



2025-26 Water Rights Rulemaking

RULES ADVISORY COMMITTEE DRAFT MEETING SUMMARY FOR RAC REVIEW OCTOBER 21, 2025 (RAC 5)

The Oregon Water Resources Department (OWRD) convened the fifth RAC meeting on October 21, 2025, from 8:30 a.m. to approximately 12:00 p.m. The meet was hybrid, held in Salem at OWRD's headquarters and via Zoom. 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 LandWatch
- 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
- Kimberley Priestley, WaterWatch of Oregon
- Branden Pursinger, Association of Oregon Counties
- Ken Yates (proxy for April Snell), Oregon Water Resources Congress
- Jeff Stone, Oregon Association of Nurseries
- Mikaela Watson (proxy for Jessi Talbott), Central Oregon Irrigation District

Public Attendees

- Howard Coopersmith

- Rich George (Portland General Electric)
- Ryan Gleason (City of Portland)
- Richard Kosesan (Water for Life)
- Michael Martinez
- Ted Ressler (Summit Water Resources)
- Brent Stevenson (Santiam Water Control District)
- Jay Weiner (Rosette Law)

Oregon State Agency Staff

- Corey Courchane (OWRD)
- Will Davidson (OWRD)
- Arla Davis (OWRD)
- Danette Faucera (Oregon Department of Fish and Wildlife)
- Adam Frederick (OWRD)
- Cassidy Fredlund (OWRD)
- Cole Hendrickson (Oregon Department of Environmental Quality)
- Lisa Jaramillo (OWRD)
- Laura Hartt (OWRD)
- Sarah Henderson (OWRD)
- Bryn Hudson (OWRD)
- Mindy Lane (OWRD)
- Dante Luongo (OWRD)
- Racquel Rancier (OWRD)
- Katie Ratcliffe (OWRD)
- Joan Smith (OWRD)

Welcome & Introductions: Katie Ratcliffe (OWRD) welcomed the Rules Advisory Committee (RAC) and called the meeting to order.

Agenda Review; RAC 4 Meeting Summary; Rulemaking Process: Laura Hartt (OWRD) went over the meeting agenda and provided an update on meeting summaries. She went over the revised meeting schedule, noting that three RAC meetings were added for October 31 (10:00 a.m. – noon), November 12 (8:30 a.m. – noon), and November 21 (8:30 a.m. – noon). Meeting summaries for RAC 1 and 2 are available for review, with corrections for the RAC 2 meeting summary due by 10/23. The Department is actively working on the RAC 3 and RAC 4 meeting summaries. Additionally, the Department is requesting input on Divisions 310, 18, 315, and 17 by 10/31, Division 380 by 11/5, and Divisions 77 and 382 by 11/11.

See also RAC 5 Meeting Presentation, available online:

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

Proposed Rule Changes

Katie Ratcliffe (OWRD) gave an overview of the general structure of the Division 380 rules. She noted the addition of similar language from other divisions to implement HB 3342 (2025) and HB 3544 (2025).

General topics covered included: phased application processing, electronic notification, aligning documentation naming conventions for transfers with water rights, expanding the use of the Department's weekly public notice process and reducing instances where newspaper public notice is required, implementing protest provisions to implement changes in Division 2, allowing proposed final orders to become final after 33 days if not protests are received, and other policy and process improvements, including incorporating current practice of conditioning transfers to prevent enlargement. New rules guiding permit amendments are also proposed. Because there is statutory authority but not rules, the Department is primarily using the existing process for transfers, with a few key differences in the process that are laid out in statute.

The Department also noted that comments and feedback collected for Division 380 will also be considered for Division 382- Groundwater Registration Modifications, provided those rules and the proposed changes within them are very similar.

