

**Proposed Rule Revision Tracker****Division 310 – WATER RIGHT APPLICATION PROCESSING**

<b>Section / Version comment</b>	<b>Issue</b>	<b>Response/Modified Language</b>	<b>Status / Version change made in</b>
<b>General</b> 9/16	<p>RACM - Similar to other state agency partners that are participating in the RAC process (i.e. Office of Administrative Hearings, Department of Fish and Wildlife, and Department of Environmental Quality), DLCD should be included in RAC discussions, providing guidance and input on the proposed draft rules.</p> <p>Nearly all rule divisions included in this rulemaking process have proposed rule changes related to land use. The absence of DLCD is a missed opportunity to involve the state agency charged with overseeing Oregon's statewide land use planning program. Our state land use system is unique in the country for how it prioritizes farm and forest uses in rural areas, while directing population growth inside cities' urban growth boundaries. Among others, this rulemaking provides an important opportunity for the two agencies to grapple with questions related to the sequencing of water right decision-making and land use decision-making, how water permitting might better align with the goals of the land use system, and overall improving how these two areas of regulation interact. As such, we strongly recommend that OWRD solicit DLCD's input as part of the RAC process.</p>	OWRD discussed the rulemaking, the draft rules related to land use, and potential revisions to those draft rules with DLCD. OWRD will continue to engage with DLCD during the rulemaking.	<p>Complete. Action taken.</p> <p><b>Will include for discussion at RAC mtg</b></p>

<p><b>Combined comments on land use compatibility issue</b></p> <p><b>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)</b></p>	<p>RACM – See detailed comments from Leah Cogan (several paragraphs so not pasting all of it 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>The SAC provides some discretion, reflected in Division 5, for processing applications when land use approvals are pending but are being pursued. The proposed changes in this rulemaking are inconsistent with these provisions in Division 5 and in the SAC.</p> <p>At the very least, accepting an application as complete while land use approvals are pending is necessary to allow large water supply projects to continue moving forward. The absence of this option will severely compromise municipal water providers’ ability to manage their water rights portfolios and provide the water supply needed to meet the state’s housing production goals.</p>	<p>OWRD is considering revising the draft rule language to link to the Division 5 rules more clearly. This could look like:</p> <p>(L) As described in OAR 690-005-0035(3)(b), (4)(a), and (4)(b)(B) and (C), a Land Use Information Form completed by the affected local government showing that the land use that corresponds with the water use(s) is allowed outright, does not require discretionary land use approval under the applicable acknowledged comprehensive plan and implementing ordinances, all discretionary land use approvals as defined in OAR 690-005-0015(5) have been granted, or that all discretionary land use approvals have been granted but the Land Use Board of Appeals process has not been exhausted.</p> <p>OWRD is considering if there should be additional language for municipal applicants.</p> <p>As a non-rule process improvement, OWRD believes the Land Use Information Form should contain a statement making it clear that the form is not the actual land use decision.</p>	<p>No changes made within the rules yet. <b>Will include for discussion at RAC mtg</b></p>
<p><b>690-310-0020(1)</b> 9/16</p>	<p>RACM - integrate “proposed” place of use throughout.</p> <p>RACM – insert “proposed”</p>	<p>Change made</p>	<p>Complete. Changed V2</p>

	RACM Recommendation – ““or any land within the <u>proposed</u> place of use” specifying that the POU is only proposed.		
<b>690-310-0030</b>	<p>RACM - We would request that the OWRD add to this list of grounds for refusing to issue and/or cancel a permit a section on “knowingly making false statements on an application”. Additionally, in the application requirements the OWRD should require a sworn and notarized document to help ensure truthfulness by the applicant or any agent acting on the applicant’s behalf. We are seeing increasing instances of applicants and their agents making false statements in water right/transfer applications, which not only is of great concern, but takes a lot of time and resources on the part of the state to sort through what is true and what is false and is generally unfair to all if decisions are made on false information. The state should take steps, similar to what it does in this section when false statements are made as to easements, to ensure truthfulness to all aspects of an application. Furthermore, a false statement on an application should bar the applicant from reapplying and receiving a permit for that water use in the future. And finally, illegal use of water in a place of use proposed in an application and illegal use from a point of diversion or point of appropriation proposed in an application should be a bar to issuance of the permit. Illegal use should not be rewarded with permit issuance.</p>	<p>This is out of scope for this rulemaking. ORS 537.139 provides specific authority. OWRD would have to do more research to determine if it has authority. Please provide a citation to legal authority for the agency if you believe that exists.</p>	<p>Complete. No changes made.</p>

