

Proposed Rule Revision Tracker**Division 53 – HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS**

Section / Version comment	Issue	Response/Modified Language	Status / Version change made in
Div 52, Div 53, Div 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>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>	See Response in Div 52.	Complete. No change made.
Div. 52, 53, 54 9/2	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	See response in Division 52. Change made in 690-053-0045	Complete. Partial change made.

	not seem efficient, and HB 3544 retains Department discretion.		
690-053 9/2	RAC - We could not find authority in statute to allow augmentation of a hydroelectric right. Could the OWRD please clarify if this exists. If not, it should be removed from the rules.	Due to the limited scope of this rulemaking as it pertains to Divisions 52, 53, and 54, OWRD does not have capacity to investigate this question at this time. OWRD will make a note of this inquiry should this rulemaking division be opened up in the future.	Complete. No change made.
690-053-0005 (7) 9/2	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 690-053-0010 (7) definition of injury fails to include qualifying language that limits reach to “previously available water” <i>(Note, the Rule reference in the comment appears to be a typo)</i>	Due to the limited scope of this rulemaking as it pertains to Divisions 52, 53, and 54, OWRD does not have capacity to investigate this question at this time. OWRD will make a note of this inquiry should this rulemaking division be opened up in the future.	Complete. No change made.
690-053-0010 (10) 9/2	<p>RAC - suggest modifying to “and has not previously been subject to forfeiture..”, noting there currently is not an established rebuttable presumption of forfeiture. The member also stated that the rule summary did not align with the proposed rule changes.</p> <p>RAC - OWRD’s proposal inadvertently establishes an additional separate burden of having to prove that water has been used and additionally disprove a rebuttable presumption of forfeiture. PGE’s proposed wording aligns directly with ORS 540.610, which establishes that water rights are presumed valid if the water has been used within the past five years. By referencing the rebuttable presumption of non-forfeiture, it reinforces the stability of rights for holders while providing clarity and consistency for administrators when reviewing permits, certificates, or licenses. The change helps ensure that decisions are based on the statutory standard rather than creating</p>	OWRD modified the language of concern to say “or” is not subject to forfeiture under ORS 540.610. We believe this is more consistent with other rules and the statutes than proposed language by commenters.	Complete. Rule change in v2.

	<p>unnecessary uncertainty about whether a right may have lapsed.</p> <p>Proposed language - “(10) Evidence that the water has been used within the past five years in accordance with the terms and conditions of the permit, certificate or license, or if a rebuttable presumption of forfeiture is established under ORS 540.610(1), evidence rebutting the presumption of forfeiture in accordance with ORS 540.610(2) & (3)</p>		
690-053-0010 General 9/2	RAC – numbering is off.	OWRD did not find the numbering error. Please provide information to Laura for correction if needed.	Complete. No change.
690-053-0015 (1), (4) 9/2	RAC - how will we handle people that are already signed up for paper notices?	OWRD responded that their research indicates only a small handful of parties receive paper notices, so advising those parties should not be a strain on the Department or the public.	Complete. No change requested or necessary.
690-053-0015 (4) 9/2	RAC - who is “agency” in “Agency comments must be received within 30 days of issuance of the notice”? Does agency include everyone submitting comments, or just agencies?	Based on the rule construction, this appears to include all of the following in the first sentence of (4): <i>The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian Tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project.</i> The phrase “Agency comments must be received within 30 days” is part of the existing rules and was moved down one sentence for readability. OWRD removed “agency” to reduce confusion and replaced with government entities.	Complete. Rule changed.
690-053-0015 (4) 9/2	RAC - how Tribal is addressed here and throughout the rules, noting the commenting is not the same as formal government-to-government consultation.	OWRD issues notices on roughly a thousand water right transactions across the agency’s programs each year. The rules describe	Complete. No change made.

		<p>staff-to-staff notifications between OWRD and Tribes for water right transactions. Although staff-to-staff notifications may result in consultation, the Department acknowledges that they do not replace the ability for Tribes to initiate or OWRD to offer to engage through government-to-government consultation on specific water right transactions. The Department is awaiting further guidance and direction from the Task Force on Consultation to update and standardize its coordination and consultation policy and practice. In the meantime, the Department continues to work with Oregon's nine federally recognized Tribes on refining and improving its Tribal engagement processes. The Department also welcome further Tribal input and engagement on this proposed rulemaking. OWRD made a change to differentiate between Tribes and agencies.</p>	
690-053-0040 (1) 9/2	<p>RAC - why not move the non- applicability language to Division 2 (-0030)?</p> <p>RAC - same non applicability language does not appear in 690-052-0110. Regarding insertion of "(1) OAR 690-002-0030 does not apply to protests under this section. "</p>	Language struck.	Complete. Rule changed in v2.
690-053-0040 (1) 9/2	<p>RAC - OAR 690-053-0040 states that OAR 690-002-0030 does not apply to protests under this section. It is unclear why the OWRD is carving these out. The OWRD is not carving out contested cases. For consistency's sake and protestant and OWRD efficiencies, we would suggest that all water right processes be uniform across programs.</p> <p>Please add a rule provision outlining that petitions for party status will be in accordance with Div 2 so there is uniformity and consistency across all OWRD processes.</p>	See response in Div 52. (Div. 52, 53, 54)	Complete. No change.

690-053-045	Comments submitted on -0050 below are actually about deletions in -0045.		
690-053-0050 (1) 9/2	<p>RAC - 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.</p> <p>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.</p>	OWRD has partially included requested change that mirrors changes made in 2025 legislation and that ensures the dept is not at risk of violating due process rights.	Complete. Rule changed in v2.