



# 2025-26 Water Rights Rulemaking

## **RULES ADVISORY COMMITTEE DRAFT MEETING SUMMARY**

### **FOR RAC REVIEW**

### **OCTOBER 31, 2025 (DIVISION 2 FOLLOW UP)**

The Oregon Water Resources Department (OWRD) convened a virtual RAC meeting to follow up on earlier discussions concerning Division 2. The meeting was held from 10:00 am to approximately noon. The meeting was recorded: the recording and other meeting materials are available online: <https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

### **RAC Members in Attendance**

- ~~Jeremy Austin, Central Oregon Land Watch~~
- Glenn Barrett, Water for Life
- ~~Anton Chiono, Confederated Tribes of the Umatilla Indian Reservation~~
- ~~Leah Cogan, GSI Water Solutions~~
- J.R. Cook, Northeast Oregon Water Association
- ~~Genevieve Hubert, Deschutes River Conservancy~~
- James Fraser, Trout Unlimited
- ~~Chris Hall, Water League~~
- ~~Keri Morin Handaly, Confederated Tribes of Grand Ronde~~
- Ryan Krabill, Oregon Farm Bureau
- ~~Greg Kupillas, Oregon Groundwater Association~~
- Mark Landauer, Special Districts Association
- Karen Lewotsky, Oregon Environmental Council
- ~~Sarah Liljefelt, Oregon Cattlemen Association~~
- ~~Michael Martin, League of Oregon Cities~~
- ~~Austin Patch, Summit Water Resources~~
- ~~Lauren Poor, Portland General Electric~~
- Brian Posewitz (proxy for Kimberley Priestley), WaterWatch of Oregon
- ~~Branden Pursinger, Association of Oregon Counties~~
- Ken Yates (proxy for April Snell), Oregon Water Resources Congress
- Marika Sitz (proxy for Jeff Stone), Oregon Association of Nurseries
- Mikaela Watson (proxy for Jessi Talbott), Central Oregon Irrigation District

### **Public Attendees**

- Daryl Dunn

- Richard Kosesan (Water for Life)
- Jessi Talbott (Central Oregon Irrigation District)

### **Oregon State Agency Staff**

- Donna Brann (Oregon Office of Administrative Hearings)
- Will Davidson (OWRD)
- Danette Faucera (Oregon Department of Fish and Wildlife)
- Laura Hartt (OWRD)
- Bryn Hudson (OWRD)
- Racquel Rancier (OWRD)
- Jesse Ratcliffe (Oregon Department of Justice (DOJ))

### **Division 2 Follow Up Discussion**

Racquel Rancier (OWRD) noted the two documents provided to the RAC members prior to the meeting (available online:

<https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>):

- Division 2 Draft Rules – second draft; October 15, 2025
- Rule Revision Tracker – Div 2; October 16, 2025

Racquel then summarized the major sections of the proposed Division 2 rules on which she thought RAC members may wish to focus discussion:

- OAR 690-002-0075 – Scope of Hearing for Hearings Not Governed by 690-002-0005(2)
- OAR 690-002-0095 – Discovery
- OAR 690-002-0205 – Default Hearing Schedule
- OAR 690-002-0225 – Request for Party Status

Racquel asked if there were other sections folks wanted to discuss. There were no other sections raised. One RAC member stated that from his perspective, the default hearing schedule and discovery items were the major issues for the group to review.

Racquel noted that there had seemed to be confusion by some members, so she wanted to provide clarity regarding when Division 2 rules, the Oregon Office of Administrative Procedure Act (APA), and/or House Bill 3544 (2025) applies to administrative hearings.

Jesse Ratcliffe (DOJ) explained that the baseline for administrative hearing heard by Oregon Administrative Hearings is the APA, ORS 183. He explained that for OAH hearings, the Attorney General's Model Rules apply unless there is something more specific required by statutes that govern agencies. He also noted that the Model Rules do allow agencies to adopt more specific rules and that rules pertaining to Discovery are one area where agencies have that option.

Jesse continued by noting that agencies have specific statutes that may either supplement or override the APA, including House Bill 3544 (2025) which does supersede parts of the APA. However, not all OWRD processes leading to a contested case are covered by HB 3544. Most

application processes are covered by the new legislation, but those involving hydroelectric licensing are not, largely due to their governance by the Federal Energy Regulatory Commission.

The Department's overarching goal is to standardize processes; if the RAC has suggestions for greater uniformity, the Department encourages members to share those.

Jesse explained that the new rules are an example of HB 3544 providing the Department with authority to deviate from the Model Rules; the party status rules are intended to implement the legislation without changing substantive standards. Racquel reiterated that if HB 3544 does not govern, then OAR 137-003 (Model Rules) would, including for requests for party status.

One RAC member acknowledged that HB 3544 does not apply to all processes, and that hydroelectric licensing and related processes are complicated. He noted that with respect to converting hydroelectric water rights to instream water rights, the statute does not provide a process while the Department's rules do (e.g., proposed order and chance to protest). He asked if the Department will be extending standardization efforts to these processes. Racquel responded that HB 3544 doesn't apply to ORS 543, so there are limitations. The RAC member replied that he did not interpret HB 3544 as precluding applicability to hydroelectric related processes and urged the Department to standardize the PFO/protest process for hydroelectric as well. Racquel responded updates pertaining to hydroelectric related processes may be addressed further by the Department in the future. *(Note: HB 3544(2)(2) explicitly states that the act only applies to Chapter 537, 540, or 541; not hydro statutes in 543 or 543A).*

### **Overview**

Racquel asked if 690-002-0075 was helpful. Racquel said a RAC member had suggested removal of the qualifier "and as identified by the administrative law judge," because it causes confusion regarding the ability to add issues other than those raised in a protest. OWRD has wondered whether any of the rule is needed. A RAC member agreed that the language is confusing and should be removed.

