

OREGON ADMINISTRATIVE RULES CHAPTER 690
DIVISIONS 2, 14, 17, 18, 52, 53, 54, 77, 300, 305 (new),
310, 315, 320, 325, 330, 340, 380, 382

FISCAL AND ECONOMIC IMPACT:

The purpose of this rulemaking is to (1) implement 2025 legislation, including House Bill 3342 (Chapter 282, 2025 Oregon Law) relating to water rights transactions, House Bill 3544 (Chapter 575, 2025 Oregon Law) relating to contested case processes, and some provisions of Senate Bill 1154 (Chapter 605, 2025 Oregon Law) relating to issuing water rights to replace domestic wells in groundwater quality management areas; (2) reinstate efforts to update Oregon Administrative Rules (OAR) Chapter 690, Division 77 rules relating to instream water transactions; (3) implement other policy and process improvements across the rule divisions that are being amended; and (4) clean up impacted rule divisions, including fixing grammatical errors, aligning rule language with statute, and repealing outdated provisions.

The Department is proposing rules changes for the following divisions: 2 (contested case/protests), 14 (certified water rights examiners), 17 (forfeiture/cancellation), 18 (allocation of conserved water), 52 (decommissioning/non-FERC projects), 53 (hydroelectric license/power claim/certificate amendments), 54 (conversion of hydroelectric to instream), 77 (instream water transactions), 300 (definitions), 305 (new standardized mapping criteria), 310 (water right application processing), 315 (extensions), 320 (miscellaneous provisions), 325 (assignments/replacement permits), 330 (renamed – proof of appropriation), 340 (water use authorizations), 380 (transfers), and 382 (groundwater registrations).

According to Pilz et al. (2023), approximately 48% of Oregon's total economic output and 44% of the state's employment rely on water-dependent businesses. Notably, these estimates are conservative, because they do not include the economic contributions from recreation, commercial fishing, or power generation (Pilz et al. 2023). Pilz et al. (2023) examined the state's water-dependent businesses, revealing the following regarding overall contributions to the state's economy:

--Economic modeling suggests industry (includes manufacturing, health care/hospitals, colleges/universities, hotels/motels, restaurants/food service, car washes, dry-cleaning/laundry, landscaping/horticulture, breweries/wineries, waste remediation) contributes \$88.8 billion annually.

--In 2017, freshwater-related outdoor recreation contributed \$63.2 billion (citing Rosenberger 2018).

--Economic modeling suggests irrigated agriculture contributes \$7.3 billion annually.

--In 2017, coastal commercial salmon fishing contributed \$28.4 million (citing ECONorthwest 2019).

The proposed rule changes will protect the substantial investment Oregon has made in these and other water-dependent businesses by improving efficiency and standardizing processes, saving the Department and public time and money while providing greater certainty for those who rely on water rights transactions.

Because the new rules are intended to streamline and modernize processes, the Department cannot state whether entities will experience greater costs or lower costs overall. In the near term, the Department anticipates that some parties may face additional costs associated with familiarization with the new rules, including the need for some parties to secure professional advice. Ultimately, however, the process improvements should result in greater efficiency and more timely responses, which may reduce overall costs.

Cost of Inaction: Currently, the Department has an active queue of over 2,500 applications for all types of water rights transactions. OWRD estimates that under current processing standards, water right processing staff would need to increase by around 30% to achieve manageable workloads within 10 years (i.e., between 4-12 months processing time per application, depending on the transaction). Thus, without any policy changes to make the process more efficient and without additional investments in staff, the Department is unlikely to achieve a manageable workload that improves processing times and customer satisfaction.

The labor costs for state employees, including health care premiums, union negotiated raises, retirement contributions, cost of living increases, etc., has steadily increased over the last several decades. The longer it takes to process an application, the higher the discrepancy between the fees paid at the time the application was submitted and the actual cost of the staff time taken process that application over the years. This creates fee revenue shortfalls and compounds high workloads at the Department, and results in increased costs to applicants who continue to pay for consultants and attorneys that help navigate the water right and contested case processes.

