



2025-26 Water Rights Rulemaking

RULES ADVISORY COMMITTEE DRAFT MEETING SUMMARY FOR RAC REVIEW

OCTOBER 29, 2025 (RAC 6 AND 7)

The Oregon Water Resources Department (OWRD) convened the sixth and seventh RAC meetings on October 29, 2025, from 8:30 a.m. to approximately 12:00 p.m. and 1:00 p.m. to approximately 4:00 p.m. The meeting 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 (across both RAC 6 and RAC 7)

- 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
- Marika Sitz (proxy for Jeff Stone), Oregon Association of Nurseries
- Jessi Talbott, Central Oregon Irrigation District

Public Attendees

- Ted Greer
- Richard Kosesan (Water for Life)
- Becky Powell (League of Women Voters of Deschutes County)
- Jim Powell
- Ted Ressler (Summit Water Resources)
- April Snell, Oregon Water Resources Congress
- Mikaela Watson (proxy for Jessi Talbott), Central Oregon Irrigation District

Oregon State Agency Staff

- Eliot Crafton (OWRD)
- Danette Faucera (Oregon Department of Fish and Wildlife (ODFW))
- Adam Frederick (OWRD)
- Cassidy Fredlund (OWRD)
- Ivan Gall (OWRD)
- Anne Hayden-Lesmeister (ODFW)
- Lisa Jaramillo (OWRD)
- Jake Johnstone (OWRD)
- Kim Fritz-Ogren (OWRD)
- Laura Hartt (OWRD)
- Sarah Henderson (OWRD)
- Bryn Hudson (OWRD)
- Mindy Lane (OWRD)
- Amanda Mather (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; Rulemaking Process: Laura Hartt (OWRD) went over the meeting agenda and provided an update on meeting summaries. She reviewed the revised meeting schedule, noting upcoming RAC meetings for October 31 (10:00 a.m. – noon), November 12 (8:30 a.m. – noon), and November 21 (8:30 a.m. – noon). The Department is actively working on RAC 3, 4 and 5 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 6 and 7 Meeting Presentation, available online:

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

RAC Input on Proposed Rules

Racquel Rancier (OWRD) provided a general overview of proposed changes for Division 382 - Groundwater Registration Modifications. She noted that many of the proposed changes also are proposed for Division 380- Water Right Transfers. The Department will apply any applicable comments received relating to proposed changes in Division 380 to proposed changes in Division 382, and vice versa.

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 no protests are received, and other policy and process improvements, including incorporating current practice of conditioning transfers to prevent enlargement.

Racquel Rancier also provided a general overview of proposed changes for Division 77- Instream Water Rights. Topics covered included electronic notification, phased application processing, 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 no protests are received, clarifying authority for protecting instream rights out of state, amendments to the estimated average natural flow requirements, paperwork requirements for irrigation districts and other similar entities, and rule alignment with statutory changes

Racquel Rancier reviewed additional changes made in response to RAC comments to Division 14- Certified Water Right Examiners, Division 300- Definitions, Division 320- Water Right Permits, and Division 330- Water Right Certificates. The Department does not plan to revisit these divisions with the RAC unless RAC members request further discussion.

Division 382 – Groundwater Registration Modifications

Rule	Comments/Questions	Department Response
-0400(7)	One RAC member asked how "tentative date of priority" is defined.	Date when applicant begins construction, as identified on the groundwater certificate of registration.
-0400(8-10)	One RAC member noted that the language "existing registration" should say "recognized registration," because the registration does not change through modification.	The Department will review.
-0400 (11)	One RAC member noted that the new requirements seemed complicated and	CWRE's need to do maps for regular transfers, but not for

