



2025-26 Water Rights Rulemaking

RULES ADVISORY COMMITTEE DRAFT MEETING SUMMARY FOR RAC REVIEW OCTOBER 15, 2025 (RAC 4)

The Oregon Water Resources Department (OWRD) convened the fourth RAC meeting on October 15, 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
- April Snell, Oregon Water Resources Congress
- Jeff Stone, Oregon Association of Nurseries
- Jessi Talbott, Central Oregon Irrigation District

Public Attendees

- Brian Erickson (Oregon State University)
- Scott Fein (CWRE)
- Ryan Gleason (City of Portland)

- Richard Koesan (Water for Life)
- Ted Ressler (Summit Water Resources)
- George Rich (Portland General Electric)
- Kay Rodgers
- KK Warren (Engineer)
- Mikaela Watson (Central Oregon Irrigation District)
- Jay Weiner (Rosette Law)
- Roxane Worley (City of Hines)
- Ken Yates (Oregon Water Resources Congress)

Oregon State Agency Staff

- Matthew Bearden (Oregon Department of Environmental Quality)
- Eliot Crafton (OWRD)
- Will Davidson (OWRD)
- Emily-Bell Dinan (Oregon Department of Fish and Wildlife)
- Danette Faucera (Oregon Department of Fish and Wildlife)
- Cassidy Fredlund (OWRD)
- Adam Frederick (OWRD)
- Dwight French (OWRD)
- Kim Fritz-Ogren (OWRD)
- Bryn Hudson (OWRD)
- Lisa Jaramillo (OWRD)
- Jake Johnstone (OWRD)
- Laura Hartt (OWRD)
- Mindy Lane (OWRD)
- Dante Luongo (OWRD)
- Racquel Rancier (OWRD)
- Katie Ratcliffe (OWRD)
- Jesse Ratcliffe (Oregon Department of Justice (DOJ))

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

Agenda Review; RAC Meeting Summaries; Schedule Updates: Laura Hartt (OWRD) went over the meeting agenda and provided an update on meeting summaries. Regarding the DRAFT Meeting Summary for RAC 2, she indicated the summary was ready and would go out following the meeting. She then requested that any corrections for both the RAC 1 and RAC be submitted ASAP, but no later than October 21.

She went over the revised meeting schedule, noting that two RAC meetings were added for November 12 (8:30 a.m. – noon) and November 21 (8:30 a.m. – noon). She also noted that the Department's virtual Division 2 follow up meeting with those who expressed interest would convene on October 31, and confirmation would go out to the RAC following the meeting.

See also RAC 4 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) opened the discussion with the rationale for amending Division 17, which governs forfeiture and cancellation for perfected water rights. She noted that the Division has not been updated in more than 20 years, and there have been several statutory changes over that time. In addition to implementing 2025 legislative changes, this rulemaking also will conform rules to statutes and implement process and policy efficiencies.

Kim Fritz-Ogren (OWRD) described the four ways that a forfeited water right can be cancelled: (1) a water right holder can voluntarily cancel their right; (2) a watermaster can file affidavits five years in a row asserting non-use; (3) others outside the agency can file affidavits asserting nonuse for Department consideration; or (4) the Department may choose to initiate cancellation if it has sufficient evidence.

Jesse Ratcliffe (DOJ) gave further explanation of the contested case process where the protest relates to the transfer of a water right when that water right also may be subject to forfeiture. The rules are intended improve efficiency by working in conjunction with Division 380 to provide the opportunity for water users to combine their protest of the forfeiture presumption with the existing protest process already ongoing.

A RAC member suggested that in situations where agricultural operations were using less water because of infrastructure upgrades, cancellation would be inappropriate. The Department clarified that not all water needs to be used; rather the user needs to be ready, willing and able and confusion may arise because language in the statute states there needs to be a facility capable of handling the full amount of your water right and be prepared to use it. A RAC member suggested that a legislative fix was needed to clarify what is meant by ready, willing, and able.

A RAC member noted that Departmental cancellation of water rights was rare and asked under what circumstances the agency would initiate cancellation proceedings. A RAC member also asked if the agency intended to increase pursuit of cancellation, including partial cancellations. Additionally, a RAC member questioned whether focusing more on cancellations meant more enforcement in the field. The Department clarified cancellations are most common during the transfer process. Additionally, if there is illegal use, the Department staff will continue to prioritize that work, when it is safe to do so. Cancellation is a tool given to the agency by the legislature in order to support Department priorities and work. The Department acknowledged requests to pursue cancellation on unused groundwater rights in the Harney Basin and emphasized that similar efforts elsewhere in the state will depend on local circumstances.

