

Division 17 – Cancellation of Perfected Water Rights - Revision Tracker

Section / Version comment	Issue	Response/Modified Language	Status/Version change made in
690-017 General 9/19	RACM – Division should cross reference OAR 635-400, rules pertaining to ODFW evaluation of instream water rights. This nexus is important to the Tribes, particularly in light of implementation of the Integrated Water Resource Strategy.	Forfeiture is not based on the provisions of OAR 635-400; therefore, the Department does not believe there is a legal basis to include.	Complete. No change made.
690-017-0005 9/19	RACM – supports change.	Support noted.	Complete. No change made.
690-017--0010(8) 9/19	RACM – Need clarity regarding what was exempt from forfeiture proceedings, noting ORS 540.610(3) & (4). RACM - suggest putting the statutory language into the rule section, because the statute section is rather long and difficult to follow.	No change made. ORS 540.610(3) is the provision that exempts from forfeiture a right for which the facility is capable of handling the full amount and the user is ready willing and able. ORS 540.610(4) pertains to drought. Putting the statute in rule will only serve to make the rule longer and potentially lead to it being out of conformance to statute.	Complete. No change made.
690-017-0010(14) 9/19	RACM – is “preponderance of evidence” a new or different standard compared with what is currently in rule. RACM – why is the rule section referencing exemptions rather than evidence. RACM - The Tribe supports the inclusion of a legal standard “preponderance of the evidence” for clarity in this definition.	Preponderance of evidence is the standard of review used by the Administrative Law Judge (ALJ), as well as for the Department’s final orders under the Administrative Procedures Act. The rule references exemptions because two of the criteria exempt a right from consideration of forfeiture. ORS 540.610(3) & (4). OWRD has integrated preponderance of evidence into the	Complete. Change made to (4) V2 draft. Will include discussion of preponderance of evidence at final RAC

		definition of cancellation 690-017-0010 (4).	
690-017-0200 9/19	RACM - The Tribe supports the language clarifying the Watermaster's role and ability to document claims as evidence that support cancellation of a permit or certificate of a water right.	Thank you, noted.	Completed. No change made.
690-017-0200 9/19	RACM - CTUIR supports the revised language and appreciates clarity provided in the proposed rule change. RACM - Support proposed changes. Note: the language in (2)(a) is found in ORS 540.660(1) and thus is appropriate for the rule (only noting as I believe there was some push back to this language in the meeting).	Thank you, noted.	Complete. No change made.
690-017-0200(2) 9/19	RACM - Is "preponderance of the evidence" the standard applied to "to the best of the watermaster's knowledge," and if so, the term should be inserted. RACM - If the watermaster is required to provide evidence in support of cancellation, the watermaster still would be required to provide information regarding when, where, and how the information used to support their affidavit was gained. Therefore, the standard for the information itself, should be clarified.	No, the term should not be inserted for each individual piece of evidence. The statute requires 5 years of affidavits based on the best of the watermaster's knowledge in order to initiate proceedings. The affidavits must be sent to the water right holder each time over the 5 years. The water right holder has 5 opportunities to tell the watermaster they are incorrect before proceedings would be initiated. Preponderance of evidence is the standard of review used by the Administrative Law Judge (ALJ), as well as for the Department's final orders under the Administrative Procedures Act. OWRD has integrated preponderance of evidence into the definition of cancellation 690-017-0010 (4).	Complete. No change made to this rule; changed in -0010(4). Preponderance of evidence

690-017-0300 (3)	OWRD Staff: This rule is lacking a reference to next steps in the process and is overly vague in saying “these rules.” The next step would be notice under 690-017-0400(6).	Change made.	Complete. Rule changed in v2
690-017-0400(1) 9/19	RACM – Should “Department” say “Director” instead; i.e., which entity makes the determination on forfeiture.	Changed to Director.	Complete. Rule changed in v2.
690-017-0400(1) 9/19	RACM – Do rules apply during drought years?	Drought is an exemption to forfeiture, if the ORS 540.610(4) provisions are met. For clarity, the Department added a reference to ORS 540.610(3) and (4)).	Complete. Rule changed in v2.
690-017-0400(1) 9/19	RACM - The proposed rule changes “would not likely be rebutted” to “would not be rebutted”. This appears to cause a sequencing problem. Until cancellation proceedings commence, it is unclear how the state could determine, definitively, that it would be rebutted. We would suggest using “would not likely be rebutted”. Other than this one point, we support the proposed rule changes to this section.	OWRD agrees that it should be not likely for the point made. While this is in statute, OWRD believes that it’s the most defensible interpretation of the statute to include “likely”.	Complete. Rule changed.
690-017-0400(1) 9/19	RACM - That said, we do not support the suggestion made in the RAC meeting to change “evidence” to “preponderance of the evidence” as, while “preponderance of the evidence” will be the standard in any proceeding, by inserting it here it could potentially be used by opponents to challenge a cancellation proceeding before it even gets to the proceeding.	OWRD has integrated preponderance of evidence into the definition of cancellation 690-017-0010 (4), which is where we think it is most appropriate.	Complete. No change made to this rule; changed in -0010(4). Preponderance of Evidence

