

Proposed Rule Revision Tracker**Division 315 – Water Right Permit Extensions**

| Section / Version comment | Issue | Response/Modified Language | Status / Version change made in |
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| 690-315 General 9/19 | RACM - throughout the rules it is not clear if the term “application” is in reference to a permit or extension application. | The Department added the word “extension” before “application” where applicable. | Complete. Changes made to V2 draft. |
| 690-315 General | A RAC member requested data regarding how many applications would still be subject to the current rules. | There are approximately 28 non-municipal/non-quasi-municipal extension applications currently pending that would be subject to current rules, and 5-6 of these are group domestic. There are approximately 12 quasi-municipal applications pending that would be subject to current rules. The total that could be subject to the current rules could increase, as applications submitted prior to April 1, 2026 (for QM, GD) will be processed under the current rules, and for the “other than” permits, applications submitted as late as February 23, 2026, could potentially be processed under the current rules if the PFO is issued by April 1, 2026. To have a chance of issuing a PFO by April 1, the extension application would need to be placed on the February 24 Public Notic. | Complete. No change requested or needed. |
| 690-315- General | RACM - The Tribe supports the inclusion of language that delineates reasons for denying an extension request to embrace transparency in decision making and to make it clear that failure to perform and complete fish related permit conditions will not be rewarded. | Thank you. Support noted. | Complete. No change requested or needed. |
| 690-315- 0010 | RACM - new definition proposed “unexpired water right”: We urge the OWRD to add a definition (and substantive requirements throughout) to make crystal clear that only unexpired rights can apply for an extension. This would help ensure that permit holders do not apply for | Adding this definition, and proposed restriction would be a substantial change. | Complete. No Change |

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| | an extension of time years after expiration of existing time to develop. | | |
| 690-315-0010(1)(a) | RACM - To align with DOJ advice (forwarded separately), sub (a) should read: (a) For permits issued pursuant to ORS 537.248(1) after July 5, 1995, to begin actional construction, complete construction or complete perfection pursuant to ORS 537.248(2). | Change made to -0030. OWRD notes that no permits were issued under ORS 537.248 on or before July 5, 1995 and therefore it would be redundant to include that part of the requested phrase. | Complete. Change made V2 draft. |
| 690-315-0010(3) | RACM - Clarify that the second use of "application" refers to the permit application, not the extension application RACM Recommendation - "if a proposed final order was issued on the permit application prior to April 1, 2026" OWRD Staff- Municipal should be moved up from b into a. | This reference in OAR 690-315-0010(3)(b) should be to the extension application, not the permit application. OAR 315-0020(1)(b)(A) contains rule language relevant to when a proposed final order on a water right permit application was issued. Change made. | Complete. Rule change V2 draft. |
| 690-315-0010(7)(d) 9/19 | ODFW - Flagging that this reference to federal ESA and ORS 496 is slightly different in 690-380-7030(2)(a) ODFW Recommendation - Provided edits to both for consistency. (d) "Fish species listed as sensitive, threatened, or endangered under state or federal law" and "Listed fish species" means fish species listed as threatened or endangered under the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C. § 1531), as amended or listed as sensitive, threatened or endangered by the Oregon State Fish and Wildlife Commission under ORS 496.172 to 496.176 and OAR chapter 635, division 100 635-100-0040 ; | Confirmed and updated reference to ESA. OWRD maintains the general reference to OAR chapter 635, division 100 because it provides a continued reference to the entirety of the division in case future changes are made to ODFW's rules that affect subsection numbering. | Complete. Changes made to V2 draft. |
| 690-315-0010(7)(e), (f) | RAC M - Please change "chapter 690, division 9" to OAR 690-009-0040. RE: This needs to reflect the new groundwater allocation definition, not the old one for regulation that OWRD retained in the Div 9 rules. | Maintaining the current reference provides for review under the entirety of Div 9, including sub 40. Change not necessary. | Complete. Change not made. |
| 690-315-0010(7)(g) 9/19 | RACM - prior language states "diverted for beneficial use," but the new language removes "beneficial use." The RAC member | The language in the rule is pulled directly from statutory language. However, beneficial use is required for any water | Complete. Rule changed in V2. |

