

October 8, 2025

Oregon Water Resources Department
725 Summer St. NE, Salem, OR 97301

Re: 2025-2026 Water Rights Rulemaking Rules Advisory Committee Meeting #2 Comments

To whom it may concern,

Central Oregon LandWatch (“LandWatch”) provides these comments in writing following the 2025-2026 Water Rights Rulemaking Rules Advisory Committee Meeting #2 on September 24, 2025.

LandWatch is an Oregon non-profit, public interest organization of about 950 members. Its offices are located in Bend, Oregon. LandWatch’s mission is to defend and plan for Central Oregon’s livable future, and it has advocated for the preservation of natural resources in Central Oregon for over 30 years.

These comments are focused on the proposed rule changes for OAR Chapter 690 Division 002.

OAR 690-002-0025

LandWatch recommends that OWRD provide an “auto-receipt” message when an email filing goes through to avoid problems related to technical issues preventing receipt by the agency.

OAR 690-002-0090

LandWatch encourages OWRD to include a process for parties to object to a Department proposal to consolidate into a single proceeding or bifurcate into separate proceedings.

OAR 690-002-0095

LandWatch understands and generally supports OWRD’s goals here of supporting due process while also providing timely decision by moving through the contested case process efficiently. However, we have several concerns with the Department’s proposed changes to OAR690-002-0095. As such, LandWatch supports the request by RAC members to give this section more discussion, potentially outside of the RAC process.

In addition, we want to echo the discussion during the September 24th RAC meeting that the proposed rule changes appear to limit discovery in arbitrary ways, as well as conflict with or fail to satisfy requirements of several existing rules.



Examples of potential conflicts include:

- OAR 690-002-0000 (which is not being changed) provides that "[c]ontested case hearings for [OWRD] are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in [OAR chapter 690, division 2] are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings."

OAR chapter 137, division 3 has its own discovery rules. OWRD can deviate from those rules, but only in specified ways. For instance, OWRD may "provide by rule that some or all discovery methods ... do not apply to a specified program or category of cases if: it finds that the availability of discovery would unduly complicate or interfere with the hearing process in the program or cases, because of the volume of the applicable caseload and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings." OAR 137-003-0566(2).

- The proposed provisions related to interrogatories (0095(2)) and site visits (0095(4)) are also problematic from the standpoint of OAR 137-003-0056(2).

The proposed rule changes would give OWRD -- *not* the ALJ -- final say over certain discovery questions in contested cases. In essence, OWRD is reserving for itself the ability to decide, on a case-by-case basis, whether more than five interrogatories or a site visit should be allowed. Per OAR 137-003-0056(2), though, OWRD can only make those kinds of decisions "by rule," not on a case-by-case basis.

- Proposed rule language in 0095(2) and 0095(4) also conflict with OAR 137-003-0568, which allows an ALJ to order discovery without an agency's consent once the case is before the ALJ. In essence, OWRD is trying to rewrite this rule, at least insofar as it applies to interrogatories and site visits.
- Proposed rule language in 0095(3), which effectively allows OWRD to convert certain requests for production into public records requests, appears to conflict with OAR 137-003-0568(9), which provides that, "[i]n addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law."



- Proposed rule language in 0095(3) is also potentially in conflict with OAR 137-003-0566(3), which allows an "agency [to], by rule, limit a party's ability to obtain discovery from the agency *when the agency merely is providing a forum for the parties and is not an active participant in the case.*" (Emphasis added).

In addition to these potential conflicts with existing rules, we want to emphasize that one of the points of referring a case to an ALJ is to allow a neutral hearing officer to manage the case and make context-sensitive judgment calls about things like the propriety of requests for discovery. ALJs should be left to do that job; OWRD should neither categorically predetermine the propriety of certain discovery methods (as with requests for admission) nor reserve for itself the ability to veto discovery on a case-by-case basis (as with interrogatories and site visits). The provisions of OAR 137-003-0565 through 0595 already provide ALJs with the direction they need to limit discovery to promote efficiency. *See, e.g.,* OAR 137-003-0567 ("Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case.").

OAR 690-002-0205

LandWatch recommends OWRD provides a party with an opportunity to submit a reply brief in support of a motion for summary judgment.

Thank you for considering these comments and please do not hesitate to reach out if you have any questions.