690-017-0400(2)(c) 9/19	RACM - Affidavits still need to include information regarding township, range, quarter-quarter section and number of acres, which does not align with –0400(1)(i) which removes the county tax plat map as a requirement.	This information is on the water right and by including on the affidavit ensures that the correct water right is being considered.	Complete. No rule change made.
690-017-0400(2)(g) 9/19	RACM - why was “with certainty removed” from the rule.	This language was removed to match the preponderance of evidence standard of review.	Complete. No rule change made.
690-017-0400(2)(i) 9/19	<p>RACM - Why are county maps being removed?</p> <p>RACM – Concerned about addition of aerial imagery and questioned the quality of that imagery data as well as the difficulty of rebutting the imagery data.</p> <p>RACM- support addition of aerial imagery.</p> <p>RACM - : Strongly support the proposed rule language as presented in the 9/19/2025 version, especially the deletion of “the county tax” before “map” and addition of the language “or aerial imagery”. We do not agree to the suggestion made by Ms. Rancier to insert “and” in response to user group opposition.</p> <p>RACM - OEC supports the proposed changes to rules language as put forward by the Department in 690-017-0400(2)(i) and 690-017-044(4). These changes allow for the use of modern technology to provide evidence for the</p>	<p>Goal of this rule change is to enable the Department to obtain necessary information to make a determination on the lands under consideration for cancellation. Tax lot information was not rendering helpful results and OWRD can verify appurtenance without it. This provision is about identifying the location of where the person thinks the nonuse has occurred in a manner that the Department can understand.</p>	Complete. No rule change made.

	Department to use in making its determinations related to cancellation of perfected water rights.		
690-017-0400(4) 9/19	RACM – Should language be “the Department may rely on stream or canal gaging records... evapotranspiration data and other relevant evidence...” as opposed to “or other evidence...”	OWRD believes the list is a series of or’s that make up a preponderance of the evidence and not that all components are required, which would be an “and”.	Complete. No rule change.
690-017-0400(4) 9/19	RACM - Clarify that preponderance of evidence was a standard that needed to be met by everyone, both the affidavits and those trying to rebut the affidavit. Appreciate the call out to evapotranspiration.	CORRECTION to response during RAC: The affidavits of the public are not required to meet a preponderance of evidence. They are a part of the body of evidence. Any cancellation order of a water right must meet the preponderance of evidence standard pursuant to the APA. OWRD would not issue a notice of proposed cancellation if it did not believe there was a preponderance of evidence (see exception on transfers where OWRD would not have a choice.)	Complete. No rule change. Preponderance of Evidence
690-017-0400(4) 9/19	RACM – What is the state’s capacity to use GIS/ESRI and mapping, including how accurate maps are and how often are they refreshed?	We maintain many data sets in GIS from a wide variety of sources. So, accuracy and refresh cycles are going to vary by theme and, in some cases, by individual features within those themes. Most of our “key” data sets, like water rights, wells, stream gages, and dams are refreshed every night. The accuracy of each depends on source materials. Many have quarter-quarter descriptions, too, but they can’t always be trusted. Whenever agency staff visit a well, they collect GPS coordinates and their locations are updated in GIS. The location of water right features in the GIS depend on the source	Complete. No rule change.

		materials for those rights and when they were mapped.	
690-017-0400(4) 9/19	RACM – Provide confirmation that the rule section would not apply to drought declarations.	Drought is an exemption to forfeiture, if the ORS 540.610(4) provisions are met.	Complete. No rule change.
690-017-0400(4) 9/19	<p>RACM - Concerns about the addition of aerial imagery and evapotranspiration data. With respect to evapotranspiration, RAC members questioned how the information would be used by the Department, particularly with respect to determining how much water is or isn't being used to assess beneficial use. They raised other concerns related to use of evapotranspiration data for enforcement, noting that the data needs to be ground-truthed prior to relying on it.</p> <p>RACM - With no current requirement to measure and report water use for more than 80% of the water rights in the state, remote sensing data sources play an important role in determining basin water budgets and supporting water planning. When it comes to managing our precious water resources, the agency must have the authority to utilize the best technology available to inform management. CTUIR strongly supports the proposed language in this subsection and the addition of relevant examples the agency may rely upon to initiate water right cancellation proceedings.</p>	Consideration for cancellation is based on the body of the evidence, not just one piece. OWRD has retained the supported rule change. The existing rule already allows for the Department to utilize this data. Including it in the rule was an attempt to be transparent.	<p>Complete. No rule change.</p> <p>Will include for discussion at RAC mtg</p>