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| | <p>recommended retaining the full phrase.</p> <p>A RAC member expressed concerns changing definitions may result in unintended consequences, so the Department should be careful when revising.</p> <p>RACM - the definition of “Undeveloped portion of the permit” should specify that it applies only to extensions specified in ORS 537.230(3)(d) and ORS 537.630(3)(d) (the first extension for a permit for municipal use that was issued prior to Nov. 2, 1998). This is important because the June 29, 2005 date is a negotiated date in the statute that is related only to these particular extensions and it would be error to inadvertently import this date to other contexts. In addition to this, we would also suggest a definition for other permits (that takes out municipal specifics). And finally, the OWRD should put the word “for beneficial use” after the word “appropriated”. The previous rule language included these words; retaining this language in the rules is consistent with the overarching water code which requires that any water that is diverted be put to beneficial use. As discussed in the RAC, absent inclusion of the “beneficial use” directive a permit holder could assert that any water diverted, even if not put to beneficial use, could count as developed water.</p> | <p>that is diverted or appropriated and is inherent in the water code. Change made.</p> <p>Updated Undeveloped Portion definition to incorporate suggestion.</p> | |
| 690-315-0020(1) | <p>RACM - General concerns with limiting extensions of group domestic water rights while not considering how much of the group domestic service area has been developed. Group domestic water rights have measurement and reporting</p> | <p>Concerns noted. The suggested considerations are already included in the “Good Cause” determination under 315-0040(2).</p> <p>The word “quasi-municipal” is still appropriate to include because the rule is</p> | <p>Complete. No change made.</p> |

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| | <p>requirements. Development may still occur on the undeveloped parcels within a group domestic service area, but that development may shift to a new well and with exempt use. Economic downturns can have a dramatic impact on development over multiple years and there is no consideration for this.</p> <p>RACM Recommendation - Understanding that legislation is guiding this update, consider looking at how much of a group domestic has been developed (%) for extension eligibility/terms to reduce speculative water rights and include the ability to incorporate/consider economic downturns that stall development (and building of much needed housing) into the decision.</p> <p>RACM - Two comments: First, Subsection (1) does not track HB 3342 in that it does not carve out quasi-municipal uses. Under the new law, quasi-municipal permits only get one extension of time of no more than 20 years. To fix, the words “quasi-municipal” should be removed from subsection (1). Then the rules should add an (a) for quasi-municipal (20 years) and then change the current (a) for group domestic (10 years) to subsection (b). See HB 3342 subsection 26(3)(b)(A) and (B).</p> <p>Second, OWRD should add a sub (c) that adds the specifics of ORS 537.248 (see DOJ memo, forwarded separately).</p> | <p>making clear that -0020 pertains to “other than municipal or quasi-municipal uses.” OWRD did not add the additional requested language about quasi-municipal permits because section -0020 does not pertain to quasi-municipal water use permits. OAR 690-315-0090, which is a rule section relevant to quasi-municipal water use permits, contains the statement that “for quasi-municipal water use permits, the extension shall not exceed 20 years from the date of the issuance of an extension final order.”</p> <p>Permits issued under 537.248 already have their application requirement in 315-0030, and would not be appropriate here.</p> | |
| OAR 690-315-0020(1)(a) | RACM - Please insert the word “unexpired” before “water use permit” to ensure that long expired permits cannot apply for extensions. | Adding this definition, and proposed restriction would be a substantial change. | Complete. No change. |
| OAR 690-315-0020(1)(b) | RACM - The word “uses” should be replaced with “use permits”. The word “unexpired” should be added before “water”. | “Uses” replaced with “use permits.” Adding this definition, and proposed restriction would be a substantial change. | Complete. Partial change made. |