Additionally, a lack of clarity in rules contributes to confusion and sometimes litigation, over the Department's analyses and authorities, further prolonging processing times and increasing costs for both the Department and the applicants and protestants during the contested case process. The Department estimates that for the 2021-2024 fiscal period, the average cost in Department of Justice (DOJ) and Office of Administrative Hearings (OAH) fees alone for OWRD, averaged \$51,600 for a single protest, with the most expensive protest costing over \$500,000. For the last several biennia, the Department has exceeded its legal expenditures budget, resulting several emergency appropriations from the Legislature, and in some cases, administrative management of costs by holding vacant positions across the agency open for longer. This impacts other operations of the agency that provide services to Oregonians.

As more frequent and intense drought conditions contribute increasingly to water scarcity, impacting both surface and groundwater availability, current policies and processes that are confusing and inefficient pose a challenge to water users as well as those who support leasing and transferring water instream. The timely processing of water right transactions is critical for small businesses, local governments, and the general public. Instream flows also provide immeasurable benefits to Oregon's nine federally recognized Tribes as well as the broader public, and those businesses that rely on instream flows such as recreation and guiding businesses.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: Cost of compliance for OWRD may be summarized as follows.

Implementation of Or Laws 2025, Chapter 282, is estimated to have a minimal impact on the Water Resources Department related to application processing and fee administration. The potential revenue associated with retained fees from returned or withdrawn applications is indeterminate, as the new staged payment process is not yet defined and may result in no fee collection for applications in critical or restricted groundwater areas. Implementation of the application review and return procedures outlined in the legislation are expected to be absorbed within existing staffing and resources. (Oregon Legislative Fiscal Office 2025a; Oregon Legislative Fiscal Office 2025b).

The Department currently administers contested case procedures for protested water right transactions and coordinates with the Office of Administrative Hearings (OAH) for hearing support. These responsibilities will continue if the new rules are adopted. However, implementation of Or Laws 2025, Chapter 575, will require the Department to update internal and external guidance materials, decision documents, and workflow tracking tools. Updates to the Water Right Information System (WRIS) also will be necessary to reflect new requirements for processing protest submissions, party status requests, and the transition from proposed to final orders. While there may be minor administrative or IT impacts, these are expected to be manageable within existing resources.

Or Laws 2025, Chapter 575 adds a new fee for requesting standing for a protest on a transfer. The Department reports receiving a low number of applicable requests in the prior biennium and anticipates between one and ten such requests per biennium going forward. Based on this estimate, the Department expects a minimal revenue increase of up to approximately \$10,000 per biennium from fees authorized for protest filings and participation in contested case proceedings. (Oregon Legislative Fiscal Office 2025c). Proposed amendments to Division 382 (Groundwater Registration Modifications) update existing fees, from a flat fee to 70%-100% of maximum fee set in statute, which is typically raised every four years. The Department does not anticipate a significant increase in revenue resulting from this change.

Proposed changes to Division 2 make the contested case process more efficient by reducing internal staff time needed for processing and the legal fees paid to the Department of Justice (DOJ) and the OAH. If OWRD resolves or refers more protests because of a more efficient process, those savings may be then used for increased contested case work, reducing the cost per case. Additionally, Oregon Department of Fish and Wildlife (ODFW) may experience increased DOJ expenses if OWRD can refer more instream water right protests to contested case (instream water rights are the most protested transactions).

In addition to OWRD, ODFW, Oregon Department of Environmental Quality (DEQ), OAH, DOJ, and other state agencies may experience additional costs due additional the time to interpret and implement the new rules. However, because the new rules were drafted in cooperation with these agencies and incorporated many of their suggestions for improved efficiency, the new rules should help streamline their involvement in processing of water rights transactions and decrease those costs over time. These agencies may experience increased legal

costs associated with disputes over statutory interpretation and rule implementation in the near terms; DOJ legal costs are passed along to respective agencies.