The Department further explained why pursuing cancellation in some circumstances is important. For example, when cannabis was legalized, there were concerns from some water right holders that uncanceled water rights that had not been used in decades would suddenly be used for new cannabis operations, leaving junior users who have been using water

consistently for years suddenly unable to access their water. Some RAC members expressed similar concerns and the importance of cancellation.

Some members discussed whether water rights were property rights or usufructuary rights, with some noting that water is a public resource. The Department clarified that water rights are usufructuary to the land and are a right within the property bundle of rights.

A RAC member asked if these rules were for both adjudicated and unadjudicated rights and whether the RAC should consider separate rules for partial forfeiture. The Department clarified that the proposed rules are only for adjudicated rights and encouraged RAC members to provide suggestions in writing.

RAC members expressed that these are important rules, and any changes need to be carefully considered to ensure no unintended consequences.

Katie Ratcliffe (OWRD) gave a brief overview of some of the items covered in Division 380, including renaming transfer documents to be consistent with the water right application process; implementing a phased application process; amendments to the consent to injury process; adding permit amendments rules; and incorporating the explicit both injury and enlargement. The RAC then began discussing Division 380 rules, focusing on sections -4000 and -4200, because they were relevant to discussions on cancellation.

Division 17 – Cancellation of Perfected Water Rights

Rule	Comments/Questions	Department Response
General	A RAC member asked if the Division would cross reference OAR 635-400, rules pertaining to ODFW evaluation of instream water rights. She further noted that this nexus was important to the Tribes, particularly in light of implementation of the Integrated Water Resource Strategy.	The Department does not believe there is a need for cross referencing but will review.
-0005	A RAC member expressed support for the change.	Noted.
-0010(8)	Some RAC members asked for clarity regarding what was exempt from forfeiture proceedings, noting ORS 540.610(3) & (4). One RAC member suggested putting the statutory language into the rule section, because the statute section is rather long and difficult to follow.	The Department will review. The Department will review, but prefers to have shorter rules that are less likely to become misaligned.
-- 0010(14)	Some RAC members asked whether “preponderance of evidence” was a new or	Preponderance of evidence is the standard of review used by the Administrative

	<p>different standard compared with what is currently in rule.</p> <p>One RAC member asked why the rule section was referencing exceptions rather than evidence.</p>	<p>Law Judge (ALJ), so the language is not introducing a new standard. Department will consider integrating the standard of review terminology throughout the Division for clarity.</p>
-0200(2)	<p>A RAC member asked if “preponderance of the evidence” was the standard applied to “to the best of the watermaster’s knowledge,” and noted that if that was the case, the term should be inserted.</p> <p>A RAC member asked if there was any ongoing litigation related to watermasters accessing property in order to obtain information. She then noted that 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..</p>	<p>The Department noted that even though it may be self-evident that there is no way water may be applied to beneficial use (e.g., irrigating a paved parking lot), the water master still needs to provide proof. The Department again stated it would review the Division’s rules to ensure that the “preponderance of the evidence” standard of review is referenced appropriately.</p> <p>The Department is not aware of active litigation. The drafted language is intended to make the information required more appropriate to what the Department is trying to attest to and to meet the preponderance of evidence standard of review. Relevant information of how the Department knows what they know is still going to be required. The Department will consider adding a reference back to ORS 540.660 to clarify what a watermaster must do.</p>
-0400(1)	<p>Some RAC members asked about if “Department” should say “Director”</p>	<p>The Commission delegates authority to the Department,</p>

	<p>instead and which entity makes . the determination on forfeiture.</p> <p>One RAC member asked if the rules apply during drought years.</p>	<p>which typically means the Director. When determining forfeiture, staff are typically making recommendations to the Director. Department will consider language stating to the “satisfaction of the director”.</p> <p>Drought is an exemption to forfeiture (ORS 540.610(4)). For clarity, the Department will consider referencing the definition of forfeiture which includes exemptions, either by referencing OAR 690-017-0010(8) or the statute itself (i.e., ORS 540.610(3) and (4)).</p>
- 0400(1)(c)	RAC member noted that 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.	The Department will review.
- 0400(1)(g)	A RAC member asked why “with certainty removed” from the rule.	This language was removed to match the preponderance of evidence standard of review that is being incorporated for clarity throughout to rule.
- 0400(1)(i)	A RAC member asked why county maps were being removed. Some RAC members expressed concerns about the addition of aerial imagery and questioned the quality of that imagery data as well as the difficulty of rebutting the imagery data. At least one RAC member expressed support for the addition of aerial imagery.	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 only about the location of water and is not the evidence.