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| OAR 690-315-0020(2) | RACM - Please add “unexpired” before “permit” in the second sentence. | Adding this definition, and proposed restriction would be a substantial change. | Complete. No change. |
| 690-315-0020(3)(i) | RACM - Please add “in accordance with OAR 690-315-0020(1)” or something similar (to make sure the request is within the allowed time). | Adding this definition, and proposed restriction would be a substantial change. | Complete. No change. |
| 690-315-0020(4) 10/31 | OWRD staff – language in the rule doesn’t comport with the statutory language for cancelation of a permit for failure to submit proof of completion. ORS 537.260 RACM - This section should be updated and strengthened in a manner that better aligns with the cancellation statutes (e.g. the cancellation statutes don’t allow a 90 day grace period for extensions, only completion). | OWRD deleted the rule. The statutes themselves speak to when OWRD may initiate cancellation proceedings and removing the rule is less likely to cause confusion about the differences between ORS 537.260 and ORS 537.410. | Complete. Change made through deletion. |
| 690-315-0030(1) | RACM Recommendation - Suggest the section be reworded to read: Counties, municipalities or districts constructing new storage projects pursuant to for permits that were issued pursuant to ORS 537.248(1) after July 5, 1995 may apply for extensions of time to begin construction pursuant to ORS 537.248(2). We are not aware of other permits where the “begin construction” deadline can be extended. | The change is unnecessary. Permits issued under 537.248 can only have been issued after July 5, 1995, which is the effective date of this original legislation. | Complete. No change made. |
| 690-315-0040 9/19 | WRD – remove comma from rule title | Comma removed | Complete. Change made to V2 draft |
| 690-315-0040(1)(b), (1)(c) | RACM -These subsections should NOT be deleted as proposed | Regarding (1)(b), this requirement was not removed but was pulled into the new (5) of the rules. Regarding (1)(c), because extensions under this section are limited to 10 years for ground domestic and group domestic expanded use permits, and 2 years for other use permits, keeping this language would force a denial of an extension if the applicant is proposing more than that period of time to complete the development in its entirety, even if | Complete. No change made. |

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| | | substantial progress could be made towards the development of a portion of the authorized use. | |
| 690-315-0040(2) | <p>RACM - add two additional subsections under due diligence (See DOJ Advice on Compliance with Permit Conditions of February 7, 2002. Also see Dwight French Guidance Memo on same topic of Oct. 15, 2002.):</p> <ul style="list-style-type: none"> ▪ <u>Whether the permit holder has complied with all permit conditions;</u> ▪ <u>Where there has been a failure to comply with a permit condition, whether measures are available to serve the public interest purposes that the condition was intended to address and achieve a result equivalent to what the permit required;</u> | <p>Consideration of compliance with permit conditions is a component of reasonable diligence as defined by 315-0040(3). Making a change to compliance with <u>all</u> conditions, as suggested, would be a substantial change, and would go against the DOJ advice referred to in the comment, as the advice clearly describes an allowance for an extension to provide time to demonstrate compliance with certain conditions, i.e., water use reporting.</p> <p>OWRD added a (c) to make it clearer that factors beyond (a) and (b) are part of the good cause determination.</p> | Complete. Partial change made. |
| 690-315-0040(5) 9/19 | <p>RACM - supports the rule change proposed, making clear that OWRD will deny extensions when a permit holder has used water and failed to demonstrate compliance with fish-related permit conditions that are required to be met before use began</p> <p>RACM - CTUIR supports the proposed rule change, which clarifies that OWRD will deny extensions when a permit holder has used water and failed to demonstrate compliance with fish-related permit conditions that are required to be met before use began.</p> <p>RACM - Support the clarification in this rule – to demonstrate compliance with fish related permit conditions before use of water.</p> <p>RACM - : As written, the structure potentially leaves open the argument that they can only deny on these two grounds. This is not accurate. Possible solution, add language that clarifies in addition to these two OWRD can deny for any consideration in (2), as well as failure</p> | <p>Comments noted.</p> <p>Regarding the structure of -0040(5), OWRD added a (c) to make it clearer that factors beyond (a) and (b) are part of the good cause determination.</p> <p>Regarding the comment about false statements, the extension of time application requires to the applicant to attest that, “I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.”</p> | Complete. Partial change made. |