	RACM - We also support the suggestion that in 690-310-0030 OWRD add “knowingly making false statements on and application” to the list of grounds for refusing to issue and/or cancel a permit.		
<b>690-310-0040(1)(a)(F)</b> 9/16	<p>RACM - integrating “proposed” place of use throughout.</p> <p>RACM – insert “proposed” RACM Recommendation – ““or any land within the <u>proposed</u> place of use” specifying that the POU is only proposed.</p>	Change made	Complete. Changed V2
<b>690-310-0040(1)(a)(L)</b> 9/16	<p>RACM – what is the order of operations when there is a land use conflict, i.e., how is a conflict adjudicated?</p> <p>RACM - Regarding the land use form change, have concern over potential economic impacts on municipalities, because land use plan compatibility is required for pursuing bonding authority to fund infrastructure projects. The proposed changes are somewhat confusing and may delay findings of compatibility.</p> <p>RACM - past experiences with small municipalities conflating other permitting requirements with water use, delaying projects.</p> <p>Department staff asked RAC members whether language that allows small governments to provide information supporting land use compatibility with comprehensive plans without</p>	<p>OWRD is considering revising the draft rule language to link to the Division 5 rules more clearly. This could look like:</p> <p>(L) As described in OAR 690-005-0035(3)(b), (4)(a), and (4)(b)(B) and (C), a Land Use Information Form completed by the affected local government showing that the land use that corresponds with the water use(s) is allowed outright, does not require discretionary land use approval under the applicable acknowledged comprehensive plan and implementing ordinances, all discretionary land use approvals as defined in OAR 690-005-0015(5) have been granted, or that all discretionary land use approvals have been granted but the Land Use Board of Appeals process has not been exhausted.</p> <p>OWRD is considering if there should be additional language for municipal applicants.</p> <p>RE: the comment about consistency of comprehensive plans with statewide planning goals, the existing rule language and draft rule language contain the word “acknowledged”</p>	<p>No changes made within the rules yet</p> <p><b>Will include for discussion at RAC mtg</b></p>