	<p>RACM - Strongly support proposed language changes to this section, including but not limited to the addition of aerial imagery and evapo-transpiration data as named evidence that can be used to show non-use.</p> <p>RACM - The Department should have the authority to utilize the best technology available to inform management. LandWatch supports the proposed draft language in this subsection and the addition of relevant examples of evidence the Department may rely on to initiate cancellation proceedings. With no current requirement to measure and report water use for more than 80% of the water rights in the state, remote sensing data sources can play an important role in determining basin water budgets and supporting water management and planning activities.</p> <p>RACM - The Tribe supports the inclusion of the language expanding the evidence descriptions to include modernized technology and notes that the inclusion of “or other relevant evidence covering each year of the period of alleged nonuse” appears to broadly cover and allow for future technological approaches to understanding an unused/unexercised water right.</p>		
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690-017-0400(5)	OWRD Staff: Address extra “the” in (4) and capitalization of T in (4) and (5)	Complete	Complete. Change made in v2.
690-017-0400(5) 9/19	RACM - This section alters the current mandate that the OWRD “shall initiate a proceeding” to allow for either a proceeding or the closing of the matter. Notably, the OWRD can close the matter without stating any reasoning and/or providing an explanation as to why they have determined the water right was not cancelled. If the OWRD is proposing to removal language that directed a proceeding, there needs to a process to ensure that the decision is not arbitrary. This needs more discussion.	No change made to the rule. Agency has authority to exercise discretion. In addition, submittal of affidavits is evidence – it does not entitle an affiant to a hearing. The affidavits are not required to meet a preponderance of evidence. They are a part of the body of evidence. Any cancellation order of a water right must meet the preponderance of evidence standard pursuant to the APA. Though there could be other reasons, OWRD would not issue a notice of proposed cancellation if it did not believe there was a preponderance of evidence (see exception on transfers).	Complete. No change made. Preponderance of Evidence
690-017-0600(2)(a) 9/19	RACM - why was “only a record owner” added? RACM – Should language say “right holder” instead of “record owner.”	ORS 540.660 refers to record owner while 540.641 refers to legal owner. OWRD reviewed and record owner and legal owner appear to be the same meaning, so left as record owner.	Complete. No change made.
690-017-0600(3)(b) 9/19	RACM – Do rule changes mean that a hearing always needs to be held; is there was an option to just move to cancellation.	Department does not have the authority to remove a right without a hearing if we receive a protest. This is a constitutional right to due process.	Complete. No rule change.
690-017-0600(4) 9/19	RACM - Proposed language seems to make it easier for third parties to claim forfeiture in the transfers process. RACM - Strongly support this new provision that provides for efficiencies in situations where cancellation is raised in a protest to a transfer.	The ALJ is compelled to take on cancellation issues during protest hearings, so the Department is constrained with respect to defining third party involvement in cancellation proceedings. Any cancellation order of a water right must meet the preponderance of evidence standard pursuant to the APA. Whenever the dept is issuing a “ <i>notice of proposed cancellation</i> ”	Complete. No rule change. Will include for discussion at RAC mtg

	<p>RACM - LandWatch supports the updated language in the proposed rule language.</p> <p>RACM - We also support proposed changes to 690-017-0600(4), which will increase efficiencies in the process.</p>	<p>we believe that there is a preponderance of evidence.</p> <p>OWRD changed subsection 4 to make it clear that for transfers it would be a “<i>notice of cancellation proceedings</i>,” we believe we need to provide the notice under 540.610 even if the agency doesn’t agree, which would allow us to not have to defend it.</p>	
690-017-0700(2) 9/19	RACM - Giving the protestant and anyone asserting forfeiture not less than 10 days notice of a hearing is not nearly enough time. We would suggest at least 30 days.	The not less than 10 days is in statute. Changed to not less than 30 days.	Complete. Rule changed.
690-017-0800(2) 9/19	RACM - OWRD should replace “rebuttals” with “grounds for rebuttal”.	Change made.	Complete. Rule changed.
690-017-0800(3) 9/19	<p>RACM - The list of criteria for economic hardship goes from (a) through (f) but the “and” is at the end of (d) instead of (e).</p> <p>- Move “and” to the end of (e)</p>	Change made.	Complete. Rule changed.