Any state agency that holds a water right or applies for a water right, or has an interest in water appropriation may be impacted by this rulemaking including, but not limited to: State Lands, Transportation, Administrative Services, Oregon State Parks, Fish and Wildlife, Forestry, Corrections, Public Safety Standards and Training, Veterans Affairs, Oregon Water Resources Department, Oregon State Hospital, Oregon Youth Authority, and Oregon Military Department. Oregon higher education and universities also hold water rights.

Local Governments: Cities and counties also may experience additional costs associated with interpretation and application of the new rules. In addition to the potential need to secure expertise to help navigate the new rules pertaining to water rights transactions, local governments may experience increased costs due to uncertainty regarding compatibility with comprehensive plans.

The proposed rules remove requirements for local governments to post certain Department notices physically and check point reports for certain permit extensions. This will remove the administrative burden of the work, especially on small municipalities that may not have many staff available to carry out these requirements.

[placeholder for land use/comp plans]

Public: Members of the public new to water rights transactions should not be impacted financially any differently than they would have been prior to the rulemaking; however, applicants familiar with the existing processes may need to rely on certified water rights examiners (CWRE), water law attorneys, and/or technical consultants to assist in completing transactions under the new rules, in the near term. In the long-term, OWRD anticipates lower economic impacts than would occur in the absence of the rulemaking, including those applicants engaged in instream water rights and leases transactions. Existing high costs include those associated with a longer application and contested case process, reduced indirect economic benefits of voluntary instream flow programs to small businesses, local governments, and the general public. Overall, rules that facilitate more consistent, predictable, and timely decisions provide benefit to the general public and also those who rely on Oregon's water.

(2)(a) Effects on Small Businesses: Estimate the number and type of small businesses subject to the rule(s).

ORS 183.336 requires agencies to use available information to estimate the number and type of small businesses likely to be subject to the proposed rules. A small business is defined as “a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or fewer employees” (ORS 183.310). According to the State of Oregon Employment Department (2025), there are just over 148,000 small businesses in the state (as defined by ORS 183.310) that pay unemployment insurance (UI) taxes. The sector breakdown is as follows: Natural Resources and Mining 4,678; Construction 17,102; Manufacturing 5,763; Trade, Transportation, and Utilities 20,471; Information 5,994; Financial Activities 10,564;

Professional and Business Services 32,988; Education and Health Services 20,809; Leisure and Hospitality 12,341; Other Services 14,509; and Unclassified 2,861. Notably, this accounting does not include many businesses within the agricultural sector that are not required to pay UI taxes. OWRD does not have information on the number of small agricultural businesses as defined by ORS 183.310. According to the 2022 Census of Agriculture (USDA 2024), there are just over 35,500 farms in Oregon, two-thirds of which are under 50 acres in size.

OWRD cannot estimate how many small businesses rely on water transactions to conduct business as the Department is unaware of any data sources that provide that information. That said, these rule changes may impact anyone, including any small business, that hold a water right, applies for a water right, or has an interest in how water is used in the state. Common industries that hold water rights include, but are not limited to agriculture, nurseries, industry and manufacturing. Other types of small businesses may hold water rights if their water use does not qualify for one of the exemptions under ORS 537.545 and they do not obtain water from a drinking water provider. Businesses that may not directly hold water rights but provide services to those seeking to participate in the water rights process may also be impacted by these rules, such as certified water rights examiners, engineers, hydrologists and hydrogeologists, attorneys, and other professionals and consultants. OWRD cannot estimate how many businesses practice in this area, however, there are 870 registered geologists in the state ([State of Oregon: Blue Book - State Board of Geologist Examiners](#)), and approximately 250 certified water right examiners (per request to OSBEELS). Other fields are too broad for these statistics to provide a meaningful representation.

(2)(b) Effects on Small Businesses: Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

OWRD does not anticipate that the cost of reporting, recordkeeping, or administrative services to significantly increase because of the rulemaking. In many instances, the rules are conforming rule to existing statute, standardizing processes to be more similar across transaction types, or restructuring when certain information that is already required should be submitted, such as pump test results and land use compatibility statement submission. In fact, because the new rules are designed to streamline the processing of water rights transactions, these costs may eventually decrease.