	wondered if the required maps should be prepared by a Certified Water Right Examiner (CWRE) rather than relying on a landowner to produce their own map.	groundwater registration modification. This is largely because registrations still need to go through adjudication, so the change is technically not final. There are many processes that do not require CWRE maps that landowners will often complete on their own.
-0400(11)(b)	One RAC member noted that this section is unclear that groundwater registration applications are limited to one modification, because three certificates of registration are referenced.	OAR 690-382-0300(2) denotes this, but the Department will review to determine how the language can be clarified.
-0400(18)	One RAC member asked how the cap for the groundwater registration modification fee is defined.	The cap for the fee is defined in ORS 537.610(4).
-0550(3)(b)	One RAC member asked whether groundwater registrations have ever been reviewed for impacts on scenic waterways.	Because groundwater registrations have not been adjudicated, they did not receive that level of review upon application. This review will only occur if a groundwater registration is modified.
-0550(3)(d)	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.
-0700(2)(b)	One RAC member asked if “Scenic Waterway receiving less water than previously available water” means the same thing as 550(3)(b). [See also -1000(1)(b)]	The intent was to keep the meaning the same. The Department will review this language as well as similar language in -1000 (1)(b).
-0900(1)	N/A	The Department noted punctuation error; will insert commas “...protests of, and contested case proceedings concerning...”.
-0900	N/A	The Department noted previous items flagged by a RAC

		member related to party status and standing statement edits. Department will review.
-1200	N/A	The Department noted that the language regarding compatibility with comprehensive plans will be revisited, because similar language appears in other divisions.

Division 77- Instream Water Rights

Rule	Comments/Questions	Department Response
-0000(7)	<p>One RAC member asked if there are any interstate compacts involving water rights, and if so, what would the implications be.</p> <p>Two RAC members noted that the language may need to be revised. There is work ongoing in the Walla Walla to protect water over state lines and they wanted to make sure that the rules do not preempt that work. There was also a suggestion to restructure the language to read “OWRD can only protect rights in Oregon”.</p>	<p>If there were an interstate compact, it would override state rules. (Note, the US Supreme Court has final jurisdiction over interstate compacts). The Department also does not have the authority to regulate to protect instream rights in another state.</p> <p>One potential interstate agreement that may have implications for managing water rights is the Walla Walla Water 2050 Plan, involving Oregon, Washington, Tribes, and the U.S. The Department will review and follow up with its North Central regional staff and the Confederated Tribes of the Umatilla Indian Reservation.</p>
-0010(14), (15)	One RAC member asked if the definition of “instream,” which refers to “place where water naturally flows or occurs” includes groundwater. He similarly noted	The Department asked the RAC member if he could provide some IWRS discussion notes that support

	that the definition for “instream flow” was not limited to surface water. He asked if the “inground” or “out of ground” should be considered, noted that the topic came up during the public process involving recent updates to the Integrated Water Resources Strategy (IWRS).	the idea of referring to groundwater in the definition of instream/instream flow. The Department’s current interpretation is that instream water rights administration is for surface water only; there is an exception for allocation of conserved water.
-0010(35)	One RAC member noted that ODFW does not require notification for anyone other than cities or counties and that when special districts are formed, notification requirements should be the same for them. Some RAC members took issue with including an NGO (i.e., Special Districts Association of Oregon). One RAC member noted that expanding notice requirements in this manner was potentially inequitable.	This section only lays out definition. The actual process, and provisions are later in the rules and will be discussed later. The Department noted that it had worked with ODFW but would review.
-0015(4), (5) proposed for deletion	<p>Some RAC members agreed with reasoning that there was no authority for the Department to apply Estimated Average Natural Flows (EANF) for leases and transfers. However, these RAC members did not agree that the Department has authority with respect to new water right applications. In practice, the Department has been limiting applications to EANF, but ODFW are the experts on flows required for fish and wildlife.</p> <p>One RAC member noted that “averages” do not reflect periodicity in stream flow, i.e., do not capture variability needed to support fish and wildlife.</p> <p>One RAC member noted that ORS 537.343 gives the Director authority to determine the quantity for instream protection and asked why the Department</p>	<p>The Department will review this section for consistency with ORS 537.332-.360.</p> <p>The Department uses averages to administer the water rights program, because it is not feasible to regulate streams 24/7.</p> <p>Instream Water Rights often are contested; the rule provide clarity regarding the</p>

