

HARTT Laura A * WRD

From: HARTT Laura A * WRD
Sent: Tuesday, September 16, 2025 5:34 PM
To: chris@waterleague.org
Cc: RATCLIFFE Katie S * WRD; RANCIER Racquel R * WRD
Subject: RE: Water Rights Rulemaking -- HB 3372

Hi Chris, thanks for the response. We are still finalizing our process for collecting/sharing RAC and public input during the RAC meetings as well as online, so please bear with us. For tomorrow, we will raise your comment during the Division 340 discussion.

Have a great evening! Laura

From: Christopher Hall <chris@waterleague.org>
Sent: Tuesday, September 16, 2025 4:13 PM
To: RANCIER Racquel R * WRD <Racquel.R.RANCIER@water.oregon.gov>
Cc: HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov>; RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>
Subject: Re: Water Rights Rulemaking -- HB 3372

Hi Laura and Racquelle,

Generally speaking, unless it's mid-meeting and makes sense, I'd usually share with you in advance my thoughts on items adjacent to but not on the meeting agenda -- so yes, I hoped to make the suggestion during the RAC. I am acutely aware of the opposition to HB 3372, and could imagine, based on this RAC makeup, that HB 3372 rulemaking might be more welcome with "different stakeholders," which really shouldn't be an issue since the law is passed, but political realities are what they are :)

I believe the preferred practice is not for RAC members to send emails to the entire email list and to request staff to funnel/ pass through such information, so if I have it right, then would you consider sending out the email I sent to you to the RAC list on my behalf? It would make my comments tomorrow a bit more streamlined.

Thank you,

Chris

On Tue, Sep 16, 2025 at 1:33 PM RANCIER Racquel R * WRD <Racquel.R.RANCIER@water.oregon.gov> wrote:

Chris,

We can note this to the RAC as suggested by Laura. To give you a heads up as we won't have much time to discuss, we are aware and this matter will be addressed by a rulemaking that will occur after this one. Until then, the statute will supersede any rule conflicts. This rulemaking is focused more on nonexempt uses and has different stakeholders and staff. The next one will be more suitable for this.

Racquel

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From: HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov>
Sent: Tuesday, September 16, 2025 1:11:36 PM
To: chris@waterleague.org <chris@waterleague.org>
Cc: RATCLIFFE Katie S * WRD <Katie.S.RATCLIFFE@water.oregon.gov>; RANCIER Racquel R * WRD <Racquel.R.RANCIER@water.oregon.gov>
Subject: RE: Water Rights Rulemaking -- HB 3372

Hi Chris, thanks for your email. Because you are a RAC member, would you mind raising this issue during our Division 340 discussion tomorrow so the full RAC can benefit from the discussion? I hope that works for you.

See you tomorrow! Laura

From: Christopher Hall <chris@waterleague.org>
Sent: Tuesday, September 16, 2025 8:48 AM
To: HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov>; RANCIER Racquel R * WRD <Racquel.R.RANCIER@water.oregon.gov>
Subject: Water Rights Rulemaking -- HB 3372

Hi Laura,

Is rulemaking for HB 3372 also required as the law relates to OAR 690-340?

Currently, OAR 690-340-0010(1) and paragraph (b) appear to be out of sync with the statute; the rule excludes 1/2 acre commercial gardens, while HB 3372 added them.

Could you include HB 3372 in the current conforming-rule package and update OAR 690-340-0010(1)? Also, unless I'm misunderstanding the intro to OAR 690-340, shouldn't it include references to groundwater along with surface water?