Racquel noted some of the issues raised by the RAC previously with respect to OAR 690-002-0095, including parameters around admissions, production, interrogatories, subpoenas, and public records requests.

Racquel also noted prior RAC comments regarding the default hearing schedule (OAR 690-002-0205) which deviate from the Model Rules. Jesse added that OAR 137-003-0566(2) (Model Rules: Discovery in Contested Case Hearing – Methods) does not specify programs or category of cases to which the Model Rules apply. The Department's proposed rules outline methods of discovery but do not affect the evidentiary standard for the scope of discovery requests.

### **OAR 690-002-0095 – Discovery**

Racquel explained that the new rule is intended to streamline processes and help lessen the backlog; the overarching goal is to provide adequate due process, while also reaching timely decisions in a cost-effective manner.

A RAC member asked why the Department was taking this issue on, given that HB 3544 balances

efficiency with due process and does not direct limits on methods of discovery. He further noted that the choice was consciously made during the legislative session. He suggested that removing requests for admissions was actually inefficient, because these requests are a tool parties use to help narrow issues and determine what should be admitted during discovery. Racquel asked for suggestions noting the goal for timely and cost-effective hearings with due process. The RAC member stated that discovery methods (requests for admission; interrogatories) were not contributing to the backlog. He also suggested that because HB 3544 sets the hearing timeline at 180 days, the timeline itself will force discovery to fit within that window of time. Racquel responded that the timeline may help, but discovery requests requiring a month or more of staff time can impact the Department's programs and services. A RAC member responded that parties could object to discovery requests viewed as unduly burdensome.

Jesse added that while there are some cases where discovery is not burdensome, he has been involved in cases, primarily on the litigation front, that have required the Department to spend large amounts of its legal budget on a handful of individual cases. He suggested this, too, is a due process issue, because the Department cannot move forward other parties' cases. The Department is seeking to level the playing field for parties seeking information to move their cases forward. He also noted that even if the Department objects to discovery requests as overly burdensome, that process is costly and timely due to motions to compel production. Racquel noted that contested cases not only involve council and the Office of Administrative Hearings, but also Department staff who have to be diverted from other work.

The RAC member reiterated his concerns regarding limits on discovery that deviate from those in the Model Rules. Racquel noted that the Model Rules allow for deviation. The RAC member responded that he was not questioning the Department's authority, just how that authority was being used.

Another RAC member shared similar concerns regarding limitations on interrogatories, stating that dropping from 20 as specified in the Model Rules down to 5 was excessive. She also suggested that the Department was focusing too much on discovery as the reason for the Department's backlog and urged the Department not to punish parties because of the outliers. She noted that while the Department may consent to allow for more discovery/interrogatories, it was not clear how the Department would decide that allowance.

Racquel asked the RAC member for suggestions on what an appropriate middle ground might be.

#### **OAR 690-002-0205 – Default Hearing Schedule**

Racquel noted that some changes were made to the proposed rules based on feedback from the Office of Administrative Hearings. Those changes are highlighted in yellow on the revised draft rules document. She emphasized that HB 3544 requires a default hearing schedule.

One RAC member suggested that discovery requests could happen sooner in the schedule, which could then provide more time to respond to discovery requests (e.g., 30 days). He also suggested allowing more time between responding and motions to compel (e.g., 30 days), because parties need to review the response to see if they got what they requested/needed.

The RAC member also suggested that the list of issues element of the hearing schedule was unnecessary and not in line with what occurs on the litigation side. He noted that the back and forth devoted to motions and arguments regarding how to summarize issues raised in a protest was time that could be better spent on other steps in the hearing process.

Another RAC member asked if the highlighted language “for any referral that is submitted in compliance with OAR 137-003-5151” means the deadline doesn’t apply in some cases. Donna Brann (OAH) responded that the language means the schedule clock does not start until OAH receives a completed filing for the case, noting that if the filing is incomplete OAH does not want to lose time because something that should have been submitted wasn’t.

Jesse stated that he was interested in the idea of trying to move discovery up earlier and would review the rules with that in mind. He noted that nothing prevents parties from engaging in informal discovery to work things out prior to filing a motion to compel. A RAC member replied that earlier discovery would compensate for allowing more time for responses and review of responses before filing a motion to compel. Will Davidson (OWRD) noted that the new protest standards include whether an issue has been sufficiently raised. He acknowledged that disputes over issues are likely but that having sideboards regarding when to resolve disputes was a good idea. The RAC member responded that protests may raise issues lacking specificity or that are irrelevant, so dispositive motion can resolve those issues.

Racquel asked how much of the issues can be resolved prior to referral to OAH. Jesse responded that adding goals regarding the proposed issue list to the rules might help clarify issues prior to referral.

<b><u>Rule</u></b>	<b><u>Comments/Questions</u></b>
690-002-0075	Remove the qualifier “and as identified by the administrative law judge as allowed by applicable law because it is unhelpful; confusing.
690-002-0095	Reconsider barring requests for admissions as a discovery tool.  Reconsider number of allowed interrogatories .
690-002-0205	Move up discovery request timeline.  Allow 30 days for response to discovery request  Allow 30 days between response to discovery and motion to compel discovery  Remove proposed issue list and objections to proposed issue list from schedule  Add goals regarding proposed issue list

**Public Comment:** No oral public comments were offered.

**Wrap-Up & Next Steps:** The Department will review the RAC’s input and consider additional revisions.