

**Proposed Rule Revision Tracker****Division 17 – Cancellation of Perfected Water Rights**

*Changes made between v2 and v3 RAC version. Changes are highlighted in the v3 RAC version of the rules for RAC member convenience. V3 is the same as the public comment draft except no highlights.*

<b>Section / Version comment</b>	<b>Issue</b>	<b>Response/Modified Language</b>	<b>Status/Version change made in</b>
<b>690-017 General 12/5</b>	RACM – A RAC member noted inconsistencies in the spelling of “cancellation.” Both ways are correct, but she recommended consistency.	OWRD did not find any examples of “cancelation” in the document.	Complete. No change made.
<b>690-017 General 12/6</b>	RACM - Generally speaking, a majority of OWRD's proposed changes to this division are not required by the 2025 legislation, and we encourage OWRD to move forward only with the changes that are specifically required by the legislation to enable further discussion of additional changes in a future rulemaking. The rules in Division 17 dictate the process by which vested property rights can be cancelled, and it is crucial that OWRD and stakeholders have adequate time to discuss any substantive changes to these rules. OAN has identified various specific changes that should be made, set forth below.	OWRD knows that these rules are particularly important and appreciates the feedback on the rule changes. Many of these changes are to align with existing statutes. If there is specific text of concern not addressed in the RAC process, please advise during the comment period. Appreciate the feedback and engagement.	Complete. No change requested.
<b>690-016-0400(2)(g) 12/6</b>	RACM - This current rule requires that an affidavit of forfeiture include a statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands. OWRD is proposing to strike “with certainty,” which is a substantive change.	OWRD has reverted language.	Complete. Change made in v3.

	<p>A party who files an affidavit is making a serious claim against a water right holder, and such a party should be certain of past water use before filing an affidavit. We understand that OWRD originally struck this language in an attempt to align with the “preponderance of evidence” standard that it has clarified across Division 17. However, OWRD’s recent language tracker document contains a “correction” which states that affidavits of the public are not subject to the preponderance of evidence standard. We request that OWRD retain the original language requiring an affiant to know with certainty that no water use has occurred when it files an affidavit.</p>		
<b>690-017-0400(1)</b>	OWRD staff	Clarifies that the affidavits in this rule division are those submitted by person external to the Dept.	Complete. Change made in v3.
<b>690-017-0400(3)</b> <b>12/6</b>	<p>RACM - This rule addresses the timeline for providing notice to a district or to the Bureau of Reclamation when an affidavit addresses water rights within the boundaries of district or federal project. The current language provides for notice of at least 90 days before OWRD initiates a cancellation proceeding, but OWRD proposes to reduce the notice timeline to 60 days. This is a substantive change not required by the 2025 legislation.</p> <p>Federal agencies, including the Bureau of Reclamation, often</p>	OWRD has reverted to existing standard of 90 days. OWRD has also made it clear that the notice needs to be provided regardless of whether its initiated based on external affidavits or based on the Department’s own evidence.	Complete. Change made in v3.

	<p>take some time to review and respond to materials that have been submitted to the agency. Additionally, the recent government shutdown is an example of a circumstance that could affect the ability of the Bureau of Reclamation to address the affidavit and identify its position and next steps within a more limited timeframe. OWRD should retain the existing language that provides for at least 90 days' notice.</p>		
<p><b>690-017-0400(4)</b> <b>12/6</b></p>	<p>RACM - OWRD's proposed language for this rule provides that OWRD may "rely on stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, aerial imagery, maps, evapo-transpiration data, or other relevant evidence covering each year of the period of alleged non-use." We request that OWRD revise its proposed language to replace the term "rely on" with "refer to" or "examine."</p> <p>We understand that each of these information types can be useful to assess whether a water right has been used, but we are concerned that if OWRD can simply "rely" upon any single one of the data sources listed in OAR 690-017-0400(4) to initiate cancellation proceedings, OWRD risks coming to an erroneous conclusion about use.</p>	<p>OWRD has reverted it to the existing rule phrase "supported by":</p>	<p>Complete. Rule Changed in v3.</p>