	<p>committing to approve the land use application on their end would suffice. A RAC member responded that it would depend on the municipality.</p> <p>RACM - comprehensive plans are largely inconsistent with Department of Land Conservation and Development's (DLCD) planning goals and was concerned that OWRD would be allowing water rights that are not in alignment with those planning goals. He also asked if the Department was planning to update the Division 5 rules, relating to compliance with state planning goals and compatibility with comprehensive plans, and whether the proposed rule changes were made in anticipation of a future rulemaking.</p> <p>RACM- proposed rule changes were beyond the scope of 2025 legislation implementation and that given the level of discomfort, should perhaps be shelved.</p> <p>RACM - There was extensive discussion over Land Use and comprehensive plans during the meeting. OWRD was going to revisit this one. Statewide planning goals are sometimes in conflict. We will wait for any updated language to review</p> <p>RACM - While we agree with the OWRD's intent as to purpose (stated at the meeting), which is to get the</p>	<p>before "comprehensive plan." Comprehensive plans are "acknowledged" by DLCD once DLCD determines that a plan aligns with Oregon's statewide planning goals.</p> <p>RE: the comment that "the proposed amendment omits the critical language "and land use regulations,"" the revised draft rules could add the words "and implementing ordinances." However, OWRD notes that DLCD defines "Acknowledged Comprehensive Plan" as inclusive of both a comprehensive plan and the implementing ordinances (OAR 660-031-0010(1)). For OWRD's purposes of water right transaction review, referring to acknowledged comprehensive plan has meant inherently also referring to the implementing ordinances.</p> <p>RE: the comment that "the proposed amendments should require a final land use decision from a local government before issuing a permit to appropriate water," the phrase "land use approval" could be used in the revised draft rule language. OAR 690-005-0015(5) defines "land use approval" as "a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired." The draft rule language could add a reference to this definition.</p>	
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	<p>information they need to comply with ORS 197.180, the language provided does not appear to go as far as ORS 197.180. We would suggest the rule either mimic language from the statute and/or simply refer to the statutory cite. Importantly, the use must comply with land use provisions, it cannot be awaiting compliance in our read of the statute.</p> <p>RACM - The proposed amendment omits the critical language “and land use regulations.” Comprehensive plans are guiding policy documents, but their language is often vague or aspirational, often including language like “The County should do...” or “Seek opportunities to do...” or “Support efforts to do...” More regulatory local land use law is most often found in other local land use regulations, usually a local zoning code or local development code. It is critical that proposed OAR 690-310-0040(1)(a)(L) add the language “local land use regulations” in addition to “acknowledged comprehensive plans[s]” 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>The proposed amendment would ask Department staff to “assess compatibility with the acknowledged comprehensive plan.” This is</p>		
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	<p>not an appropriate role for OWRD staff.</p> <p>Local governments have exclusive jurisdiction over determining the compliance of proposed land use actions with local comprehensive plans and land use regulations, with review jurisdiction vested in the Land Conservation and Development Commission (“LCDC”) and the Land Use Board of Appeals (“LUBA”). See ORS 215.416 – 427 (describing local land use decisional procedures); ORS 197.610 – 627 (describing review of certain local land use decisions by LCDC); ORS 197.805 – 860 (describing review of local land use decisions by LUBA and the Courts). More practically, OWRD staff are not appropriately prepared to assess compatibility of a proposed water use with local land use regulations. Internal OWRD review procedures will not ensure the fulfillment of the substantial procedural rights afforded to participants in local land use proceedings under ORS 197.797. And OWRD staff will not be familiar with the substance and procedure of the state and local land use regulations that must be applied in order to determine whether a proposed development that requires a water permit will be compatible with those land use regulations.</p> <p>RAC Recommendation - Instead, and to comply with</p>		
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	<p>ORS 197.180(1), the proposed amendments should require a final land use decision from a local government before issuing a permit to appropriate water. If two separate land use decision processes are running concurrently, one through the local government and one through OWRD review, much confusion and the potential for conflicting determinations are likely to result. OWRD should not issue water permits until local land use review for a proposed use that requires a water permit is complete.</p> <p>Alternatively, and as a middle ground, the proposed rules should require the local government to determine whether the proposed use is allowed outright by the local land use regulations, or whether the proposed use is conditionally allowed or requires some other discretionary land use review. If the use is allowed outright, then OWRD should process the water permit application. If the use is conditionally allowed or requires discretionary land use review, then OWRD should wait for a final land use decision, and for any appeals to LCDC or LUBA to be resolved, before processing the water permit application.</p>		
<b>690-310-0040(1)(a)(M)</b> 9/16	<p>RACM – re: “and evidence of signatory authority or a signed statement that such authority exists.” I believe there should be examples of what constitutes acceptable</p>	<p>OWRD appreciates the comment but believes this can be accomplished through application materials rather than specifying examples in rule.</p>	<p>Complete. No change made.</p>



	evidence that the department will accept (screenshot of Oregon SOS business registry, etc.).		
<b>690-310-0040(1) (c)(A)</b> 9/16	<p>RACM - reduced information for dams and reservoirs pertaining to the map, specifically for smaller infrastructure was problematic.</p> <p>RACM - Concerned with the wording of "less than 9.2 acre-feet of water or with a dam less than 10 feet in height." Depending on location and width, a dam less than 10 feet could hold back a significant volume of water where additional info is useful</p> <p>RACM Recommendation - If a dam less than 10 feet is holding back more than 9.2 acre-feet of water - width and crest width could be important safety information.</p> <p>RACM - Strongly oppose the new language stating that if the dam is less than 10 feet or will store less than 9.2 af the applicant does not have to provide the dam width. The "or" in statute has allowed some mischief in practice, with reservoirs over 100,000 acres using preferences meant for small projects to avoid rigorous review. For the OWRD and the public to assess a project, plans should also include width and crest width.</p>	<p>The "or" clause between dam height or volume is included in statute at ORS 537.409(1)(a), which is replicated here in the rules.</p> <p>Note that width and crest width are not required information with regard to dams that are included in the alternate review process for reservoirs, so this change would be make that consistent with the standard review process. The draft rules were developed after discussing with our Field Services Division and Dam Safety teams the information they need to support our storage application reviews and their regulatory programs.</p>	Complete. No change made.
<b>690-310-0040(5)</b>	RACM - the reference to abandoned water wells should link to well abandonment rules.	The draft rule as written reflects language included in Chapter 605, 2025 Laws. This change would require discussion with a broader	Complete. No change made.