Sincerely,



Jeremy Austin
Wild Lands & Water Program Director
Central Oregon LandWatch
2843 NW Lolo Dr St. 200
Bend, OR 97703



Feedback on Water Rights Rulemaking – Input (RAC 2, Sept 24, 2025)

RAC Member Name: Leah Cogan

Rule # e.g., 690-014-0170(1)(b)	Concern	Proposed Rule Language/Description of Proposed Fix
690-300-0010(46)	Use of “and” implies that both domesticated <u>and</u> wild animals must consume water for it to be stockwater use	“domesticated or wild animals”
690-300-0010(47)	Missing “water” for “surface water” (where “groundwater” is one word, there is no separate word for “surface” to refer to)	“surface water or groundwater”
690-300-0010(56)	Typo “the owner or that right” instead of “owner of that right”	“beyond the control of the owner of that right”
690-300-0010(57)(C)(c)	Question: is this still needed given that it only applied to applications received prior to 7/17/1992? In other rule divisions, obsolete language was proposed to be removed	Remove (C)(c)?

Feedback on Water Rights Rulemaking – Input (RAC 2, Sept 24, 2025)

RAC Member Name: Austin Patch (Summit Water Resources, LLC)

*All specific rule languages changes (proposed) are in red font.

Rule # e.g., 690-014-0170(1)(b)	Concern	Proposed Rule Language/Description of Proposed Fix
690-305-0010(3)(g)	There is no mention of including donation land claims, or government lots for maps that aren't for municipal use	(g) township, range, section, quarter-quarters tax lot(s), donation land claims, or government lots where water will be or has been diverted, conveyed, and used.
690-305-0010(3)(i)(B)	There is no mention of including distance and bearing as an acceptable form to describe the location of a POU point.	(B) For places of use that are limited to a point, such as a stock watering tank, the location may be identified by distance and bearing (distance north or south and distance east or west) from a recognized public land survey corner, or by latitude and longitude as established by a global positioning system accurate to within ten feet. If latitude and longitude is provided, the coordinates shall be expressed as degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).
690-305-0010 (general)	It was brought up by another committee member to require location information of Points of Appropriation (POA) / Points of Diversion (POD) to be described by coordinates when a transaction occurs to modify an existing water right or apply for a new water right. This change would infringe upon ORS 537.615.	For modernization efforts, I agree that coordinates should be allowed, but not required, to describe location information regarding locations limited to a point (POA's/POD's), which would align with ORS 537.615(4) for groundwater rights. Per ORS 537.615(2)(h): "The location of each well with reference to government survey corners or monuments or corners of recorded plats." A change to require applicants to provide coordinate data instead of in reference to government survey corners or monuments or corners of recorded plats would require ORS 537.615 to be modified, which is not in the scope of this rulemaking process.
690-305-0010(3)(k)	The concern is based on the ambiguity of the language proposed for 690-305-0010(3)(k). Only information directly related to the transaction should be requested.	(k) Any additional information the Department requests that is directly relevant and reasonably necessary for the Department to evaluate the specific water right transaction



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

October 10, 2025

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

Re: Initial comments, Draft OAR 690 Division 2 Rules, PROTESTS AND CONTESTED CASES

Dear Laura,

In addition to comments made in RAC meeting #2 we offer the following initial comments. We anticipate providing additional comments at the auxiliary meeting OWRD is holding on the Div 2 rules, as well as on future drafts.

Comments:

690-002-0005, Applicability

General: As we noted in meetings #1 and #2, except in cases where there are specific statutory provisions to the contrary, WaterWatch would encourage the OWRD to make these rules applicable to all water related contested cases, including hydro conversions, for consistency and to avoid confusion. Also, we suggest some language about the extent to which OAR Division 137 continues to apply, and making it clear that, unless HB 3544 says otherwise, ORS Chapter 183 continues to apply.

Subsection (6):

- Need to clarify “in an existing contested case proceeding” means that a contested case proceeding starts when a protest is submitted, not when it is referred (if this is what OWRD means). There also needs to be consistency on this point both with the Div 300 rules and ORS 183.310.
- Given later sections on electronic notice, need to clarify here that first contact with past protestants will be via mail given previous protest requirements did not include email.

690-002-0023 Agency Representation

Comment on proposed “may appear and participate”: ORS 183.452 is about when an agency “can be represented at contested case hearing” by an agency employee (for example, Will Davidson cross examining a witness). The words “may appear and participate” seems broad enough to include agency employees as witnesses, but the draft language then seeks to limit what kinds of cases they can appear. It is unclear what OWRD is trying to do here.

690-002-0025 time for filing protests

We support the ability to file electronically. However, the rule should also specify how to comply with (1)(b) (payment of fee) when one files electronically. We would also suggest provisions requiring OWRD to immediately acknowledge receipt of electronic filing and payment.

