc. The applicant can also choose to manage all or part of the applicant's portion of conserved water instream for future out-of-stream use at place(s) of use located within the boundary identified in the application.</p> <p>The intent of the proposed language in OAR 690-018-0040(15) and (16), together, was to better differentiate between the use of the applicant's portion of conserved water out-of-stream vs. instream. The proposed rule language is simply reiterating Oregon's well-established requirement that the use of water must be used beneficially.</p>	
690-018-0050(3)(j) 12/5	<p>RACM - Support added language to assure measurement and management of conserved water. Metering, measurement and verification are key components to ensure the conserved water serves its intended purpose and does not result in enlargement. This may include third party or agency verification of the amount of water saved.</p> <p>RACM RECOMMENDATION - Consider metering/ measurement and verification.</p>	<p>OWRD does not believe it is necessary to call out “verification” as it relates to this rule, because the local Watermaster already has authority to request access to meters to verify allowed water diversions are not being exceeded.</p>	<p>Complete. No change made.</p>
690-018-0040(25) 12/5	<p>RACM - We request that you do not eliminate the mandatory fee waiver for the conservation projects specified. We find it frustrating that the out-of-stream use of water has been granted to such an extent that many of our fisheries have been severely compromised; indeed, many of</p>	<p>OWRD has reverted to shall.</p>	<p>Fee Waiver Complete change made in v3.</p>

	<p>our rivers and streams would have no water during the irrigation season if it were not for the work of flow restoration practitioners like CTUIR and others. To eliminate the fee waiver for this work to try and correct Oregon's past practices and restore water back to our rivers and streams is particularly frustrating. We respectfully ask that you do not eliminate this waiver.</p> <p>(25) Changes the existing rule from "shall waive" to "may waive" fees to be consistent with the statute language. The Tribe understands the goal, but notes that a generous fee waiver policy for creating an instream water right is important for correcting historic harms to Indigenous people from overextraction of water under Oregon's water right system despite being subsequent to Tribal Treaties and to the Winters v. United States Supreme Court ruling.</p>		
690-018-0050(1) 9/18	<p>RACM - different variation as written (Div 310: unless the recipient has requested mailing, Div 315: unless the applicant has requested mailing or other sending in written form, Div 18: unless the recipient has requested that the notice be sent by regular mail) I am proposing that the same language be used throughout all divisions.</p> <p>RACM - Division 18, 310, and 315 all have slightly different variation as written (Div 310: unless the recipient has requested mailing, Div 315: unless the applicant has requested mailing or other sending in written form, Div 18: unless the recipient has requested that the notice be sent by regular mail)</p> <p>RACM Recommendation –</p>	<p>OWRD will strive for consistent language across the various rule divisions as it relates to requests for mailing of documentation and notice instead of by electronic means if it has time. Some of the divisions have already been finalized and OWRD was unable to add consistent language. OWRD will attempt to correct for the final filing.</p>	Partial complete. In progress.

	propose same language be used throughout all divisions.		
690-018-0010	OWRD Staff: Applicability language old dates.	Clarifies when these rules apply to applications.	Complete. Change made v3.
690-018-0050	OWRD: Language in 7 is redundant with 6.	Removes redundant language.	Complete. Change made in v3.
690-018-0050	OWRD Staff	Add back in "if needed" to be consistent with 537.470(3)	Complete. Change made in v3
Various sections including-0062	OWRD staff	Made grammar and rule reference updates and added further wording for clarity	Complete. Change made in v3
690-018-0020(9) 12/5 690-018-0050(7)(a)(B), (7)(b)(A) and (B), (7)(c)	RACM - The V2 rules insert a new definition of "living certificate". This is a new term/concept that is not found anywhere in statute, and in fact is directly contrary to the ACW's requirement that new certificates be issued. See ORS 537.470(6). The issuance of new certificates is important both for the underlying right and the new instream right. If a water right is reduced because of an ACW transaction, the water needs to be expeditiously removed from the certificate so that there is no confusion in relation to any future transfer applications, regulation of the underlying right, m/r and/or other processes. It is also needed to protect against any future statutory changes that might try to regain access to that water. It is also critically important that the instream portion be protected by a state-held instream right as mandated by the Act. As read in conjunction with OAR 690-018-0050, a "living certificate" means the instream portion of the ACW could be held by the district rather than the state. This puts the instream portion at risk and is directly contrary to the intent and language of the statute. All provisions allowing	This is current practice as living certificates are common practice for changes to district rights. Living Certificates are authorized under 540.530(2). Based on the comments, there is probably a need for further discussion so that there is shared understanding of what does and does not occur with living certificates. In brief, OWRD does issue the instream certificate once a project is finalized and OWRD does track what the district is entitled after changes are made. OWRD has reviewed the statutes. ACW does not appear to be tied to 540.530(2). This is likely to be problematic and will impact workloads in the division. OWRD has removed from the rule, but will likely need to find a solution to this matter.	Living Certificate Complete. Change made in v3.
12/5 690-018-0020(9), -0050(7)(b)(B), -0050(7)(c) 690-018-0065(2)(b)		Changes made to address incorrect number sequencing. See OAR 690-018-0050(4), (5), (6), (7), (8), (9) and (10).	
12/5		In response to the comments related to the requested OWRD Water Right Information System (WRIS) improvements, we understand that it can be difficult to easily find current authorized reduced rate and volume quantities associated with "living certificates." In its current state, however, the WRIS database framework is not set up to accept and display current-state data (e.g., such as	

	<p>for “living certificate” need to be removed from these rules. This wholly new concept is significantly outside the scope of this rulemaking.</p> <p>RACM - Please remove reference to a living certificate for reasons outlined previously.</p> <p>RACM - Please delete “living certificate” from all of these sections. As noted previously, the concept of a living certificate is not supported by statute, is not in HB 3342 or HB 3544, is a wholly new concept and is unrelated to aligning rule to statute. Keeping the certificate “live” puts the instream portion at risk as it will continue to be held by the district and not the state. This could invite future legislation and/or other changes that could move water that is supposed to be permanently instream to other uses. Long story short, insertion here is vastly outside the scope of the rulemaking and should be struck.</p> <p>RACM - There appear to be some number sequencing issues in - 690-018-0050 with a 4,5,6,7,6,7,8. The comments here relate to the first (7).</p> <p>Thank you for the clarification that a portion of a certificate may be cancelled and there may be a “living certificate”. While these are modified and tracked by OWRD, the remaining rate and volume are not always easy to find. DRC suggests if a project reduces the rate or volume from a “living certificate” that the new reduced rate and volume be readily available on the OWRD Water Right Information System (as the reduced rate and duty would be</p>	<p>a real-time updated dashboard) for “living certificates.” Undertaking an upgrade such as this would require staffing resources from OWRD’s Information Technologies (IT) Section, which it currently does not have. That said, final orders affecting water rights in this way (reducing the authorized rate and duty), are available as a scanned PDF on the appropriate water right page in WRIS. Additionally, OWRD staff are always available to assist with tracking down this information.</p>	
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	easy to find when a certificate is cancelled and a new certificate issued with reduced rate and duty)		
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