	RACM - please add “permanently” before the word “abandoned”.	group beyond the current RAC and staff involved. This is an item that can be addressed in implementation. No change made, in order to maintain alignment with statutory language.	
<b>690-310-0070(1)</b> 9/16	<p>RACM - how the new legislative authorities will impact fees, including whether processing fees would be refunded if an application is returned and if any processing fees for credit card payments also would be refunded.</p> <p>RACM - recommend letting applicants know whether or not refunds include processing fees.</p>	Under the new phased process for reviewing applications, the Department will not collect all fees upfront, just a portion of the applicable examination fee. Therefore, the applicant is not at risk for losing the entire application fee in the event the Department’s review does not support moving forward with the application. We will not be refunding any credit card payment processing fees – noting this for the implementation team.	Complete. No change made.
<b>690-310-0070</b> 9/16	<p>RACM - is there a sequencing issue, in that determinations made in -0070(4) and -0070(5) should occur prior to endorsement.</p> <p>RACM - it appears that there might be a sequencing issue with these two sections. It does not seem efficient to “endorse” the application if it is in an area that is withdrawn and will have to be returned. Rather, if an area is withdrawn and the state cannot accept the application that should occur before any “endorsement”. The overarching intent behind this particular statutory change was to reduce challenges to agency denials. Including an endorsement before returning the application might muddy the intent. While we appreciate the endorsement language is in statute, there is</p>	<p>An application is indorsed upon determination that it is complete and not defective, which occurs prior to review for prohibited sources. This order is reflected in the proposed rule structure.</p> <p>The sequence of actions included in the proposed rule reflects those that are included in statute as well as the amended statutory language in Or Laws 2025, Chapter 282.</p>	Complete. No change made.

	nothing prohibiting the state from doing the analysis in HB 3342 Section 14(3) before the endorsement step outlined in section 14(2). We would suggest that the order be switched so that the rules set forth a process for (1) determining completeness, (2) evaluating whether it is prohibited by HB 3342 Section 13(3) and (3) if YES it is prohibited the returning the application or if NO it is not prohibited then endorsing the application, recording it in the book and moving into the IR.		
<b>690-310-0070(4), (5)</b> 9/16	<p>RACM - why are the first sentences in -0070(4) and -0070(5) inconsistent.</p> <p>RACM – questions regarding requirement differences for returning applications in closed areas between ground and surface/stored water and what the intent was for “if the Department has information sufficient” language. Additionally, another RAC member was concerned about the Department’s interpretation of what areas were closed or not and how this guidance would be carried forward to field offices.</p>	<p>OWRD agrees that the first sentences of -0070(4) and 0070(5) should be made structurally consistent and made the change.</p> <p>When groundwater applications are submitted, in some instances our team may not be able to immediately assess whether the proposed use is prohibited based one of the scenarios described in the draft rules and HB 3342. This might occur for example if the proposed source is hydraulically connected to a surface water body withdrawn from appropriation under ORS 538. Hydraulic connection is determined during the groundwater review, which occurs after intake. In such instances, the Department would not return the application and would continue to process it by sending it to the Groundwater Section for review. RE: the second part of the comment, the Department already maintains a publicly available list of groundwater administrative areas:  <a href="https://www.oregon.gov/owrd/programs/GWWL/GW/Documents/GWAdminAreasTable.pdf">https://www.oregon.gov/owrd/programs/GWWL/GW/Documents/GWAdminAreasTable.pdf</a></p>	Complete. Some changes made as noted. V2

