

Proposed Rule Revision Tracker**Division 54 – CONVERSION OF A HYDROELECTRIC WATER RIGHT TO AN INSTREAM WATER RIGHT**

Section	Issue	Response/Modified Language	Status
Div 52, 52, 54. 9/2	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.	See division 52 (52, 52, 54) response.	Complete. No change made.
690-054-0010 (7) 9/2	RAC member - 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 690-054-0010(7) definition of injury does not subscribe to traditional definition and refers to standards in OAR 690-054-0040(6), which have absolutely no basis in statute.	These comments are beyond the scope of this rulemaking and the RAC that has been tasked with this work. Further, these rules were adopted in 2022 with significant time investment as this statute and issues are highly complex; the agency does not have resources at this time to review these policy choices. Some of these provisions appear to be from elements of the governing statute. Due to the limited scope of this rulemaking as it pertains to Divisions 52, 53, and 54, OWRD will make a note of this concern should there be a future rulemaking.	Complete. No change made.
690-054-0020 (2)(c), (d) - Note: comment did not indicate	RAC - 690-054-0020(c) and (d) do not allow for the conversion of a hydro right issued in conjunction with another right that is part of a larger distribution system, or storage. This is a gross misinterpretation of statute. ORS	See explanation on 690-054-0010(7) above. Due to the limited scope of this rulemaking as it pertains to Divisions 52, 53, and 54, OWRD will make a note of this concern should there be a future rulemaking.	Complete. No change made.

section number; presuming (2) 9/2	543A.305(6) states: If hydroelectric production is not the sole beneficial use authorized by a water right, this section shall apply only to that portion that is used exclusively for hydroelectric purposes. Sections (c) and (d) should be struck and replaced with the statutory language.		
690-054-0020 (3)(b)(B) 9/2	RAC - This section expands the definition of injury to something that is not supported by statute, and strays significantly from the historical understanding of injury. Recommend striking.	See explanation on 690-054-0010(7) above. Due to the limited scope of this rulemaking as it pertains to Divisions 52, 53, and 54, OWRD will make a note of this concern should there be a future rulemaking.	Complete. No change made.
690-054-0060 (4)-(6) 9/2	OWRD staff: Should be renumbered (3)-(5)	Numbering corrected.	Complete. Change made to V2 draft.
690-054-0060 (3) deleted 9/2	RAC - If the OWRD is going to delete the provision allowing for standing statements, then the provision for party status in subsection (4) should be updated to include the deadlines provided in Div 2. The OWRD noted that it did not have the statutory authority to accept fees for standing statements for these kinds of processes. It should be noted that the governing statutes do not provide for protests either. That said, a multi-year RAC agreed that both protests and standing statements should be allowed, thus they were included in the rules. For conformity across processes, we would urge OWRD to tie the party status provision in sub (4) to Division 2. Moreover, sub (4) should also limit party status to those who support OWRD's determination. As currently drafted, this is not clearly stated.	See also response in first row of this table re: requests for party status. OWRD does not have authority to depart from the request for party status procedures in the model rules for Division 54 transactions. However, we are concerned about division 54's call out to the model rules, while other divisions do not. It is not best practice to continue to call out specific provisions of the model rules as that can cause confusion as to when a model rule applies. Division 002 makes it clear the model rules apply. Strike reference in OAR 690-054-0060(3) that says requests for party status are governed by the model rules, specifically OAR 137-003-0535.	Complete. Rule change made.
690-054-0060 9/2	RAC - OAR 690-054-0060 (5) states that a failure to raise reasonably ascertainable issues in a protest with sufficient specificity precludes consideration of that issue in the	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.

	<p>contested case proceeding. This is too narrow. In our view, the OWRD Director should retain the discretion to not go to contested case if the protest does not raise substantive issues or otherwise comply with protest requirements.</p> <p>RAC member - 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 (e.g. OAR 690-052-0110(6)(b)(A), OAR 690-053-0050(1) and (2), OAR 690-054-0060(60(b), OAR 690-054-0070(4)). 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>		
690-054-0060(2)	OWRD staff: Fees only apply for protests.	Remove provision pertaining to fees to be a party to a hearing.	Complete Rule changed in v2.
690-054-0070 (4) 9/2	<p>RAC member - 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 (e.g. OAR 690-052-0110(6)(b)(A), OAR 690-053-0050(1) and (2), OAR 690-054-0060(60(b), OAR 690-054-0070(4)). 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</p>	OWRD has reverted applicable language in light of change made to 0060.	Complete. Rule changed in v2.

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