	RACM - aerial imagery and evapotranspiration are helpful tools but should not be the solitary tool.	The Department recognizes that some of tools are not appropriate in every circumstance and that the sum of the evidence must meet the preponderance of evidence standard.	
690-017-0400(5) 12/5	<p>RACM - This section alters the current mandate that the OWRD “shall initiate a proceeding” to now allow the OWRD to either initiate proceedings to cancel a water right or close the matter. Notably, as written, the OWRD can close the matter without stating - or having - any reasoning and/or providing an explanation.</p> <p>In our response to our V1 comments opposing this change, the OWRD noted that the agency has broad authority to exercise discretion on whether or not to initiate cancellation proceedings. In the RAC meeting, the DOJ attorney noted that OWRD’s discretion was broad enough to allow the OWRD to close the matter for any reason. We disagree.</p> <p>“whenever it appears to the satisfaction of the Water Resources Commission upon the commission’s own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610(1), and would not be rebutted under ORS 540.610(2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of</p>	<p>OWRD has re-reviewed the statute and the rule and partially agrees. Based on the re-review the Department will include in the notice that the Dept is closing the matter “because the Department is not satisfied that a right has been forfeited as specified in subsection 1.” We do not believe that the statute supports initiating cancellation where the Department does not believe there is evidence of forfeiture. (Note the exception related to transfer proceedings as discussed elsewhere).</p>	Complete. Partial Change in v3.

	<p>such initiate to proceedings..." ORS 540.631.</p> <p>At most, the statute requires that when presented with evidence by any person (via affidavit), the Commission must review the evidence in order to determine whether it appears, to its satisfaction, that the perfected right has been forfeited and that the evidence would not be rebutted. If yes, then the statute demands that they "shall" initiate proceedings. Another interpretation is that "appears to the satisfaction of the Water Resources Commission" only applies to the "commission's own determination", while submission of evidence via conforming affidavit triggers a cancellation proceeding so long as the Commission does not determine that forfeiture would be rebutted.</p> <p>In any case, the only instance in which the Commission could not initiate cancellation proceeding would be if, in their determination, the affidavits did not meet requirements, or that forfeiture would be rebutted. In other words, the Commission cannot simply choose not to proceed with initiating cancellation proceedings for political reasons, for resource reasons (noted at RAC meeting) or for no reason at all. Failing to act on affidavits of non-use would also be inconsistent with the very specific requirements for filing such affidavits because the implication of</p>	
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	<p>those requirements is that conforming affidavits will either trigger action by the Commission, or a determination and notice by the Commission that the affidavits do not meet standards. The wide discretion claimed by the OWRD to simply not act at all is not granted by and conflicts with this statute and the broader statutory scheme.</p> <p>Other statutes corroborate our view, including ORS 536.340(1)(b), which directs that the Commission “Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and unused amounts may be made available for appropriation and beneficial use by the public.” Given that the rules are not supported by statute, we again ask the OWRD to delete their proposed language.</p>		
<b>690-0400(5)(b)</b>  <b>12/5</b>	<p>RACM - the revised rule does not require OWRD to state the reason why they are closing the matter as opposed to pursuing cancellation when affidavits are received.</p> <p>The RAC member also asked what the outcome would be if the agency refused to act.</p>	<p>OWRD reviewed following the RAC meeting and has revised its response. See above comment and response.</p>	<p>Complete. See above response.</p>
<b>690-017-0600(3)</b>  <b>12/5</b>	<p>RACM - One RAC member stated that he believed legislation was needed to support the proposed rule changes.</p>	<p>The Department indicated that legislation may be preferred, but would not necessarily provide parties with adequate notice in the interim.</p>	<p>Complete. No change made.</p>

12/22/25

<b>690-017-0700(2)</b> <b>12/6</b>	RACM - OAN appreciates that OWRD has increased the notice of cancellation hearing timeline from the original proposed 10 days to 30 days.	Thank you.	Complete. No change.
<b>690-017</b>	OWRD staff	Cleanup to summaries, and clean up of rules related to spacing and grammar.	Complete. Changes made in v3.