	<p>One RAC member suggested rewriting the first sentence in - 0070(5) to improve clarity as follows:</p> <p>“If a groundwater application is complete and not defective and if the Department has information sufficient to make the determination at the time of the application intake, then the Department shall determine whether the proposed use is prohibited because the source of water is designated as a critical groundwater area under ORS 537.730, subject to restrictions on allowed groundwater uses by classification under ORS 536.340, or withdrawn from appropriation under ORS Chapter 538 or by rule or order of the Water Resources Commission under ORS 536.410.</p>	OWRD agrees that the sentence is somewhat unwieldy, but it accurately reflects the process.	
<b>690-310-0080(1)</b>	<p>RACM - Please return “by statute” into this section. We appreciate you want to reference the rules, but both are appropriate. There are in fact instances where a new water right would be prohibited by statute that is not captured by the rule referenced.</p>	-0070(4) and (5) cover many of the prohibitions that would likely include all of the relevant statutes considered at the time of intake. Additional review for other statutory prohibitions would come at a later stage of application processing.	Complete. No changes made.
<b>690-310-0080(2)</b> 9/16	<p>RACM - this rule section is difficult to follow and suggest breaking it up further.</p> <p>RACM - applicants may not know whether they need to seek counsel regarding the timing of payment. Some RAC members also suggested that communications to applicants should include “response required” in</p>	<p>OWRD revised the rule to address readability.</p> <p>The Department committed to working with interested parties when implementing this provision to ensure that notification is sufficient.</p>	Complete. Some changes made as noted. V2

	<p>subject headings to provide proper notice that further action is needed.</p> <p>RACM - 90-day deadline for applicants to confirm moving an application forward is a change in process and asked whether the administrative hold process could be used to pause the 90-day deadline.</p> <p>ODFW - I'm trying to piece together the timelines and how the Div33 reviews will fit in. Div33 reviews would help them make this determination; seems a bit unfair to get a negative agency review after it is too late to get fees returned.</p> <p>RACM - As discussed in the RAC, once the application file is closed it is permanently closed and no further action can be taken on it ever. We would suggest, given the questions on this at the RAC, that the OWRD insert the word "permanently" before the word "closed" for clarity's sake.</p>	<p>The Department confirmed that the administrative hold process does not stay the 90-day deadline.</p> <p>Although it may be useful to the applicant to have this information, this section does not address timelines with regard to ODFW's processing of Division 33 reviews.</p> <p>Taking "no further action on the application" would be synonymous with "permanently closed."</p>	
<b>690-310-0090(2)(a)</b> 9/16	RACM - removed language regarding posting the notice in a conspicuous location for local governments may limit public access to Department decisions. Another RAC member noted that some smaller municipalities will post notices on bulletin boards.	The Department's weekly public notice is already freely available to anyone who is interested. The posting language in the existing rules is already a request and not a requirement.	Complete. No changes made.
<b>690-310-0100</b>	RACM - Please add language making clear that the OWRD must "consider comments". We have seen PFOs that do not even acknowledge that comments have been	OWRD appreciates this comment, and has implemented additional checks in procedure to ensure comments are not overlooked.	Complete. No rule changes made.

	<p>received let alone considered; it is a waste of the public's time to submit comments if the OWRD is not required to read and consider them. Discouraging comments in this way also puts the agency at a disadvantage because it may result in the agency being unaware of defects and concerns until the PFO/protest state. Additionally, urge language requiring supervisor review for comments that raise significant issues.</p>		
<b>690-310-0120(7)</b>	<p>RACM - Please reverse the proposed deletion. As we read HB 3342, it retains the discretion of the director not to go to hearing if a protest does not raise significant disputes. By deleting this and essentially ensuring that any protest will result in a contested case (whether instream or out-of-stream), the agency is inviting frivolous protests to stall the process. This goes against the notion of "water right processing efficiencies"</p> <p>RACM - OEC believes that Division 310 should retain the option for the Director to, at their discretion, decide whether or not to proceed to a contested case hearing in a specific situation.</p>	Under ORS 537.153(7) and ORS 537.621(8), as amended by HB 3342 and HB 3544, the Director retains discretion to enter a final order rather than proceed to a contested case hearing where a protest has been filed by a non-applicant and the Director finds that there are no significant issues related to the proposed use of water. The proposed deletion of OAR 690-310-0120(7) does not remove the discretion provided by statute. Also, OWRD has proposed adding language to OAR 690-310-0160(2)(a) that reflects the Director's discretion not to go to a hearing if a non-applicant protest does not raise significant issues.	Complete. No change made.
<b>690-310-130(2)(b)</b> 9/16	<p>RACM – capitalize "department"</p> <p>RACM recommendation - The Department shall presume that a... Other references call out WRD as "Department"</p> <p>RACM - Please insert the word "permanently" before</p>	<p>Change made.</p> <p>The draft rule as written reflects language included in Chapter 605,</p>	Complete. Some changes made as noted. V2