Below is a suggested revision of OAR 340:

Division 340 WATER USE AUTHORIZATIONS

690-340-0010 Exempt Uses

The uses of water listed below do not require a water right permit under ORS 537.211 **and 537.625** or a water right certificate under 537.250 **and 537.700**:

(1) The statutory exemptions from permit requirements for use of groundwater include watering any lawn **or and** noncommercial and **commercial** garden not exceeding 1/2 acre in area **in an amount not exceeding 3,000 gallons a day**. Not more than 1/2 acre of lawn and noncommercial **and commercial** garden in total area may be irrigated through a group delivery system under such exemption. The statutory exemptions from permit and certificate requirements for use of groundwater include:

(a) Stockwater use;

(b) Lawn **or and** non-commercial and **commercial** garden watering of not more than 1/2 acre in total can be irrigated from any groundwater source under the exemptions listed in ORS 537.545(1)(b) **in an amount not exceeding 3,000 gallons a day**;

(c) Single or group domestic water uses of no more than 15,000 gallons per day;

(d) Industrial or commercial water uses not exceeding 5,000 gallons per day based on peak daily use **other than for watering any lawn and noncommercial and commercial garden**. A commercial or industrial operation shall be allowed only one well system and exemption under ORS 537.545(1)(f) on each ownership or tax lot, whichever is larger.

(e) A ground water use for purposes of watering a commercial garden that is exempt under subsection (1)(b) of this section, when combined with the use of water for industrial or commercial water uses under subsection (1)(d) of this section, may not exceed 5,000 gallons a day nor may a ground water use for purposes of watering a commercial garden that is exempt under subsection (1)(b) of this section irrigate plants in the plant Cannabis family Cannabaceae, unless the plants are grown by a person licensed under ORS 571.281

Thank you,

Christopher Hall
Executive Director
Water League
PO Box 1033
Cave Junction, OR 97523
(541) 415-8010

www.waterleague.org

HARTT Laura A * WRD

From: Gen Hubert <gen@deschutesriver.org>
Sent: Wednesday, October 1, 2025 4:34 PM
To: HARTT Laura A * WRD
Subject: OWRD RAC 1 Comments - Deschutes River Conservancy

October 1, 2025

Oregon Water Resources Department
Laura Hartt: Water Policy Analyst/Rules Coordinator/Tribal Liaison

RE: RAC 1 , September 17, 2025, comments

Ms. Hartt:

Thank you for the opportunity for the Deschutes River Conservancy (DRC) to participate in the Fall/Winter 2025 series of Rules Advisory Committee meetings. We appreciated the discussion of the proposed rule(s) updates in the September 17 meeting but have comments on just one segment of the discussion.

DRC is supportive of updates to OAR Chapter 690, Div 14-0170 & Div 305 that allow maps that require use of a Certified Water Rights Examiner-CWRE to be submitted with electronic stamps and signatures. We appreciate the diligence of the Department in working to improve consistencies across rules and for standardizing map criteria for specific types of transactions. This will improve efficiencies for DRC and partners permanent projects and should not impact the temporary instream lease programs maps which do not (and should not) require CWRE stamps/signatures.

The DRC also participated in the 2nd RAC meeting on September 24, 2025, and has no comments for the 2nd meeting.

Thank you for this opportunity to provide comments.

Regards,

Genevieve Hubert
Senior Program Manager
Deschutes River Conservancy
www.deschutesriver.org

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PGE Feedback on Water Rights Rulemaking – Input (RAC 1, Sept 17, 2025)

RAC Member Name: Lauren Poor, Portland General Electric

Rule # e.g., 690-014-0170(1)(b)	Concern	Proposed Rule Language/Description of Proposed Fix
690-053-0010(10)	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 unnecessary uncertainty about whether a right may have lapsed.	“(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).”



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

October 1, 2025

Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Re: Initial Comments, OWRD Draft Division 52, 53, 54, 320, 325 and 340 rules

Dear Laura,

In addition to comments we made during the RAC #1 meeting, we offer the following comments on the draft rules.

Division 52, 53, 54 Common Comments:

- Petitions for Party Status, protests, contested case hearings: 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.
- Agency discretion not to go to contested case hearing if significant issues are not raised: 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(6)(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.
- Definition of injury: 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 690-052-0010 (3) definition of injury does not spell out the meaning but rather refers to rules that have been renumbered.
 - OAR 690-053-0010 (7) definition of injury fails to include qualifying language that limits reach to "previously available water"
 - 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.