Division 380 – Water Right Transfers

Rule	Comments/Questions	Department Response
General	One RAC member noted that the contested case portions of the proposed rules that connect back to Division 2 also incorporate other provisions and those should be referenced as well.	Department will review.
-0100	One RAC member asked if the definitions in Division 300 apply to Division 380.	Yes, Division 300 definitions apply to Division 380.
-2110(3)	<p>One RAC member noted that injury is more explicitly called out in statute than enlargement and asked if enlargement can cause injury.</p> <p>One RAC member noted that referencing “enlargement” explicitly in rule is not a larger standard, requiring protection of the public; rather the focus is on injury to junior users.</p> <p>One RAC member noted that conditioning a transfer to protect against “enlargement” is not in statute and asked about the reasoning for its inclusion in the rules.</p>	<p>The Department responded that it was possible. One scenario might be when a senior user enlarges to the detriment of a junior user.</p> <p>The Department is clarifying its current practice in rule. The Department explained that it considers both; authority to include enlargement along with injury comes from the doctrine of prior appropriation where users are allocated a certain amount water for beneficial use, and that amount</p>

	<p>A RAC member recommended looking at DEQ's conditioning of NPDES Permits, to see if that approach could work here.</p> <p>RAC members discussed inclusion of the word "potential" when evaluating and conditioning a transfer to protect against enlargement. Some suggested either removing the word entirely or using "likely" instead to make it clear that the Department is looking at direct enlargement resulting from the proposed change. A RAC member also noted that sometimes applications cannot be approved without conditioning to mitigate for injury or enlargement. Another RAC member noted the similarity with how DEQ conditions NDPS permits.</p> <p>A RAC member noted that some of the proposed rule language was not appropriate for rules and suggested it could remain in a check list for efficiency.</p> <p>One RAC member asked for an example of conditioning to protect from injury or enlargement.</p>	<p>cannot be enlarged through a transfer.</p> <p>The Department will review but notes that federal (Clean Water Act) implementation through state statute and rule differs from water rights conditioning because the latter is based on state prior appropriation law implemented through state statute..</p> <p>The Department noted that "potential" enlargement or injury is mitigated by conditions. Conditions are side boards to ensure that enlargement or injury do not happen are often included so that the Department can approve an application. The Department will evaluate whether likely would be a good replacement.</p> <p>The Department will review this recommendation.</p> <p>Examples of conditions include restrictions on how much water can be diverted. Conditions on existing permits get carried over with the transfer.</p>
-2120 (Rule Title)	<p>One RAC member noted that the addition of "appropriation" in the rule title was potentially out of scope for the rule section and not in alignment with ORS 540.532.</p> <p>Another RAC member inquired as to whether groundwater point of appropriations (POA) received adequate review.</p>	<p>The Department will review. The change was made to bring rules into alignment with current practice; rule technically already references point of appropriation (OAR 690-380-2120(1)).</p> <p>Groundwater point of appropriations are reviewed by the Department's Groundwater Section to ensure in POA pertain to same aquifer.</p>

<p>-2120 (2)(c)</p>	<p>One RAC member noted that this rule is missing cross references to ORS 537.348 and 537.465 and suggested either removing all ORS references or including a complete list of ORS references for clarity.</p> <p>One RAC member noted that “validated” is not used elsewhere in the rules; he also suggested that if retained, only the second use of the term was appropriate.</p> <p>One RAC member asked about the reference to instream rights and if this standard applied to all junior rights.</p> <p>One RAC member asked who was responsible for submitting claims of injuries for instream water rights.</p> <p>One RAC member asked if the language specifying “existing” rights was necessary and if the Department considers changes to instream rights that injure other rights.</p>	<p>The Department will review.</p> <p>The Department will review. Validating claims of injury is in alignment with current practice.</p> <p>The Department will review. The intent was to clarify evidence of no claim of injury also applies to instream water rights.</p> <p>The watermaster submits the claim of injury for an instream right.</p> <p>The Department will review. There may be an opportunity to incorporate this into the definition. Injury for instream applications is covered in Division 77.</p>
<p>- 2120(3)(a) (E)</p>	<p>One RAC member noted that the cross references to statutes appear to be missing (ORS 537.348 and 537.465), so the suggested removing ORS references or including a complete set of references.</p>	<p>Department will review.</p>
<p>-2120 (3)(b)</p>	<p>A RAC member asked what happens if someone refuses certified mail.</p>	<p>The Department responded that they most likely would coordinate delivery efforts with the local master. Department will review.</p>
<p>-2120 (5)(b)</p>	<p>A RAC member stated that the language as written, suggests an “intent” to enlarge.</p> <p>A RAC member suggested addition of “potential for injury” language.</p>	<p>Department will review.</p>
<p>-2200(2)</p>	<p>A RAC member asked if enlargement occurs when a change in place of use occurs moving water “from” lands that are inundated with water to a proposed place of use, when the water rights holder has not irrigated the full acreage.</p> <p>Another RAC member asked if transferring instream, can those users transfer the full amount? I.e., is there</p>	<p>The Department responded that it would be enlargement because the original place of use was not benefiting from irrigation due to the inundation.</p> <p>The Department does not allow the portion to be leased instream or moved to new lands.</p>