-0400(4)	<p>Some RAC members expressed 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 for enforcement.</p> <p>A RAC member asked if the language should be "the Department may rely on stream or canal gaging records... evapotranspiration data and other relevant evidence..." as opposed to "or other evidence..."</p> <p>A RAC member clarified that preponderance of evidence was a standard that needed to be met by everyone, both the affidavits and those trying to rebut the affidavit. They also appreciated the call out to evapotranspiration.</p> <p>A RAC member asked about the state's capacity to use GIS/ESRI and mapping, including how accurate maps are and how often are they refreshed.</p> <p>A RAC member asked for confirmation that the rule section would not apply to drought declarations.</p>	<p>This rule section is clear that the consideration for cancellation is based on all of the evidence, and evapotranspiration data would not be the only evidence considered. The Department will review.</p> <p>The Department responded no.</p> <p>The preponderance of evidence standard applies to everyone; the Department could consider incorporating that language for clarity.</p> <p>Evidence for non-use needs to include the entire period of non-use, so one year of imagery would not be sufficient. The Department will follow up on the refresh rates and accuracy of mapping.</p> <p>The Department confirmed that was the case.</p>
- 0600(2)(a)	Some RAC members asked why "only a record owner" was added..	<p>Record owner comes from ORS 540.660.</p> <p><i>NOTE POST RAC Follow up: 540.660 refers to record</i></p>

	One RAC members asked if the language should say “right holder” instead of “record owner.”	<i>owner while 540.641 refers to legal owner.</i>
- 0600(3)(b)	A RAC member asked if rule changes meant that a hearing always needed to be held and if there was an option to just move to cancellation.	Department does not have to the authority to remove a right without a hearing if we receive a protest. This is a constitutional right based on the right to due process pertaining to property rights.
-0600(4)	<p>A RAC member asked if this was the process for when someone is asserting that the water right was never subject to transfer.</p> <p>Some RAC members expressed concern that the proposed language seems to make it easier for third parties to intervene.</p> <p>A RAC member asked for clarification regarding how allegations of forfeiture fit into the Department’s transfer process.</p>	<p>The Department confirmed that is that process.</p> <p>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. However, the Department invited suggested rule revisions to address the RAC concern.</p> <p>A water right cannot be subject to forfeiture based on non-use while that right is pending for transfer.</p>

Division 380 – Water Right Transfers

Rule	Comments/Questions	Department Response
- 4000(3)(f)	<p>Some RAC members noted that “any other requirements” was too broad and suggested incorporating specific references to ORS 540 or OAR 380.</p> <p>One RAC member suggested adding “as set forth in ORS 540 and OAR 690-380” after “any other requirements.”</p>	<p>The Department will review.</p> <p>The Department will review.</p>
-4000(8)	A RAC member expressed concern that the new rule section may expand the process to allow parties opposing a finding of injury to instream water rights.	The Department will review.

		[Note: This topic was revisited during the 5th RAC meeting (Oct 21)].
-4200(2)	A RAC member asked whether or not the preponderance of evidence standard was still the appropriate standard.	During a contested case, that is the standard of review. [Note: This topic was revisited during the 5th RAC meeting (Oct 21)].
-4200(3)	A RAC member expressed a preference for 30 days for response.	OWRD will review.

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

Scott Fein provided oral public comment from his perspective as a CWRE from Ashland, OR, on Div 17 (-0200(2)(a)). He noted that documentation and surveys for decrees are inconsistent (especially in Southern OR), specifically for Points of Diversion (POD) and Places of Use (POUs) and what is authorized. He further noted turnover in Department staff, resulting in loss of regional knowledge. Scott suggested including language that says watermaster information concerning forfeiture must come from someone who has worked in the region for more than five years. He suggested there needs to be more accountability from CWREs to protect against transfers where the water has not been used. He also noted that rules are intended to fill in where statutes fall short, removing large swaths of rule language that is more restrictive than the statute is concerning, because that rule language was likely intended to provide clarity regarding legislative intent.

Laura Hartt (OWRD) noted that written comments received will be compiled and posted online after the deadline given to the RAC for receiving written input:
<https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/2025-Water-Rights-Rulemaking.aspx>.

Wrap-Up & Next Steps: The Department requested feedback on the Division 17 draft rules by October 31, 2025. OWRD noted that the next RAC meeting is scheduled for October 21, and that the RAC would continue discussing the Division 380 rules and possibly start the Division 382 rules (time allowing). The meeting was adjourned.