	<p>could not just reference the statute rather than rely on rule OAR 690-077-0015(4).</p> <p>One RAC member asked why ODFW and OWRD using different models to calculate flows.</p> <p>One RAC member asked noted that instream water rights are contested because there are a lot of ramifications of the rights, including their impact on water availability. Another RAC member noted that the ramifications of no instream water rights have already been felt in many basins across the state.</p>	<p>Department's methodology and approach.</p> <p>The ODFW model optimizes for fish and wildlife habitat needs. The EANF model is hydrological, representing pre-historic streamflows, i.e., predating human consumptive use and impediments (i.e., dams). The Department will need to review relationship between models.</p> <p>Establishing instream water rights is a priority of the State.</p>
-0015(8)	<p>One RAC member asked for verification that the new rule language would not preempt all other uses.</p>	<p>The Department noted that the Commission can classify use within basins, but classification is different from withdrawing the basin from future appropriation. When these rules were first adopted, instream water rights were not acknowledged. The rule updates clarify that instream uses must be explicitly referenced in rules or orders withdrawing waters from further appropriation, which we believe makes the rule clearer.</p>
-0020(3)	<p>A RAC member noted that processing of instream water rights applications should align with processing of other water right applications, per ORS 537.349 and Division 310. She also noted that nothing</p>	<p>The proposed notification process is intended to help entities anticipate and/or avoid protests. In response to RAC concerns, the Department</p>

	<p>in statute suggests that Special Districts and municipalities are entitled to special notification not afforded other parties.</p> <p>Some RAC members repeated earlier concerns over including one NGO (i.e., Special Districts Association of Oregon) and allowing it to determine potentially who potentially affected water-related entities might be. These members stated the proposed rules are inequitable and outside the scope of new legislation. One RAC member commented that “only” in “... notify only those potentially affected water-related entities...” should be removed.</p> <p>One RAC member noted that ODFW has routinely notified governmental organizations and leaving out Special Districts is not fair, they want to be treated the same.</p>	<p>asked about adding language that the notice is a courtesy and that failure to notify is not grounds for challenge or protests. The Department will review.</p> <p>The Department explained that it had coordinated with ODFW. ODFW finds the notification process cumbersome for identifying entities and sending notifications for the existing rules. For this provision, ODFW works with the Special Districts Association, which provides it with a notification list.</p> <p>OWRD will review this section and follow up with ODFW.</p>
- 0020(5)(e)(B), (C)	<p>Some RAC members noted that GPS and other mapping tools should include quality standards to assure accuracy. RAC, members noted that GPS is not always accurate in pinpointing latitude and longitude locations and suggested broadening the language to include standard land surveying practices”.</p> <p>Some RAC members noted that the mapping requirements seem more rigorous than those in Division 305 and may pose challenges for long reaches where quarter-quarter measurements are required.</p> <p>A RAC member asked whether searching by the quarter-quarter on plaque cards will show the full instream reach.</p>	<p>The Department will review and evaluate for opportunities to incorporate more standards into Division 305.</p> <p>ODFW noted that they already use GIS for creating maps for instream rights.</p> <p>ODFW and the Department will review.</p> <p>Yes, the full instream reach would be indicated.</p>

-0029(2)	A RAC member noted that in addition to allowing the rules also should allow both confirmation to move applications forward as well as confirmation to stop the application process to occur in one email.	The Department will review.
-0031(1)(a) and (5)	N/A	The Department acknowledged that compatibility with comprehensive plans and posting of notices by local governments is under review.
-0043(1)	<p>One RAC member noted her reoccurring concern regarding requests for standing and party status.</p> <p>The RAC member also suggested adding “and meets requirements for a protest” after “...if a protest was timely submitted.”</p>	<p>The Department has this item under review.</p> <p>The Department may need to reference Division 2 requirements; the Department will review.</p>
-0052(2)	One RAC member noted that a “collaborative conversation” is subjective, could mean different things to different parties and should be refined for clarity.	This language currently mirrors language in Division 310. The Department will review.
-0054(1) (proposed for deletion)	<p>A RAC member noted that the original rules reference both the Commission and the Department; she asked for clarification on authority.</p> <p>Another RAC member stated that the deleted language provides important context regarding conversion of minimum perennial streamflows. A RAC member asked if this new language removed the process for those who want to engage or protest regarding those outstanding conversions.</p>	<p>The Department will review.</p> <p>The Department agrees that the language remaining is unclear and probably needs to reference the proposed final order and will review.</p>
-0054(1)	Two RAC members noted that all minimum perennial streamflows should have been converted to instream rights, but some still remain.	The Department responded that there are around 40 remaining. Post meeting, the Department confirmed there are currently 17 unconverted in the Umatilla Basin and 23

