

Proposed Rule Revision Tracker

Division 52 – DECOMMISSIONING RULES FOR NON-FERC PROJECTS

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
Div 52, 53, & 54 9/2	<p>RAC - Div 52, 53, & 54 have the same provisions for contested case / party status, etc.</p> <p>RAC - Party Status – Division 52 (also possibly Divisions 53 & 54) do not refer to the Division 2 process for petitioning for party status. RAC member recommends looking at Division 2 for consistency regarding request for party status, noting importance of clear and consistent requirements for petitioning for party status.</p> <p>RAC - Division 54 rules as proposed are not as equitable if they do not require the timelines outlined in House Bill 3544.</p> <p>RAC - To the extent the OWRD is attempting to create efficiencies, we would urge the OWRD to ensure that all processes across all water right transactions are uniform, unless otherwise directed by statute. While we understand that HB 3544 and HB 3342 didn't directly apply to all the hydro statutes (e.g. conversions), OWRD is proposing to align some sections (e.g. contested cases), but not others (petitions for party status). Having disparate processes for different transactions will only create confusion and inefficiencies, which is counter to the intent behind both bills.</p>	<p>HB 3544 sections 2 and 3, which address contested case hearing processes, protests, and requests for party status, do not apply to transactions governed by ORS chapters 543 and 543A, and OWRD cannot make HB 3544 sections 2 and 3 applicable to those transactions by rule. See HB 3544 section 2(2)(a) and (2)(b). Absent statutory authority or an exemption from the Attorney General providing otherwise, ORS 183.630(1) requires OWRD contested case hearings to be governed by the Attorney General's Model Rules of Procedure for Contested Case Hearings at OAR 137-003-0501 to –0700. Requests for party status in such contested case hearings are governed by the model rules, specifically OAR 137-003-0535. The provisions of OAR 137-003-0535 are similar to the proposed request for party status provisions in OAR 690-002-0225, such that the procedures governing requests for party status in contested case hearings on Division 52 transactions will be similar to the procedures governing requests for party status in hearings governed by HB 3544. Language in division 54 regarding such requests should be removed for consistency purposes. Regarding discretion.</p> <p>With respect to protest requirements, OWRD could revise them to be more consistent with the HB 3544 protest requirements or the</p>	Complete. No change made.

		<p>protest requirements in OAR 690-002-0030. However, OWRD does not have capacity to make changes to the hydro protest requirements at this time and does not believe this is within scope of this RAC. OWRD will make a note and consider changing the protest requirements to be more consistent with the HB 3544 or OAR 690-002-0030 protest requirements in a for potential future rulemaking. At this time, the hydro related protest requirements are all fairly similar. There is a need for a more comprehensive update of hydro statutes and rules, which is beyond the scope of this process.</p>	
Div 52, 53, & 54 9/2	<p>RAC - Contested cases - The proposed changes remove discretion of the Department not to go to hearings, even if no significant issues are raised. I.e., the Department still has to go through the contested case process. RAC member recommends re-examining HB 3544 and ORS 537.153, because revised process does not seem efficient, and HB 3544 retains Department discretion.</p>	<p>See response to comment on OAR 690-052-0110(6)(b)(A), below. Similar updated language is included across all three rule divisions.</p>	Complete Partial rule change made.
690-052-0010 (3) 9/2	<p>RAC - The definition of “injury” should be common across all OWRD rules to avoid confusion, including the hydro statutes. The working definition of “injury” or “injury to an existing water right” means a proposed XXX would result in another, existing water right not receiving previously available water to which it is legally entitled. We would urge the same definition in Div 52, 53 and 54 rules, where existing problems include but are not limited to: OAR 690-052-0020(3) definition of injury does not spell out the meaning but rather refers to rules that have been renumbered.</p>	<p>OAR 690-052-0020(3) was renumbered to OAR 690-380-0100. Change has been made. Aligning injury definitions among hydro rules is beyond the scope of this rulemaking.</p>	Complete. Partial change in v2 draft.
690-052-0030 9/2	<p>690-052-0030 RAC - proposed rules do not update “weekly bulletin” to “public notice” throughout.</p>	<p>Change made throughout division 52. Including 690-052-0110 and 690-052-0030</p>	Complete. Changed in v2 draft.

690-052-0030 9/2	RACM - Should be renumbered to (2)	Changed.	Complete. Changed in v2 draft.
690-052-0110 9/2	RACM - proposed rules do not update “weekly bulletin” to “public notice” throughout. OWRD Staff: Applicant should be changed to operator for consistency with rules.	Change made throughout division 52. Including 690-052-0110 and 690-052-0030 Change made.	Complete. Changed in v2 draft.
690-052-0110 (6)(b)(A) 9/2	RACM - We oppose the proposed removal of the existing discretion of the Director to assess significant issues as it pertains to final orders and contested cases. HB 3544 did not remove existing discretion as it relates to water rights, nor is it prohibited by the hydro statutes specifically. The state should not have to go to contested case when significant issues are not raised, as it is a waste of state resources. Contrary to the narrative accompanying these changes, the hydro statutes do not dictate that owners are automatically entitled to a hearing.	OWRD has partially included requested change that mirrors changes made in 2025 legislation and is similar to existing rule and that ensures the dept is not at risk of violating due process rights, while also increasing efficiency. Example language is below and is similar across all three hydro divisions. If a protest was timely submitted, the Water Resources Director shall: (a) Issue a final order if the operator has not filed a protest and the director finds that there are no significant issues related to the decommissioning; or (b) Schedule a contested case hearing.	Complete. Partial change in v2 draft.