	“abandoned”.	2025 Laws. Further, permanent abandonment may inadvertently tie this section to OAR 690-220-0030 (Permanent Abandonment). This would require discussion with a broader group beyond the current RAC. No change suggested to maintain alignment with statutory language.	
<b>690-310-130(3)</b> 9/16	<p>RACM - rule references to well abandonment should link back to well abandonment rules.</p> <p>RACM – change to “Department” RACM recommendation – “...of this section, the <del>Water Resources Department</del> <u>Department</u> may....” Other references call out WRD as “Department.”</p> <p>RACM – change “ground water” to “groundwater” RACM recommendation – “...appropriate <u>groundwater</u> in a <u>groundwater</u> quality management area declared....” Groundwater is referenced as one word in other sections</p> <p>RACM - Please insert the word “permanently” before “abandoned”.</p>	<p>The draft rule as written reflects language included in Chapter 605, 2025 Laws. Further, permanent abandonment may inadvertently tie this section to OAR 690-220-0030 (Permanent Abandonment). This would require discussion with a broader group beyond the current RAC. No change suggested to maintain alignment with statutory language.</p> <p>Removed “Water Resources” before Department as suggested.</p> <p>No change recommended for ground water to groundwater as statutory language in Or Laws 2025, Chapter 605, uses the two-word spelling. OWRD does note that usage is inconsistent throughout the Division between one word and two word spelling.</p> <p>See earlier response in this box.</p>	Complete. Some changes made as noted. V2
<b>690-310-0150(2)(b)</b> 9/16	<p>RACM - rule references to well abandonment should link back to well abandonment rules.</p> <p>RACM – change “ground water” to “groundwater” RACM recommendation – “...if the application is to appropriate <u>groundwater</u> for group domestic use expanded for a public water system</p>	The draft rule as written reflects language included in Chapter 605, 2025 Laws. Further, permanent abandonment may inadvertently tie this section to OAR 690-220-0030 (Permanent Abandonment). This would require discussion with a broader group beyond the current RAC. No change suggested to maintain alignment with statutory language.	Complete. No changes made.

	located in a <b>groundwater....</b> ” Groundwater is referenced as one word in other sections	No change recommended for ground water to groundwater as statutory language in Chapter 605, 2025 Laws, uses the two-word spelling. OWRD does note that usage is inconsistent throughout the Division between one word and two word spelling.	
<b>690-310-0160</b>	RACM - We encourage the OWRD to include language prohibiting ex parte communications after the close of the protest period; meaning that any communication (including those by elected officials) need to at least include all parties, and the ALJ if it's in contested case and referred.	ORS 183.685 and OAR 137-003-0625 address ex parte communications with administrative law judges during contested case hearings. ORS 183.462 and OAR 137-003-0660 address ex parte communications with an agency after a hearing is held and before the agency issues its decision. None of these statutes and rules prevent OWRD from communicating with parties about a contested case prior to the end of the hearing without all parties present. The requested restrictions are not required by law and would increase costs by requiring ALJs to receive and review or be present for all post-referral communications and decreasing OWRD's ability to communicate efficiently regarding settlement and other matters.	Complete. No changes made.
<b>690-310-0160(2)</b>	RACM - The rules should retain the Director discretion not to go to contested case hearing if substantive issues are not raised. The statute retains this discretion, so should the rules. Absent that, the OWRD is inviting frivolous protests to stall the process (instream and out-of-stream), which is a huge waste of agency resources and time.  RACM - OEC believes that Division 310 should retain the option for the Director to, at their discretion, decide whether or not to proceed to a contested case hearing in a specific	Under ORS 537.153(7) and ORS 537.621(8), as amended by HB 3342 and HB 3544, the Director retains discretion to enter a final order rather than proceed to a contested case hearing where a protest has been filed by a non-applicant and the Director finds that there are no significant issues related to the proposed use of water. The proposed deletion of OAR 690-310-0120(7) does not remove the discretion provided by statute. Also, OWRD has proposed adding language to OAR 690-310-0160(2)(a) that reflects the Director's discretion not to go to a hearing if a non-applicant protest does not raise significant issues.	Complete. No change made.