	One RAC member asked how many minimum perennial streamflows have not been converted to instream rights.	unconverted in the Willamette Basin.
-0065(4)	One RAC member notes that “year around” should say “year-round.”	The Department will make the edit.
-0065(4)	One RAC member asked for clarification if “lessor(s) and lessee” applies to Districts. One RAC member asked where ORS 537.343(2), as mentioned in the Rule Summary, does apply.	The Department responded that it should. The Department responded that it only applies to proposed final orders.
-0070(2)	A RAC member asked if a holder of a water use subject to transfer that is for “use of stored surface water” means “flow augmentation.” She also asked if this use would be characterized as changing the character of use. Another RAC member responded that there are several stored water projects authorized by Division 18 that add flows located in the Crescent Lake area.	The Department responded that flow augmentation requires a secondary water right. The Department needs to review this language.
-0071(1)	A RAC member noted that the mapping requirements were complicated and suggested that they should be prepared by certified water rights examiners (CWRE) to ensure accuracy and wondered if the Department was concerned it would disincentivize instream transfer and lease applications. One RAC member responded affirmatively based on her experience in the Deschutes Basin where nearly half of these types of transactions occur within the state, noting that CWRE maps exceed requirements for other transfers.	The Department noted that since instream lease changes are not permanent it does not make sense to require CWRE maps; the Department also shared concerns about the cost of requiring CWRE maps.
-0071(1)(b)	One RAC member noted that if required to include tax lot numbers on maps, that given how many tax lots are involved, the numbers would be nearly impossible to read.	The Department noted that rule language includes “if appropriate” but will review.

-0071(1)(c)	One RAC member asked if “other similar use” could reference nurseries as similar language in Division 305 does.	The Department will review.
-0075 (including 3)	<p>A RAC member stated that the processing of instream transfer applications should be the same as for out of stream transfer applications. She also noted that users should be allowed to transfer the full amount and not less than due to efficiency.</p> <p>One RAC member asked if return flows are accounted for and noted issues with the efficiency of some irrigation ditches and potential impacts on downstream users. A RAC member responded that the Districts are careful when leasing involves inefficient ditches.</p>	<p>The Department responded it will review language as well as Division 380, but they are generally the same.</p> <p>The Department accounts for any known potential losses, including evaporative loss and return flows. Those losses are subtracted from the full amount that can be transferred.</p>
- 0075(3)(b)(D)	One RAC member noted the paragraph reference should be “3(c)(B)” instead of “(2)(c)(B).”.	The Department will make this correction.
-0075(3) (c)	One RAC member asked how the newly added language changes the calculation for transferring water instream.	The Department responded there is no change in the calculation; the intent of the rule language is to clarify how the Department performs the calculation.
- 0075(4)(a)(A)	One RAC member asked if the Department should insert “a portion of” prior to “existing water right(s),” suggesting the current language does not refer to living certificates. .	The Department replied yes and will review.
-0076(2)(c)	One RAC member asked who would provide compensation, i.e., can third parties do this—pay someone to put water instream? Another RAC member responded that this was something her organization did frequently, in partnership with others.	Yes, third parties can do that. .
-0076(4)(b)	One RAC member asked if this rule section also includes water conveyance agreements.	The Department indicated that was the intent, but the current language does not appear to include it; the Department will review.

-0079(2), (4)	A RAC member noted that although “reporting” is referenced in (2), there do not seem to be any reporting requirements outlined in (3) or (4)).	The Department will review.
-0080 (proposed for deletion)	One RAC member asked why this rule existed in the first place.	The Department has not had time to dig into the history, but the current rules do not work under existing authorities.
-0100	A RAC member asked what the Department meant by “petition,” given that it has a specific meaning under the Administrative Procedures Act.	The Department reviewed ORS 537.352 and did not see use of the term “petition.” In general, the Department means “a formal written request”; the Department will review and consider revising the term.
-0105 Generally	<p>A RAC member asked if this new rule section is in line with statute.</p> <p>A RAC member gave an example of hydroelectric rights where the infrastructure for putting the water right to hydroelectric use no longer exists and that rights where the original use could no longer occur should not be allowed to be leased. Another RAC member responded that there is no real incentive to lease water instream if the option to resume use is taken off the table.</p>	<p>The Department responded that ORS 537.348 is vague, allowing for discretion.</p> <p>OWRD noted that hydro is a separate matter and asked RAC member to consider whether this was the only example.</p>
-0105(1)	A RAC member asked if “any prior final order” also means “preliminary final orders” that can become final orders.	The Department responded that no, for leases there is no PFO.

