

2/27/26

Proposed Rule Revision Tracker

Division 17 – Cancellation of Perfected Water Rights

Rule language changes made after the close of the public comment period February 5, 2026.

Rule(s)	Commenter/Comment	Response	Changed?
Affidavits -0200(1)	<p>Kimberley Priestley (RAC; WW) - The rule application appears narrower than that in statute. ORS 540.660(1) directs a watermaster to file an affidavit if they have reason to believe that circumstances exist that prevent a water right from being exercised “according to the terms and conditions of the water right...”. ORS 540.660(1) also provides that the affidavit shall state that there is no physical way that the water may be applied “to a beneficial use” “in accordance with the terms and conditions” of the water right certificate.</p> <p>OAR 690-017-0200(1) however, stops short of this and only directs an affidavit if the water right cannot be exercised; it does not include the terms “within the terms and conditions of the water right” or “beneficial use”. While the OWRD has added this language to what must be in the affidavit in sub (2), which we support, leaving it out of the initial standard in (1) could inadvertently narrow the OWRD’s determinations to only those situations where no water is used, rather than water not being used “within the terms and conditions of the water right” or for the “beneficial use” of the underlying right. To rectify this, the language “beneficial use within the terms and conditions of the water right” should be inserted into (1), as well as remaining, as proposed, in (2).</p>	<p>This rule and the recommended language partially cite statute in 540.660 (1). In the interest of clarity, the Department has removed some of the language and replaced it with “as specified in ORS 540.660(1).” The alternative would be to directly copy the entire text from statute. In the interest of brevity in the rules, OWRD has cited statute.</p>	<p>Change made.</p>
Affidavits -0400(1)	<p>Kimberley Priestley (RAC; WW) - This section inserts new language that qualifies “evidence” submitted to</p>	<p>Change made to reflect current approach by not requiring evidence to be submitted as affidavits. Strike sections referencing subsections 2 and 4 for parity and rule structure.</p>	<p>Change made.</p>

	the Department with “in the form of affidavits”. ORS 540.631 does not require that the evidence be in the form of an affidavit, rather it just notes “evidence”. While existing subsection (2) sets forth what must be in any affidavit, that is limited to situations “where the evidence “is in the form of affidavits”. Neither the statutory directives, or the existing rule language, limit evidence submitted to the OWRD to be in the form of affidavits. Please strike “in the form of affidavits” from section (1) to align with statute.	Note, however, no corresponding change was made to subsection (5) because affidavits have a clear standardized formal process.	
-0400(1)	OWRD Staff Proposed Change – 0400(1) should be revised to recognize that ORS 540.612, in addition to ORS 540.610(3) & (4), provides for an exemption from forfeiture. Other portions of the proposed rules already do that, such as 690-017-0010(8), 690-017-0400(6)(d), and 690-017-0600(2)(a).	OWRD added ORS 540.612 to the list of exemptions.	Change made
Grammar -0400(2)(b)	Kimberley Priestley (RAC; WW) - It would seem more efficient all around to require the certificate number rather than the “page number of the certificate”.	OWRD modified. For older water rights, the page number is the certificate number, but that may not be obvious because it is not identified as the certificate number. Changed to: Certificate number (or page number)	Change made.
Aerial imagery; evapotranspiration -0400(4)	April Snell (RAC; OWRC) - We have concerns about the addition of “aerial imagery” and “evapotranspiration data” to 690-017-400 (4). Aerial imagery is a snapshot in time, which can be useful, but without specific time delineation it may not reflect actual water use and agricultural practices. Similarly, evapotranspiration data can be useful in some instances, but Oregon lacks the on the ground monitoring needed to verify this data, particularly in areas with multiple types of crops. We request these additions be removed	As per statute and the proposed rule language, the standard of proof in cancellation of water rights subject to forfeiture is the preponderance of the evidence. Inclusion of aerial imagery and evapotranspiration as support for the notice of proposed cancellation in the proposed rules does not change the standard of proof. Even without the change, the Department could use this data. OWRD is opting to include it here for transparency.	No change made
Cancellation scope	Kimberley Priestley (RAC; WW) - Again, this rule provision appears to be narrowing the scope of what is subject to cancellation. The governing statutes are	OWRD partially agrees; there may be instances outside of (2)(g) that meet the standard of forfeiture. OWRD is concerned, however, about making significant changes to this section which were not	No change made.