Examples not dictated by statute include removal of some information requirements for new water right applications (Division 310) that OWRD already has access to, removing check point reporting for quasi-municipal and group domestic permit extensions, removing submission of landowner approval documentation for irrigation districts submitting applications for instream lease, and adding a new streamlined process for instream lease renewal. These changes to the process are anticipated to reduce the cost of compliance with these sections of the rules, however, because these changes only remove portions of processes, these reductions are likely too small to quantify on their own.

There are some instances where increased reporting or administrative work for small business could increase. The clarified conditioning authority to protect from injury and enlargement on transfers may result in some water users needing to comply with additional conditions, including water use measurement and reporting. OWRD does have a water use measurement cost-share

fund available to assist landowners with purchasing and installing measurement devices and equipment.

Some other divisions add additional information for applications or mapping components, to processes that are already required. For example, Division 77 requires additional information about the lessor and adds a few more parameters that must be included in the submitted map. Division 310 requires proof of signatory authority and Division 325 adds more specificity on the type of information that can be requested on the application. There are also several divisions that add the requirement for CWRE prepared maps to also have the signed and seal of CWRE that prepared the map.

While some of these proposed rules will add some new reporting requirements or administrative work, the rules do not add brand new processes and applicants are already required to submit many of these forms and maps already. The Department anticipates that incurred cost of compliance will be minimal, as the additional cost for each item is likely too small to quantify on their own.

(2)(c) Effects on Small Businesses: Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Certainly, small businesses employing attorneys, CWREs, and consultants, may be impacted by the rulemaking. Whether those costs are positive, negative, or neutral is hard to say. On the one hand, some of these businesses will need to gain knowledge and expertise to be able to assist their clients with current and future water rights transactions. On the other hand, the new rules could increase clientele in need of professional advice concerning future transactions in the short term.

In many instances, however, the rules are conforming rule to existing statute, standardizing processes to be more similar across transaction types, or restructuring when certain information that is already required should be submitted. Because the new rules are designed to streamline the processing of water rights transactions, these costs should eventually decrease. This also means that any member of the public or water user can look at the rules and understand the process, decision making, and requirements instead of having to be an expert.

Small businesses and small farms, some relying on attorneys, CWREs, and/or consultants to assist with water rights transactions, may experience both positive and negative economic impacts as well. Applicants who are familiar with the existing water rights transaction processes may need expert advice regarding the new rules in the near-term, and that expertise will come at a cost. In general, however, future applicants are likely to experience greater efficiency and certainty with respect to the processing of their application(s), leading to cost savings and enabling businesses to plan for the future. Ultimately, the streamlining and improved efficiencies should benefit all small business and small farms pursuing or supporting water rights transactions and will help bolster timely, predictable, and consistent decision making.

In some cases, the application requirements are reduced, which should make the process of filling out an application quicker, and therefore less expensive. Further, it is anticipated that standardization across different processes will make it easier and more efficient for applicants

and associated professionals to know what is expected and to allow for some standardization for professionals in their own workflows (for example, having standardized mapping baseline criteria for most processes). It is difficult to determine the cumulative impacts as a result.

Some rule changes may result in increased labor, either by the small business or via professional services.

Division 305 and mapping standardization across divisions could have varying impacts. A standardized baseline helps maps received by the OWRD look consistent. This can help those interfacing with water rights processes and records to know what they are looking at and spend less time trying to understand what maps mean. It also means that those applying for various transactions know what is expected, which can reduce their costs and increase efficiency. On the other hand, this may require some CWRE's that amend their processes to comply with information required, such the requirement for a digital copy to the map to be submitted.