[illegible]

	the rules clarify that an application may only request multiple changes if they are related.	Department will review how we can improve clarity.
-3000 (8)(a)	<p>One RAC member asked whether the new requirements proposed in this section are required by the recent legislation.</p> <p>Other RAC members suggested that the requirements appear to be overly burdensome and, perhaps redundant for the caseworkers.. It was suggested that this information could be contained in an application checklist.</p> <p>One RAC member noted that required items should be in rule so that the Department can process the application quickly.</p> <p>Another RAC member asked whether the language conflicted with ODFW's stream program language.</p>	<p>Some of these items have been added to ensure that the Department has the necessary information to process the application, at the time of receipt so that it can be processed as efficiently as possible. The Department will review.</p> <p>Noted.</p> <p>ODFW has reviewed this language so there should not be any conflicts.</p>
-3000 (12)(a)(A)	Some RAC members discussed whether the receipt requirements were too stringent, e.g., providing records of electricity use.	This language is largely tied to the evidence that the Department receives, and the intent is to provide more clarity on this type of evidence. The Department will review.
-3000 (12)(a)(C)	One RAC member noted potential accuracy issues with aerial imagery evidence.	Noted.
-3000 (12)(b) (proposed for deletion)	One RAC member asked if the removed language is also going to be removed from the affidavit template.	Yes. The language is duplicative in rule, but the policy still stands.
-3000 (19)	One RAC member suggested including "local land use regulations" to clarify that those apply as well.	The Department will review.
-3100 (2)(a)	One RAC member suggested including language that allows the CWRE signature to be electronic to clarify that both can be digital.	The Department will review
-3220(3)	One RAC member asked if "or" implied that that only one criterion can be met. She recommended clarifying the language "except under the following circumstances" to indicate that only one criterion needs to be met.	This language implies that at least one may be met.

-3400	<p>One RAC member requested that the Department checks into what happens for fee waivers when credit/debit cards start to be accepted.</p> <p>One RAC member recommended changing “50 percent of the application fee” to include processing fees.</p>	The Department will review.
-4000 (3)(f)	Two RAC members discussed the “any other requirements” language. There were suggestions to add “any other requirements set forth in ORS 540 or Div 380” or “any other requirements set forth in applicable laws”	The Department will review.
- 4000(8)(a) , (b)	One RAC member noted that the consent to injury process historically was discretionary, allowing for consent to injury in order to allow restoration projects to go forward; however, current use of consent to injury in this context seems to have strayed from that intent and is more focused on opposition. She was concerned that the new language may be opening up more process for those in opposition. The RAC member indicated she will continue to evaluate this section.	Noted.
-4010 (2)(b)	One RAC member suggested that language directly from statute for forfeiture be added.	The Department will review.
- 4010(2)(c)	One RAC member noted that ORS 540.520(g) includes the deleted language and recommended retaining it.	The Department will review.
-4010 (2)(g)	Two RAC members discussed the “any other requirements” language. There were suggestions to add “any other requirements set forth in ORS 540 or Div 380” or “any other requirements set forth in applicable laws”.	The Department will review.
-4030	One RAC member noted that “standing statement” rule language has been removed but there is no description of party status.	The Department will review.
-4200(2)	One RAC member noted that process consolidation could allow parties to bog the process down, especially if the Department does not review claims of forfeiture.	When a transfer is protested and a claim of forfeiture is filed at the same time, the Department does not have discretion on claims. In this case the ALJ is often compelled to address these topics together so there needs to be a standard process