Suggest amending sub (3) to read something like: (3) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects. A protestant filing a protest electronically may pay the statutorily required fee by including in the protest an authorization for the Department to deduct the fee from the protestant's Customer Account, or XXX

690-002-0030 Form and Content of Protests, for Protests not governed by 690-002-0005(2)

As stated previously, to the extent not dictated by statute, we believe that the protest and request for party status provisions should be consistent across all processes so as to avoid confusion, promote uniformity of process and gain efficiencies. For example, the hydroelectric conversion statutes do not set forth direction on protest, so the OWRD could and should not put those in this section to be guided by an alternative process (addition of ORS 543).

OAR 690-002-0075 Scope of Hearing for hearings not governed by O690-002-0005(2)

We would suggest cutting the qualifier “and as identified by the administrative law judge as allowed by applicable law”. In our experience, it adds confusion about the authority of an ALJ to add to, or subtract from, issues raised in protests, etc.

OAR 690-002-0085 Method of Filing and Service

We would suggest adding a subsection (3): For protests, standing statements and petitions for party status filed prior to amendment of these rules, the Department must initially serve the filer by paper and request an email address for electronic filing.

OAR 690-002-0090 Consolidation of Proceedings

We would urge the OWRD to include some process around this. Eg: parties should have a chance to object to consolidation or bifurcation and have that ruled on by the ALJ and/or agency.

OAR 690-002-0095 Discovery

As noted in the RAC #2 meeting, WaterWatch has significant concerns with this section of the proposed rules (subsections (1) through (6)). Discovery is a big subject and should be broken out and handled separately.

Discovery was not limited by HB 3544, in part, we believe, because WaterWatch raised concerns in the process about any attempt do to that. We do not support the draft's seemingly arbitrary limits on discovery.

This proposed rule seems designed specifically to help the agency and applicants and to prejudice groups representing the public interest, whether conservation group, environmental justice group or citizen group. This section of the rule is very important because a party representing public interests typically needs to get relevant information from the agency and the applicant, whereas the applicant typically does not.

Comments specific to each subsection are found below.

1. Requests for admission: Disagree with this restriction. Requests for admission can be useful in narrowing the issues in dispute and making resolution more efficient, which was the articulated goal of HB 3544. That's why they are included in both state and federal court discovery. To make them more useful, we suggest some provisions, similar to those in the ORCP, limiting blanket denials and allowing for cost recovery for proof of something that should have been admitted.
2. Interrogatories: The suggested limit of 5 seems arbitrary and too low. The presumptive limit in federal court is 25. Unclear where this came from.
3. Production of documents: This section is unfair. It could make public participation cost prohibitive, especially with protest fees now over \$1,000. It also raises questions as to how the OWRD will make determinations as to the time fulfilling any request would take. Overly broad document requests can be addressed by objections to discovery based on relevance, undue burden, etc.
4. Site Visits: This section seems arbitrary. The Department should not have unfettered veto power and site visits may be appropriate in some cases and should be an allowed form of discovery.
5. Subpoenas: This seems random and arbitrary, especially the level of detail on this one subject, which seems to be coming from one party's grievances instead of a thoughtful discussion. These provisions also may be inconsistent with ORS 183.400, which they cannot be unless the legislature said so, which it has not.
6. Public record request/extension: This seems random and ill-conceived, and appeals to be addressing an undisclosed party's grievance, which is not a good basis for a generally applicable rule. Discovery in contested cases was not addressed in the bills and needs to be a more thoughtful discussion than this rulemaking is allowing. Also, this issue should not be addressed in this cookie-cutter way. Different cases require different treatments. Justification for an extension will depend on the particulars.

OAR 690-002-0190 Exceptions to Final Orders of the Director

Rather than leaving filing method to what it says in the final order, which is sometimes ambiguous (e.g., "with the Department"), we suggest saying exceptions (to final order and proposed orders) "may be filed with the Department in person, by mail such that they arrive by the deadline, and/or by electronic mail or other electronic means provided by the Department."

OAR 690-002-0205 Default hearing schedule

WaterWatch has significant concerns with the cookie-cutter approach of these rules. Deadlines should be set in each case by conferral and prehearing conference. Cases may require more or less time for

certain things. (e.g. This schedule seems built around motions for summary determination, which, although some counsel seem to love to file them, often add considerable unnecessary time and expense to the process). We appreciate that HB 3544 calls for a default scheduling including discovery requests and responses and motions to compel. We suggest leaving it at those and allowing other deadlines to be set in prehearing conferences. For example, the parties may agree that the issues cannot be resolved on motions for summary determination, or that all of them can, which would change the need to set deadlines for those motions.

Thank you for this opportunity to provide comments.

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