-0400(2)(g)	clear that a water right can be cancelled not only if the water is not used, but also if the use is not for the beneficial use of the water right in accordance with the terms and conditions of the water right. So, for example, if a water right holder was using water for their beneficial use but their diversion structure only allowed diversion of half of the water granted under their water right, the unused water is subject to partial forfeiture and can be cancelled (see ORS 540.610(3)). As such, this section needs to be amended so that the required statement is that the affiant knows that the use has not been used at all or has not been used beneficially within the terms and conditions of the water right.	part of the RAC discussion or the notice of proposed rulemaking. Therefore, we decline to make further changes at this time. Given that (2)(g) is the most likely scenario, it makes sense that is part of the affidavit. With changes included above for -400(1), other situations can be provided as information submitted to the department. Further, for OWRD, should other scenarios exist we can make findings as it pertains to (2)(g) stating that the situation is not relevant but that the facts still meet the standard of forfeiture.	
-0400(5)(b)	Kimberley Priestley (RAC; WW) - We appreciate the new language that attempts to address concerns raised with V2.	Comment in support	No change made
-0600(1)	OWRD Staff Proposed Change – Missing standard language related to requests for party status and contested cases.	Added: requests for party status, and contested case proceedings	Change made.
Risk of cancellation	Ryan Krabill (RAC; OFB) - We also have serious concerns with any rule changes that could make cancellation outcomes more likely through accelerated timelines, default finality, or heightened “gotcha” requirements for rebuttal. OFB supports allowing agricultural water right owners to obtain waivers of five-year cancellation for nonuse when sufficient reasons exist, and OFB supports repealing the portion of water right law that allows cancellation after five years of nonuse. While OWRD may be seeking procedural alignment and clarity, the rules should be drafted and implemented in a way that does not expand cancellation risk beyond what is necessary, especially where nonuse is temporary, documented, or tied to normal cycles, programs, or economic conditions.	We understand the concerns and seriousness of forfeiture. In many cases, the intent of the rules is to align to statute, and in doing so the rules more accurately represent the exemptions from forfeiture, as well as rebuttals to forfeiture that can be utilized to protect a water right from forfeiture. The rebuttals and exemptions are specified by statute and appear to address at least some of the areas of concern. Other changes to the rules are nondiscretionary such as the automatic final order provisions, protest provisions, and default hearing schedule from 2025 legislation. Regarding defaults, note that existing law was the same (60 days to protest) and that notice of the hearing requirement was a shorter amount than what is being proposed. Finally, some changes modify the rules as current rules are narrower than the statute; it is important to remember that failing to cancel a forfeited water right can impact other water users who have consistently and lawfully made use of their water right.	Change made.

	<p>We respectfully request clear guardrails ... prevent procedural “defaults” from creating unintended cancellation risk,</p>	<p>OWRD has made a few changes to attempt to address the concerns:</p> <ol style="list-style-type: none"> 1. 690-017-0600(3)(b) -We have added that OWRD can request more information prior to going to hearing or closing the matter. While this already informally exists as an option, this would make it clear. 2. 690-017-0600(1) - We have made it clear that within the 33 days OWRD can reconsider or withdraw the PFO – this is already the case, but again, it has been added for clarity by pointing to 690-002-0235(4). 	
<p>-0700(3)</p>	<p>OWRD proposed staff change: Following conversations with the commission in February, regarding delegation of the authority to consider exceptions and issue a final order, the Department recommends instead a delegation order.</p>	<p>At the February Commission meeting, staff and the Commission discussed options on this matter. After hearing the commission’s desire to delegate, but also to be able to retain some involvement, as needed. The Department recommends deletion of the rule “The Director shall consider any exceptions to the Administrative Law Judge’s proposed order and issue a final order.” A delegation order can be rescinded by vote of the Commission should it desire to take back this authority, whereas a rule would require rulemaking. Further, the Department will explore options for retaining some Commission involvement (as needed). OWRD will present a delegation order for Commission consideration and discussion, likely later this year, should the Commission agree with this proposed path.</p>	<p>Change made.</p>