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| | <p>to meet any permit conditions designed to protect the public interest (See DOJ memo, Feb 7, 2002). We would also urge that the OWRD add a subsection that directs denial if an applicant “knowingly makes a false statements on an application”.</p> <p>RACM - LandWatch supports the rule change proposed, making clear that OWRD will deny extensions when a permit holder has used water and failed to demonstrate compliance with fish-related permit conditions that are required to be met before use began</p> | | |
| 690-315-0040(5, old, proposed for deletion) | <p>RACM - This section should be retained; the cancellation pathway is important to retain in rule.</p> | <p>Removing this would not remove the cancelation pathway as it is provided for in statute; however, retaining the provision may be beneficial if in these situations the extension PFO includes a proposal to cancel the permit under the applicable statute, and the PFO is delivered via certified or registered mail as required under the statute.</p> <p>OWRD brought back in the language about cancellation proceedings and added information about how the Proposed Final Order on the extension application may initiate cancellation proceedings under ORS 537.260(1).</p> | Completed. Changed V2 draft. |
| 690-315-0040 (5)(i) 9/19 | <p>WRD – (i) should be (a) WRD – (ii) should be (b)</p> | Changes made. | Completed. Changed V2 draft. |
| 690-315-0040 (5)(ii) 9/19 | <p>RACM – 690-315-0040(5)(ii): This should be broadened, consistent with DOJ advice, to capture any permit condition that was included on the permit to serve the public interest. Beyond fish-related conditions, this could also include wildlife-related conditions.</p> | <p>As explained in the memo referenced by the RACM, failure to meet a time-sensitive condition contributes to a denial of extension through a negative implication regarding the “good faith of the appropriator” OAR 690-315-0040(2)(c) and “whether the applicant has demonstrated reasonable diligence in previous performance under the permit” (2)(a). Those rules remain under the proposed rules.</p> | Complete. No change |
| 690-315-0050 General | <p>RACM - For consistency and efficiency's sake the same process should be allowed here as applies to</p> | OWRD appreciates the comment. Adding an Initial Review step, however, would increase processing times for extension | Complete. No change. |

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| | <p>other water right transactions, e.g. IR 30-day comment, PFO 45-day protest, petition for party status with 30 days of a protest. It is within the OWRD's discretion to allow this, as they are doing in the hydro conversion statutes. Commenting on applications is of limited use as there is no understanding of what the OWRD's position is</p> | <p>of time applications without creating the types of internal consistency benefits anticipated for other types of transactions. For example, creating similar process steps across various transfer types (with some exceptions) helps caseworkers moving between transfer types as they have less work to do to familiarize themselves with the process steps for the type of transaction they are working on at that moment. Our extension program only has one person, and currently the processing steps across types of extension applications are already similar to each other.</p> <p>The current draft rules state that protests and contested case proceedings are governed by Or Laws 2025, ch 575 and OAR Chapter 690, Division 002. Therefore, besides the Initial Review comment, the other concerns are already addressed.</p> | |
| 690-315-0050(1) | RACM - add "for a valid water right" or "for an unexpired water right" after "application" | Adding this definition, and proposed restriction would be a substantial change. | Complete. No change. |
| 690-315-0050(3) | RACM - Needs to be amended to reflect that commenters do not need to pay a "copy fee" to receive the PFO electronically. If WRD needs to retain a "copy fee" approach for commenters who want to receive the PFO by mail, this should be set forth specifically. | Upon further evaluation, OWRD removed the proposed rule changes. These changes are not required by HB 3342, HB 3544, or the Administrative Procedures Act; would not have the benefit of streamlining transaction processes; and based on the comment, would have the potential to cause concern or confusion about the fee in ORS 536.050. | Complete. Change made to revert back to existing rule language. |
| 690-315-0050(4) 9/19 | <p>RACM - is "reasonable time" still needed since extensions are limited to two years.</p> <p>RACM - Clarify that the "reasonable time necessary" must fall within the bounds of the new law, e.g. 20 years for quasi municipal, 10 years for domestic expanded.</p> | Phrase needs to remain due to reference in 690-315-0100, which pertains in part to municipal permits; however, OWRD added "within the time allowed by the applicable statute" to reference limitations on extensions in statute. | Complete. Partial change made. |
| 690-315-0050(6) (proposed for repeal) 9/19 | One RAC member asked about the rationale for removing check point requirements and wanted assurance that checkpoints still apply for those subject to the current rules. | The Department does not feel that the check points added value for group domestic extensions, if they only have a maximum duration of ten years. The proposed change should not impact | Complete. No change. |

