

Proposed Rule Revision Tracker
Division 310 – WATER RIGHT APPLICATION PROCESSING

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.

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
General 12/5	RACM - We want to emphasize that in order to comply with ORS 197.180(1), the proposed rule language should require a final land use decision from a local government before issuing a permit to appropriate water. This includes exhaustion of the administrative appeal process for a land use approval. We would recommend including this requirement as a criteria for approval in the PFO subsection, 690-310-0150, or other subsection that OWRD deems appropriate	<p>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 partially reverted to the original rule language pertaining to land use.</p> <p>Text in OAR 690-310-0040(1)(a)(L) reverted in part to existing rule language.</p> <p>Rule summary updated in OAR 690-310-0090.</p> <p>Administrative hold language updated to reflect language shared with RAC in 11/19 rule tracker, at RAC meeting on 11/21, and again on 11/24.</p>	Complete. Change made in V3.
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)	RACM – See Leah’s detailed comments. RACM RECOMMENDATION - Retain original language at this time. For permit amendments, include language similar to the original language for transfers.	<p>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 partially reverted to the original rule language pertaining to land use.</p> <p>Text in OAR 690-310-0040(1)(a)(L) reverted in part to existing rule language.</p> <p>Rule summary updated in OAR 690-310-0090.</p> <p>Administrative hold language updated to reflect language shared with RAC in 11/19 rule tracker, at RAC meeting on 11/21, and again on 11/24.</p>	Complete. Change made in V3.

12/5			
690-310-0040(1)(a)(L)	RACM - A RAC member noted that irrigation districts are quasi-municipal by nature so carve outs offered for municipalities should also be considered for irrigation districts. Another RAC member noted that any carve outs for municipalities should include language limiting those carve outs to municipal use.	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 partially reverted to the original rule language pertaining to land use. Text in OAR 690-310-0040(1)(a)(L) reverted in part to existing rule language. Rule summary updated in OAR 690-310-0090.	Complete. Change made in V3.
12/5	RACM - Another RAC member noted that the language is clearer but there is a missing reference to 005-0035(4)(c) and that this change could be out of alignment with the State Agency Coordination program. RACM - We appreciate that OWRD has entered discussions with DLCD on the land use provisions. As to language in V2, aside from the municipal exception, the language appears to be going in the right direction. That said, we would urge OWRD to reconsider the language in COLW's V1 comments (option 1) and adjust to that proposal. As to the new language proposing an exception for municipalities, we urge deletion of that. That is a wholly new concept that was developed outside the RAC in conversations between OWRD and the counties/cities. No real detail was provided to the RAC as to why the cities were seeking this exception. Unless there is a statute directing such an exception (which we	Administrative hold language updated to reflect language shared with RAC in 11/19 rule tracker, at RAC meeting on 11/21, and again on 11/24.	

	<p>could not find), it appears far outside the rulemaking and should be struck.</p> <p>RACM - LandWatch appreciates the updated language, which requires greater specificity in an application about whether the proposed land use that corresponds with the water use is allowed by the local land use regulations. Importantly, the revised language adds the phrase “and implementing ordinances” to ensure that other land use regulations in addition to the comprehensive plan are considered, and it requires acknowledgement of an ongoing LUBA appeals process.</p> <p>We do have questions about the revised language “For municipal water use applications, a Land Use Information Form completed by the affected local government showing that all necessary land use approvals are pending is sufficient for the completeness review under OAR 690-310-0070(1) pertaining to land use information.”</p> <p>It's not clear why this exception is needed or what “municipal water use” encompasses. We do not recall any robust discussion about this topic during the RAC process. At a minimum, we suggest providing more specificity about the type of water use a municipal water use application may be serving. For example, the rules could state</p>	
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	something along the lines of “municipal water use applications that serve a municipality (e.g. city, residential area).”		
690-310-0040(1)(c)(A) 12/5	RACM - As noted in our V1 comments, we 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 acre feet using preferences meant for small projects to avoid rigorous review. Moreover, not all dams that store less than 9.2 af or are less than 10 feet in height use the alternative reservoir process (which is part of the OWRD’s rationale for including this language). Even for alternative reservoirs, the width is important to know as it can affect ecological values downstream. Long story short, for the OWRD, ODFW and the public to assess a project, plans should also include width and crest width. This is simply information to be able to better assess the project, not a standard of review. It is unclear why OWRD would not want all information available	The added language was a proposed simplification of requirements for non-statutory reservoirs. Given the concern with the change, we are proposing to revert to the original language.	Complete. Change made. V3
690-310-0080(2) 12/5	RACM - As OWRD clarified in the RAC, once the application file is closed it is permanently closed and no further action can be taken on it ever. That said, we will repeat our comment in V1, that given the questions on this at the RAC which made clear some did not interpret it this way, we	OWRD still believes that “take no further action” would be synonymous with permanently closing the file and that maintaining the current language aligns with the statutory language in Or Laws 2025, ch 282.	Complete. No changes made.

	would request the OWRD insert the word “permanently” before the word “closed” for clarity’s sake. OWRD’s response to our comments in V1 was that “no further action on the application” is synonymous with “permanently closed”. While that might be true, in this case we feel it is a good idea to be redundant so that it is crystal clear and there is no room for mischief in the future.		
690-310-0270(2) 12/5	<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, we have a few concerns:</p> <ul style="list-style-type: none"> • The extension to gather groundwater data seems unreasonably long and allows a hold for what should have been done before the application was filed. • We are still evaluating the land use exceptions, but will flag we have some questions. • We agree with OWRD that the language in (b) should retain the word “collaborative” for the reasons stated by OWRD, as well as others (both here and in Div 77). <p>RACM - Only five specific scenarios are proposed under which OWRD can grant an administrative hold. While these may be the most</p>	<p>OWRD notes the comments on this section and believes that the included opportunities and timelines for extending administrative holds beyond the initial allowed cumulative 180 days of administrative holds balances the need for reasonable and necessary administrative holds with the need to continue processing applications.</p>	Complete. No changes made.

	<p>common reasons for needing a hold, there are surely other reasonable and necessary circumstances that would now be excluded from consideration if OWRD gives up its discretion. Recommend retaining some discretion to avoid OWRD painting itself into a corner.</p> <p>RACM RECOMMENDATION - Add an "(f)" with broader exceptions, such as "Complete other actions deemed reasonable and necessary by the Director."</p>	<p>restricted to specified activities, and OWRD believes the provided for opportunities balance the needs for processing holds with the need to continue processing applications.</p>	
690-0270(2)(d) 12/5	<p>RACM - OWRD shared on Nov 24th a proposal to include revised draft rule language: "Exhaust the administrative appeal process for a land use approval, and the extension does not exceed one year."</p> <p>OWRD provided further context for this language, stating that:</p> <p>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 as the Deschutes Groundwater Study Area mitigation cap or the Water</p>	<p>Updates made to reflect language shared with RAC in 11/19 rule tracker, at RAC meeting on 11/21, and again on 11/24, which is the same language the RAC member commented on.</p>	Complete. Changes made to V3.

	<p>Availability Reporting System – as the amount of remaining water to allocate decreases.</p> <p>LandWatch supports this approach. OWRD should not approve a water permit application if a LUBA appeal is ongoing. As we described in our October 31 comments, 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. Further, 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 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>OWRD asked for feedback on the length of time for extensions. LandWatch supports retaining the current proposed language of one</p>	
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	year, in part, due to the concern pointed out by OWRD of applicants trying to “hold space” within “caps.”		
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