Parties who secure private attorneys, CWREs, or consultants to aid in the contested case process laid out Division 2, may face added financial costs related to new requirements that direct discovery requests exceeding XX hours of staff time through the public records request process, which is subject to fees established under Oregon Department of Administrative Services Policy #107-001-030. Additionally, new standard hearing schedules could accelerate the timelines for contested case, which may result in legal costs being front loaded, rather than more spread out over an extended period. Similar impacts may occur when settlement conversations are required. That said, the proposed changes intend to promote fairness and uniformity in the process regardless of income status by setting limits on the discovery methods and process timelines, which may result in more cost-effective hearings for all parties.

The clarifications around requirements to secure an administrative hold may add additional labor or need for professional services. The proposed rules standardize and add clarification stating that applicants must be engaged in discussions with OWRD. This may require applicants and their consultants to more actively participate in these discussions, above and beyond what was previously required or expected, to get an administrative hold. Additional limitations on how many administrative holds may be granted may mean that applicants and their consultants will need to accelerate work to comply with new timelines restrictions.

For historic points of diversion changes in Division 380, most of the rule changes apply to existing processes or are the products of new legislation and do not in themselves create new costs or requirements. However, some changes may result in new requirements, for example, for historical POD changes an applicant must now send via certified mail instead of regular mail or hand delivery. However, OWRD does not anticipate that the cost of equipment supplies, labor or administration will increase because of the rulemaking. Similar positive impacts on process efficiencies are expected to apply to these transactions as well.

Division 382 (Groundwater Registration Modifications) amends the existing fees for a flat fee to 70%-100% of maximum fee set in statute, which is typically raised every four years. This will result in an increase in the Groundwater Registration Modification fees each time maximum fee

in statute is raised. Any water users applying to modify their groundwater registration will be subject to this increase in fees.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Rules Advisory Committee included members representing small businesses, and others most likely to be affected by this rulemaking, including individuals that are part of the following sectors or organizations that represent the following sectors: certified water rights examiners, consultants, irrigators, farmers, ranchers, nurseries, power providers, cities, special districts, counties, and conservation organizations. Tribal staff also participated in the RAC meetings, and the agency invited formal Government-to Government consultation. Of these entities, all sectors may either be small businesses, have members that are small businesses, or have constituents that are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? Yes

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

This is an abbreviated list of the principal documents relied upon for the proposed rulemaking. Please contact the Oregon Water Resources Department for a complete list of documents relied upon and the location(s) of those documents.

ECONorthwest 2019, Economic Contributions of Oregon's Commercial Marine Fisheries, Report prepared for Oregon Department of Fish and Wildlife, available at <https://econw.com/project/economic-contributions-of-oregons-commercial-marine-fisheries/>

Oregon Employment Department (OED) 2025, Quarterly Census of Employment and Wages, available upon request from OED, <https://www.qualityinfo.org/>.<https://www.qualityinfo.org/>.

Or. Laws 2025, Chapter 282, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0282.pdf.

Or. Laws 2025, Chapter 282, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0282.pdf.

Or. Laws 2025, Chapter 575, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2025orlaw0575.pdf.

Oregon Legislative Fiscal Office 2025a, Impact of Proposed Legislation – Measure HB 3342 – A (reviewed April 10, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/90089>.

Oregon Legislative Fiscal Office 2025b, Impact of Proposed Legislation – Measure HB 3342 – B (reviewed May 14, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/91770>

Oregon Legislative Fiscal Office 2025c, Impact of Proposed Legislation – Measure HB 3544 – A (reviewed June 3, 2025), available at <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureAnalysisDocument/92955>

Pilz, D. et al. 2023, The Business Case for Investing in Water in Oregon, available at https://www.oregon.gov/owrd/WRDPublications1/230721_FINAL_Business_Case_for_Water_in_OR.pdf.

Rosenberger, R.S. 2018, Total Net Economic Value from Residents' Outdoor Recreation Participation in Oregon, Final Report prepared for Oregon State University, , available at <https://www.oregon.gov/oprd/PRP/Documents/SCORP-2018-Total-Net-Economic-Value.pdf>

United States Department of Agriculture (USDA), Summary by Size of Farm: 2022, Table 71 in 2022 Census of Agriculture, Oregon State and County Data (2024), available at https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Oregon/st41_1_071_071.pdf.