WaterWatch of Oregon
Main Office: 213 SW Ash St. Suite 208 Portland, OR 97204
Southern Oregon Office: PO Box 261, Ashland, OR, 97520

www.waterwatch.org
Main Office: 503.295.4039
S. OR Office: 541.708.0048

- Cleaning up the rules to align with statute: We strongly support the agency's work to try to expunge rule sections that are not supported by statute; that said, we think there is more work to be done here. We will note specifics by section.

Div 53 rule specific comments (not captured by common comments above)

Protests and provisions for party status:

- 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.
- 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.

Aligning rule with statute:

- 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.

Div 54 rule specific comments (not captured by common comments above)

Protests and petitions for party status:

- OAR 690-054-0060 (3) proposes the deletion of standing statements. 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.
- 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 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.

Aligning rule with statute:

- 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 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): This section expands the definition of injury to something that is not supported by statute, and strays significantly from the historical understanding of injury. It should be struck.
- 690-054-0020(8): This section automatically subordinates the instream right resulting from the conversion to authorized water uses by other existing water rights as of October 23, 1999. This section not only makes all processes related to mitigation in the previous sections moot, but does not follow the statutory structure that only protects “actual use” of authorized water uses by other existing water rights as of October 23, 1999. To align with statute, this section should be struck, or, at the very least, insert the words “actual use”. There are similar problems with sections (9) and (10).
- 690-054-0080, Issuance of Instream Water Right: This section restricts the instream right associated with the conversion so that it “is not additive” to other instream rights. There is nothing in the Hydro Conversion statutes (ORS 543A.305) or the Instream Water Rights Act (ORS 537.332 et al) that directs or allows this. OWRD should delete from these rules.

Division 320 Rules –Miscellaneous Water Right Process Provisions

- 690-320-0010 proposed deletion of entire section: As noted in the RAC meeting, it is important that the provisions of subsection (10) relating to checkpoints be carried over. OWRD indicated those would be in the 315 rules, but since the RAC has not covered those yet, I am just noting here so the comment is not lost.
- 690-320-0020 cancellation of permit: OWRD has indicated that this rule section does not align with ORS 537.260 and ORS 537.410 to ORS 537.450 and thus is proposing to remove this. We agree the process should align, but we disagree that the subsection should be completely removed. It is important for people who have received extensions, and for the OWRD caseworkers and otherwise that are tracking extensions, that it is clear that if use has not been made under the permit or extension that they OWRD can initiate cancellation under its own volition.
- 690-320-0040(1): The word “of a municipal water right” should immediately follow “partial perfection” for clarity’s sake.
- 690-320-0070 Primary and Supplemental Rights: The OWRD is proposing to remove this section as it is also found in the 330 rules. The 330 rules are tied to water right certificates. This definition comes into play in many instances not tied to water right certificates (e.g. transfers). Duplication for clarity’s sake is not a problem in our mind, and we feel strongly this should be retained in this section and/or put into other related sections.

Division 325 Rules—Assignment of Water Rights/Replacement Permits

- 690-325-0040(8) requires, as part of the application, a statement from the applicant that the most recent water use under the applicant's portion of the water permit, if any, has been exercised within the relevant terms and conditions of the water right. While this is in the governing statute, we would urge the OWRD to require documentation to back up the statement. Similar to RAC member comments made in relation to the Div 305 rules, in today's day and age where technology is readily available to offer solid documentation of water use and compliance with conditions, the applicant here should have to provide more than simply a statement, for example, GPS linked photos, water right measurements, etc. The applicant should also have to prove use within the past five years to ensure that an unused right is not being resurrected via this process.
- 690-325-0050 mapping: similar comment as to need for precision.
- 690-325-0070(2)(b): OWRD should add "has not been used in the past 5 years" to the list of finding. While arguably, it is part of "withing the terms and conditions of the water right permit", we urge OWRD to spell this out so to avoid any confusion.