		for consolidation. The Department is open to suggestions.
- 4200(2)(a)	One RAC member asked if a protest asserting that a water right to be transferred has been forfeited through non-use must rely on the preponderance of the evidence standard.	Yes, because during contested case proceedings, the ALJ must reach a finding based on preponderance of evidence.
- 4200(2)(b)	One RAC member stated that the new rule language allows virtually anyone to assert non-use and force the applicant into a contested case process. He also stated this was lacking in due process.	The Department will review. The Department is open to suggestions.
-4200(3)	One RAC member noted that 15 days is not in the recent legislation and seems too short a period; he recommended a minimum of 30 days.	The Department will review.
-5000	N/A	The Department confirmed that like-changes made in the initial review and proposed final order rules will also be considered for final orders.
-5000(1)(c)	One RAC member noted that the language implies the right must be categorically immune rather than not under forfeiture proceedings.	The Department will review.
-5000(1)(f)	One RAC member noted that the existing language was too broad and recommended, “any other requirements set forth in ORS 540 or Div 380” or “any other statutes or rules”.	The Department will review.
-5000(2)	One RAC member noted that the language for the “remaining right certificate(s), shall become a final order...” does not read right.	The Department noted that “shall become a final order” should read “shall become final.” The Department will revise.
-5100	One RAC member noted that he will coordinate with municipal RAC members to improve the language concerning compatibility with comprehensive plans. .	Noted.
-6020 (no proposed changes)	One RAC member asked where the statutory allowance for an extension on a transfer lies. One RAC member asked if the intent was to provide flexibility for applicants by allowing for extensions on transfers.	The Department will review and follow up. Yes, the intent is to provide flexibility.
-7010(1)(c)	One RAC member stated that “or additional point(s) of diversion” is not supported by statute and recommended deleting it.	The Department will review.

-7020 (1)(a)	One RAC member asked if “need not be a water use subject to transfer” was necessary language.	Permits are not perfected, non-certificated so they are technically not subject to transfer. The Department will review the language but believes the language should be included.
-7100(1)	One RAC member noted the requirement to provide an email address was missing.	The Department will add email address to these requirements.
-7100(4)	One RAC member noted agreement with 120-day timeframe.	Noted.
-7300	One RAC member noted that this section of the rules does not specify how the final order will be issued or distributed to the applicant and asked how electronic notification from HB 3342 will be applied.	The Administrative Procedure Act establishes how final orders can be distributed, and in this case, require paper mailing and cannot be sent via email. The Department will review opportunities to provide more clarity for notification of a final order.
-8000 (1)(b)	One RAC member asked about the removal of “character of use of a right to store water” and asked if there was ever a time when it could be transferred.	There is allowance for these types of transfers with respect to temporary district transfers. For regular temporary transfers, however, the Department has never had this authority.
-9000(1)	One RAC member noted appreciation for the language clarification.	Noted.

Public Comment: Comments received by RAC members are reflected above.

Tedd Ressler provided comments pertaining to the permit amendment portion of the Division 380 rules: Most criteria listed out are consistent with statute, but OAR 690-380-7300 1(c) and -73001(h) are not. Additionally, the 120-day completion requirements for applicants feel appropriate. I would also like to see a timeline given to the Department for processing the permit amendments. Sometimes, permit amendments may sit in the backlog of applications for years, all the while permittees cannot start construction or make progress on development. Perhaps a legislative solution could be pursued to allow for automatic extensions for permit amendments based on the amount of time it took the Department to process the amendment.

Wrap-Up & Next Steps: The Department noted that the next RAC meeting is scheduled for October 29th to discuss Division 382 rules in the morning (8:30 a.m. – noon) and Division 77 in the afternoon (1:00 p.m. – 5:00 p.m.), with other agenda items to be determined. The meeting was adjourned.