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| | RACM - We strongly object to the proposed deletion of provisions that require checkpoints for any extension exceeding 5 years. HB 3342 still allows for extensions beyond 5 years thus checkpoints and the ability to cancel should still continue forward for the remaining extensions allowed. Please retain this section. It will be a small subset of extensions that these rules will apply to, but it is still important to protect against speculation. | existing extensions since check points already are required in the order. | |
| 690-315-0060 | RACM - In specifying that contested cases are governed by Or Laws 2025, ch 575 and OAR 690-002, amend to state: "...governed by Or Laws 2025, ch 575 (HB 3342 (2025) and HB 3544 (2025); ORS 183; OAR 690-002; and OAR 137-003 to the extent not in conflict with OAR 690-002." Note: adding the bill #s will make application of the rules easier and less confusing. | The purpose of the sentence the comment concerns is to make HB 3544 sections 2 and 3 and rules adopted thereunder applicable to extension PFOs, protests, and contested case proceedings pursuant to 3544 section 2(2)(b). The sentence is not intended to state the full universe of statutes and rules applicable to contested case proceedings for extension applications. OWRD has revised the sentence to make it more consistent with language used in HB 3544 (see, for example, Section 5a(6)), and to remove any implication that OR Laws 2025, ch 575 and OAR 690-002 are the only statutes and rules that apply to extension protests and contested case proceedings. | Complete. Partial change made. |
| 690-315-0060(1) 9/19 | WRD – delete number (1) b/c no number (2) | Updated. | Complete. Changed V2 draft. |
| 690-315-0070(1)(d) | 690-315-0070(1)(d): It is unclear where the 50-year trigger derives from as it is not in statute. Extensions are allowed for a reasonable time necessary. Given municipalities are granted 20 years to develop a permit, it seems that a trigger for this information should be 20 not 50 years. | The 50-years trigger is an existing rule under 315-0070(1)(l). Those rules pertain to municipal and quasi-municipal water use permits. The phrase "For municipal water right permit" was added before the 50-years trigger simply to make it clear that quasi-municipal water use permits wouldn't be subject to this as they would now be capped at a maximum of 20 years. The 50-years portion of the rule came from previous rulemaking, and additional research into the history would need to be done to determine its origin. That said, the recent legislation was specifically | Complete. No change made. |

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| | | crafted to leave the municipal extension process unchanged, and significant changes to the municipal water use permit extension of time process are outside the scope of this rulemaking. Additionally, development under these municipal use permits is further limited through the WMCP process, where use of the “undeveloped portion” is tied to the approval of a WMCP and authorization of use beyond any development limitation. | |
| 690-315-0070(3) | RACM - The proposed addition to the last sentence doesn’t need “For” at the beginning RACM Recommendation - “Municipal water right permit extension requests for greater than 50 years must include documentation | Change made. | Complete. Change made. |
| 690-315-0090(1) | RACM - General concerns with quasi municipal (QM) differentiation while understanding that part of the intent here may be to limit speculative water rights. In central Oregon (and maybe in other areas of the state), some quasi municipal water providers have contracted service areas with municipalities (Avion Water’s relationship with City of Bend for example). The city and developers control permitting and buildout of service areas. This is not within control of the QM while the QM still must provide service or future service to these areas. In addition, a QM has a complicated association with the Public Utilities Commission and may not be able to make decisions as quickly as a municipal entity. Economic downturns can also have a significant impact on how quickly an area can be built out or how long development may be stalled. RACM Recommendation - Understanding that legislation is guiding this update, consider revisiting this. Consider some accommodating language for QM’s closely linked to municipal territories and supplying long established and growing communities. Include an | Concerns are noted; however, the statute does not provide latitude in the allowable time limits on extensions. The extension process already includes a consideration for “unforeseen events”, which include economic downturns. (690-315-0040(2)(h)) The Department prefers to maintain the current language in the proposed rule and rely on the statutory language to limit QM extensions to one under the new statutes and rules because the applicability of the new statutes vary depending on when an application is submitted. See 690-315-0010(3)(a) and -0090(1). | Complete. No change made. |

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| | <p>ability to incorporate/consider economic downturns that stall development (and building of much needed housing).</p> <p>RACM - We recommend amending the new language so that it is clear that quasi municipal water use permits only get one extension of time, as set forth in HB 3342.</p> | | |
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