Division 340 rules—Water Use Authorizations

- Exempt Uses: As we understand it the OWRD is going to update these rules to incorporate statutory changes to exempt wells from the 2025 session and thus will hold comments until that time.
- Limited Licenses:
 - OAR 690-340-0030(1)(E)(a): The rules should require a water availability determination based on WRIS, especially if the limited license is for more than a single year.

Aligning limited license rules with statute:

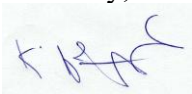
- OAR 690-340-003(1) NEW SECTION: The rules should be updated to make clear that limited licenses are only for uses allowed in basin plans, except the very narrow exceptions allowed in ORS 537.143. We do not agree with any assertion that the statute limits this statutory protection to only "specifically prohibited" actions rather than an action that is "not allowed" under a basin plan. The terms mean essentially the same thing, both mean that an action is forbidden. This is incredibly important as limited license should not be allowed to provide loopholes to regulations that other water right holders must ascribe to. It can also lead to the exact degradation that the basin rule is trying to protect against.
- OAR 690-340-0030 (7): This section should be deleted and replaced with the language that is in statute, which makes clear that limited licenses are subordinate to other water rights **from the same source** only. In other words, if the limited license is for stored water the OWRD could and should regulate off surface water right holders who try to use the stored water, which is from a different source. This is a very important distinction. As is, section (7) is not correct.

- New section: The rules should be updated to ensure that limited licenses are for “uses” that are of short term or limited duration (road construction, etc.). This is required by statute, but we are seeing increasing use of limited licenses as loopholes to existing water right restrictions for long term uses.

Thank you for the opportunity to provide written comments in addition to those made in the RAC meeting. These serve as initial comments, we will likely have additional comments as adjustments are made.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Priestley', is written over a light blue rectangular background.

Kimberley Priestley
Sr. Policy Analyst

HARTT Laura A * WRD

From: Rick Parsons <rick.parsons@parsonswater.com>
Sent: Monday, September 29, 2025 9:06 AM
To: HARTT Laura A * WRD
Subject: proposed rulemaking

Ms. Hartt -

I read through some of the proposed changes to rulemaking and wanted to provide the following comments. I hope you will find them helpful.

I will comment further when the edits to Divisions 77 and 382 are posted.

- 690-325-0040(2) Name(s) under which the original water right permit was issued
 - Does the original water right permit refer to when it was initially permitted or to the current water right permit? I am wondering if you want something akin to 690-315-0020(3b) The name ~~and mailing address~~ of the water right permit holder(s);
 - I ask since the current permittee may not be the original permittee. I would presume you would want the name of the current permittee; otherwise that person's name may be absent from the application.
 - I would also note 690-325-0010 notes the purpose is "to reflect an assignment from the current water right permit holder to one or more additional water right permit holders." [emphasis included]
- 690-340-0060(7a) - even though it appears to reference the remainder of this section, the sentence "The comment must allege facts in support of and specifically explain the relevance." seems awkward and may benefit from some wordsmithing.
- 690-340-0060(11b) - for consistency with other language in other rule changes I thought you might want to replace "The copy shall be sent by electronic means unless a person has requested mailing." with the following change underlined here - "The copy shall be sent by electronic means, or if requested by that person, by regular mail". Similar comment on
- 690- 315-0020(3)(d)(B) - should "letting contracts" be "getting contracts"?

Regards,
Rick Parsons, P.E. CWRE

ParsonsWater Consulting LLC
<http://parsonswater.com>
rick.parsons@parsonswater.com
541.499.0257 303.667.5067 (mobile)

HARTT Laura A * WRD

From: Christopher Hall <chris@waterleague.org>
Sent: Monday, September 22, 2025 12:32 PM
To: RATCLIFFE Katie S * WRD; HARTT Laura A * WRD
Subject: WR RAC #2 -- Div 305

Hi Katie and Laura,

In the new proposed rule, Division 305, OWRD is designing for a 20th Century workflow.