RAC Input of Notice of Proposed Rulemaking

Bryn Hudson (OWRD) provided an overview on the statement of need for the proposed rulemaking, including the statutory requirements contained within ORS 183.335. She noted multiple calls to action based on customer service metrics, water law experts, Governor Kotek’s signing letter on the Department’s budget, 2025 legislative efforts (budget and legislation), and the agency itself, all emphasizing the need to modernize and streamline the water right and contested case process. The need for the proposed rulemaking is based on the need to 1) reduce

processing times, 2) reduce existing and prevent future backlogs, 3) ensure a clear, consistent process, and 4) promote timely and informed decisions while providing due process.

The intended outcome of the proposed rulemaking is to (1) improve the clarity and transparency of rules, (2) standardize water rights transaction processes to improve consistency and predictability, (3) update statutory and rule references and align language as needed, (4) correct grammar and spelling as needed, and (5) implement other policy and process improvements in those rule Divisions already subject to proposed changes.

There was discussion of the water rights backlog and that factors included lack of efficient processes, as well as lack of sufficient funds. The RAC noted that improvements pursued during the rulemaking will not be enough to overcome the lack of State investment in or reductions to the Water Rights Services Division; funding for staff is needed to improve processing times concerning water rights transactions.

It was noted that “preventing future backlogs” is not a reasonable goal, because the Department cannot control the number of applications it receives. Some RAC members suggested “minimizing” or “reducing” future backlogs as a rulemaking need rather than “preventing” or “eliminating.” Another RAC member asked if and how the Department projects fluctuations in the number of water right transactions over time, for example, an uptick in transfers accompanying a reduction in new water right applications. The Department noted that the only projections it typically does is related to fee revenue, when the Department pursues water right fee increases; however, those revenue and transaction projections are largely assumptions. Lastly, one RAC member noted that the Department also must respond to the needs of the public to satisfy legislative intent. The Department noted that there will be more opportunities for RAC members to provide input on the statement of need.

Laura Hartt (OWRD) provided an overview of the requirements and inquiries made to assess racial equity impacts stemming from the proposed rulemaking, as required by ORS 183.335. She noted that this statement also will include a summary of engagement efforts with Oregon’s nine federally recognized tribes. One RAC member noted that given the wide swath of rules being updated that virtually all Oregonians are impacted, i.e., irrigators, municipalities, instream interests, rafters/outfitters, and drinking water providers. A Tribal RAC member described the historical impacts of colonization on Oregon’s Tribes. She noted that this colonization has negatively impacted the waterways, fish and lands that Tribes have historically depended upon for their survival. She also noted that Oregon’s water code pre-dates many of the treaties between the Tribes and the federal government. The Department noted that there will be more opportunities for RAC members to provide input on the racial equity impacts of the proposed rulemaking.

Laura Hartt also provided an overview of the requirements and inquiries made to assess fiscal and economic impacts stemming from the proposed rulemaking. Key inquiries include an estimate of the economic impacts generally, and the cost of compliance for state agencies, units of local government, small businesses, and the public, as required by ORS 183.335. One RAC member noted that relevant sister agencies will be impacted, including the Department of

Environmental Quality, Oregon State Parks and Recreation Department, Oregon Department of Fish and Wildlife. Additionally, a RAC member noted that counties and cities will likely have more feedback to share regarding economic and fiscal impacts associated with the rulemaking with respect to the issuance of new water rights and their compatibility with comprehensive plans once they have seen the next iteration of the proposed rules. The Department noted that there will be more opportunities for RAC members to provide input on the fiscal and economic impacts of the proposed rulemaking.

Public Comment: Comments received by RAC members are reflected above. No oral public comments for Division 382 and Division 77 were received.

Laura Hartt (OWRD) noted that written comments received for Divisions 382 and 77 will be compiled and posted online after the deadline given to the RAC for receiving written input (November 11th):

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

Wrap-Up & Next Steps: The Department noted that the next RAC meeting is scheduled for October 31 to discuss Division 2 rules (10:00 a.m. – noon) and after that, the next RAC is scheduled for November 12th. 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. The meeting adjourned at approximately 3:30 pm.