	situation.		
<b>690-310-0160(2)(a)</b> 9/16	RACM – re: language "the director finds that there are no significant issues ," is new language from the new legislation because it did not appear to align with current statutes.	This language comes from statute (Or Laws 2025, ch 575, section 5(a)).	Complete. No changes made.
<b>690-310-190(1), (2)</b>  <b>690-310-0200(1), (2)</b>	RACM - Again, we object to the removal of Director discretion of whether or not to go to hearing for the reasons stated previously.  RACM - OEC believes that Division 310 should retain the option for the Director to, at their discretion, decide whether or not to proceed to a contested case hearing in a specific situation.	Under ORS 537.153(7) and ORS 537.621(8), as amended by HB 3342 and HB 3544, the Director retains discretion to enter a final order rather than proceed to a contested case hearing where a protest has been filed by a non-applicant and the Director finds that there are no significant issues related to the proposed use of water. The proposed deletion of OAR 690-310-0120(7) does not remove the discretion provided by statute. Also, OWRD has proposed adding language to OAR 690-310-0160(2)(a) that reflects the Director's discretion not to go to a hearing if a non-applicant protest does not raise significant issues.	Complete. No change made.
<b>690-310-0210</b>	RACM - If the OWRD modifies a PFO based on a protest without going to contested case hearing, they should re-notice the PFO. This should apply whether it is a third-party protest or an applicant protest. Applicant protests should not be granted more rights than third party protests.	Where an applicant files a protest and no other person files a protest or a request for party status, there is nothing in HB 3544 that prevents OWRD from issuing a FO that differs from a PFO based on a settlement with the applicant. If a nonapplicant supports a PFO that an applicant protests and does not want OWRD to alter the PFO, the non-applicant may file a request for party status, because if the non-applicant becomes a party, the non-applicant will need to agree to any settlement. It has recently been OWRD's practice to issue a new PFO if a protest settlement results in a major change to OWRD's proposed action, such as going from denial to approval, but the law does not require OWRD to do that.	Complete. No changes made.

<p><b>690-310-0270(2)</b> 9/16</p>	<p>RACM – asked for confirmation that administrative holds cannot get approved more than once.</p> <p>RACM - is “administrative hold” defined.</p> <p>RACM – could a section be added for general engagement with the Department on an application.</p> <p>RACM - As a general matter, we support the OWRD putting time limitations on administrative holds. Administrative holds have been too often used to stall a final decision after OWRD relays a proposed denial to an applicant, which has allowed applicants to hold on to priority dates for years after a decision should have been made. That said, the extension to gather groundwater data seems unreasonably long and allows a hold for what should have been done before the application was filed. Similarly, we have questions about the land use exceptions.</p>	<p>The rule, as proposed, limits the cumulative length of administrative hold to 180 days and allows for longer holds for specific activities.</p> <p>The Department stated that ORS 537.175 describes the function and parameters of a hold (note: so does ORS 537.627). The term “administrative hold” is one that Department uses but is not defined.</p> <p>The Department encouraged members to submit language but reminded the group that the appropriate place in the process to disagree with Department findings is during the protest process.</p> <p>Collecting groundwater data requires at least 5 years of data, per OAR 690-008, to evaluate reasonably stable groundwater levels. However, the inclusion of expiration upon failure to submit the first static water level is intended to ensure an applicant is actively collecting the data. Other responses in this table discuss the land use item.</p>	<p>Complete. No changes made.</p>
<p><b>690-310-0270(2)(b)</b></p>	<p>RACM - Requiring the conversations to be “collaborative” may be hard to define and assess RACM Recommendation - Remove “collaborative”</p>	<p>The definition of collaborative is “two or more parties working together.” Maintaining collaborative requires that the conversation includes the applicant and at least one other interested party. This would prevent</p>	<p>Complete. No changes made.</p>