This approach is outdated and unjustifiable from the perspective of the broader public. While there is a long history of water users advocating for ambiguity around the location of PODs, POU's, POAs, and related infrastructure, that history does not justify embedding imprecision into new rules going forward. In virtually every other sector, mapping has moved into the 21st century, relying on digital tools to provide accuracy, efficiency, and transparency. OWRD should do the same. A minority of individual interests may bristle at the increased precision, but OWRD's duty is to manage those concerns in service of the greater public interest.

Div 305 maintains location ambiguity by:

- 1) Requiring paper maps at a scale of 1"=1,320' is very imprecise. This imprecision is a legacy of USGS quadrangle mapping, but is no longer a factor in 2025. GIS maps can be viewed and printed at any scale, and other electronic means of mapping using GPS are readily available and easier to use than a drafting board with a drafting machine or parallel straightedge. Who would insist on a 20th century legacy tools and the imprecision of a 4-inch section drawn on a letter-sized paper?;
- 2) Requiring the electronic form to conform with the paper standards is a reversal of the past 30 years of technological advancements. Any paper map should conform to the electronic maps as a printout;
- 3) Referring to TRS, quarter-quarters, public land survey corners, etc. for locations and to the "general location" for infrastructure with no standard for what that means. Retaining the PLSS as the primary requirement standard maintains the ambiguous cadastral descriptions of the 20th century rather than precise geospatial data. There is no reason that geospatial data should not be required, and if OWRD wanted to retain backwards compatibility with old maps, then requiring PLSS standards additional to electronic mapping would solve that problem. Perhaps Division 305 should require OWRD to bring any remaining PLSS paper maps into the digital age;
- 4) Making Lat/ Lon only optional. Geotagging should be required across the board. Any CWRE, or even a teenager with a smartphone, can generate Lat/ Lon coordinates within seconds, whether on-site, in GIS software, or in Google Earth.

By drafting Division 305 in 2025 to ensconce 20th-century location standards throughout multiple rules, OWRD is not making a science-based choice but a deliberate policy decision to codify archaic and imprecise practices.

I thought of writing in advance of the meeting to share my thoughts given the time constraints.

Thank you,

Christopher Hall
Executive Director
Water League
PO Box 1033
Cave Junction, OR 97523
(541) 415-8010
www.waterleague.org

HARTT Laura A * WRD

From: HARTT Laura A * WRD
Sent: Wednesday, September 24, 2025 1:48 PM
To: Jeff Shaw
Cc: Brad Arnold
Subject: RE: Public comment re RAC Meeting 24 Sep 2025 Div 305

Hi Jeff, Thank you for your comments. We accept them in writing as well as orally during the public comment period at the end of each RAC meeting.

Thank you for joining us today. We've recorded your comments and will review them.

Laura

From: Jeff Shaw <jshaw@ekiconsult.com>
Sent: Wednesday, September 24, 2025 9:35 AM
To: HARTT Laura A * WRD <laura.a.hartt@water.oregon.gov>
Cc: Brad Arnold <barnold@ekiconsult.com>
Subject: Public comment re RAC Meeting 24 Sep 2025 Div 305

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Hi,

Sorry, I am unfamiliar with the public comment process for this committee so did not comment directly at the meeting.

Specifically, regarding the proposed Div 305 rule, I support incorporating modern geospatial standards into general map criteria. This represents an opportunity to modernize and save many future hours of labor and costs in both public and private sector going forward. Tying locations to legal land descriptions also is obviously necessary.

These are not in conflict if language is included to establish that in the event of a discrepancy, the legal PLSS land description overrules the geospatial coordinates.

Thanks for your efforts.

Jeff R. Shaw, PG, CHg
Senior Hydrogeologist

EKI Environment & Water, Inc.
2175 NW Raleigh St, Suite 110
Portland, Oregon 97210
T: (650) 292-9100 | D: (650) 292-9074
jshaw@ekiconsult.com | www.ekiconsult.com