		an applicant from requesting an administrative hold without buy-in from an interested party that provided comment.	
<b>690-310-0270(2)(d)</b> 9/16	<p>RACM - a “one year” extension of an administrative hold may not be sufficient with respect to obtaining land use approval..</p> <p>RACM - This proposed rule language is problematic for several reasons:</p> <ol style="list-style-type: none"> <li>1. The proposed rule concerns “administrative appeal” periods, but land use appeals often include both administrative and judicial appeals. See ORS 197.850 (outlining procedure to appeal a decision from LUBA to the Oregon Court of Appeals).</li> <li>2. Using the language “a land use approval that has already been obtained,” misunderstands when a land use approval is final. Many local land use decisions are not final until appeals are resolved. See ORS 197.625(1)(b) (concerning the effect of appeal on post-acknowledgment plan amendment decisions); ORS 197.845 (concerning stays of local land use decisions pending appeal at LUBA). Thus, a land use approval has not been “obtained” until all appeals are resolved.</li> <li>3. Once a land use appeal is “complete,” a water permit extension should not be granted unless the completion of the land use appeal results in the sought land use application being approved. Many appeals of land use decisions approving</li> </ol>	<p>The Department agrees that the processing hold in the draft rules could expand to include exhaustion of the LUBA administrative appeal process (LUBA hearing and decision, potential remand to the county, potential appeal beyond LUBA, etc.) on a land use approval if it does not exceed a specified timeframe.</p> <p>For example, the current draft rule language:</p> <p><i>(d) Complete the administrative appeal period for a land use approval that has already been obtained, and the extension does not exceed one year;</i></p> <p>Could be modified to state:</p> <p><i>(d) Exhaust the administrative appeal process for a land use approval, and the extension does not exceed one year;</i></p> <p>OWRD is interested in feedback about the length of time and could consider increasing one year to two. The length of time should not be so long that a water right transaction is pending for an extensive period with OWRD. If the LUBA administrative appeal period has not been exhausted within the time allowable for a processing hold, OWRD could issue a Proposed Final Order recommending denial of the requested water right permit. This would avoid the applicant, for an extended time, maintaining a tentative priority date that is senior to other applicants who have all the information and approvals needed to proceed. This would also reduce concerns related to applicants trying to “hold space” within “caps” – such</p>	<p>No changes made within the rules yet. <b>Will include for discussion at RAC mtg</b></p>

	<p>a proposed land use result in remand or reversal of the approval. Conversely, many appeals of land use decisions denying a proposed land use are affirmed. In those cases, OWRD should not continue reviewing a water permit application, and should deny the application under ORS 197.180(1).</p> <p>4. In the event a water permit review period is extended due to a land use appeals process, the review period should be extended for as long as it takes for the land use appeal to resolve. This could be longer than the proposed one year. In line with our comments on OAR 690-310-0040(1)(a)(L), above, OWRD should not process a water permit application until final land use approval, including the resolution of any appeals, is complete.</p>	as the Deschutes Groundwater Study Area mitigation cap or the Water Availability Reporting System – as the amount of remaining water to allocate decreases.	
<b>690-310-0270(2)(e)</b> 9/16	RACM - is this provision specific to data from one well and if that meant determinations on reasonably stable water levels could be based on a single well, while the rest of the aquifer was not reasonably stable.	This provision is specific to where data are insufficient to evaluate Reasonably Stable Groundwater Levels, as those terms are defined in OAR 690-008, and the Department cannot determine water availability for a requested new groundwater appropriation.	Complete. No changes made.
<b>690-310-0160(1)</b>	OWRD Staff: Addressed concerns heard about party status.	Added “party status”	Complete. Rule changed.