

**WATER RESOURCES DEPARTMENT
CHAPTER 690, DIVISION 17
CANCELLATION OF PERFECTED WATER RIGHTS**

***NOTE: ONLY THE PORTIONS OF DIVISION 17 PROPOSED FOR
MODIFICATION ARE INCLUDED. THE FULL TEXT OF DIVISION 17 CAN
BE FOUND AT**

http://arcweb.sos.state.or.us/rules/OARS_600/OAR_690/690_017.html

690-017-0010

Definitions

(1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.

(2) "Affiant" means the individual completing, swearing to and signing an affidavit.

(3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.

(4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.

(5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.

(6) "District" has the meaning of the term as defined in ORS 540.505

~~(6)~~ **(7)**"Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.

~~(7)~~ **(8)**"Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years.

~~(8)~~ **(9)**"Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.

~~(9)~~ **(10)**"Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.

Bold and underlined text (**example**) is proposed new text.

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OWRD
Final Proposed Rules
October 22, 2004

1
2 ~~(10)~~ **(11)**"Perfected Water Right" means a water right which has been confirmed by the
3 issuance of a certificate of water right or by a court decree.

4
5 ~~(11)~~ **(12)**"Presumption of Forfeiture" means a conclusion established by statute that a
6 water right, in whole or in part, is forfeited by nonuse of the right for five successive
7 years.

8
9 ~~(12)~~ **(13)**"Principal Farm Operator" means the record owner, including a lessee to whom
10 the right of possession of agricultural property has been granted by the lessor for a
11 specified period of time in return for a consideration.

12
13 ~~(13)~~ **(14)**"Rebuttable Presumption" means a presumption which, by statute, may be
14 overcome by evidence sufficient to explain or disprove the presumption.

15
16 ~~(14)~~ **(15)**"Record Owner" means the person shown as the owner of the land in the county
17 deed records established under ORS Chapter 93.

18
19
20 **690-017-0100**

21 **Cancellation Authorized by Record Owner**

22
23 (1) Perfected water rights shall be cancelled by order of the Director in accordance with
24 the provisions of ORS 540.621 when so requested by notarized affidavit of the record
25 owner of the land to which the water right in question is appurtenant.

26
27 (2) The affidavit shall contain, at a minimum, the following:

28
29 (a) A statement that the affiant is the record owner of the lands associated with the water
30 right in question;

31
32 (b) The certificate number of the water right;

33
34 (c) A statement that the affiant has abandoned any and all interest in and to all or a
35 specified portion of the water right;

36
37 (d) Where only part of the right has been abandoned, a description of the specific place of
38 use by quarter-quarter section and acres on which the right has been abandoned, with
39 information sufficient to determine the lands on which the right is not to be cancelled;
40 and

41
42 (e) A request that all or part of the certificate be cancelled.

43
44 **(f) A statement of whether, to the best of the affiant's knowledge, the subject water**
45 **right is within the boundaries of a district or federal reclamation project.**

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2 **(3) Based on the best information available to the Department, if the subject water**
3 **right is within the boundaries of a district or federal reclamation project, the**
4 **Department shall, as applicable, provide the district and the United States Bureau**
5 **of Reclamation notice of the water right cancellation request.**
6

7
8 **690-017-0400**
9 **Cancellation Initiated by Department**
10

11 (1) The Department shall initiate proceedings to cancel a perfected water right, as
12 provided in ORS 540.631 and these rules, whenever it appears that a right has been
13 forfeited as provided in 540.610. The decision to initiate cancellation proceedings shall
14 be based on evidence submitted to the Department, by any person, that alleges five or
15 more years of nonuse so as to create a presumption of forfeiture, and from which
16 evidence it further appears the presumption of forfeiture would not likely be rebutted
17 under OAR 690-017-0800(2)(a), (d) or (e).
18

19 (2) Where the evidence submitted to the Department is in the form of affidavits, notarized
20 affidavits from two individuals shall be required. An affidavit shall contain the following:
21

22 (a) Name, address and telephone number of affiant;
23

24 (b) Page number of the certificate in question as recorded in the State Record of Water
25 Right Certificates, name of the person to whom the certificate was issued, and priority
26 date of the certificate;
27

28 (c) Township, range, quarter-quarter section and number of acres to which the certificate
29 in question is appurtenant;
30

31 (d) The use for which the water right was issued;
32

33 (e) The source of water to be used as provided in the certificate;
34

35 (f) A statement of the affiant's knowledge of the lands described in the certificate in
36 question, and an explanation of how the affiant gained this knowledge;
37

38 (g) A statement that the affiant knows with certainty that no water from the allowed
39 source has been used for the authorized use on the lands, or a portion of the lands, the
40 portion being accurately described, under the provisions of the water right within a period
41 of five or more successive years, and the beginning and ending years of the period of
42 nonuse. Where possible, beginning and ending months should also be given;
43

44 (h) A statement that the affiant believes the allegation of nonuse will not be rebutted
45 under any of the grounds for rebuttal set out in ORS 540.610 [(2)(a)-(n)] ~~(g)~~; and

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2 **(i) A copy of the county tax plat map illustrating the lands to which the subject**
3 **water right is appurtenant, and if applicable, the location of the portion of the water**
4 **right asserted to have been forfeited;**

5
6 ~~(i)~~ **(j)** The affiant's agreement to testify in a hearing before the Water Resources
7 Department if necessary;

8
9 **(k) To the best of the affiant's knowledge, a statement of whether the subject water**
10 **right is within the boundaries of a district or federal reclamation project; and**

11
12 **(l) Proof that the affidavit(s) have been served upon the legal owner of the lands to**
13 **which the water right is appurtenant and to the occupant of such lands.**

14
15 **(3) Based on the best information available to the Department, if the subject water**
16 **right is within the boundaries of a district or federal reclamation project, the**
17 **Department shall provide notice of receipt of affidavits submitted under this rule, as**
18 **applicable, to the district and the United States Bureau of Reclamation at least 90**
19 **days prior to initiating a cancellation proceeding.**

20
21 ~~(4)~~ **(3)** Where the evidence submitted is solely from Department personnel, such evidence
22 shall be submitted in the form of an affidavit and contain all information described in
23 section (2) of this rule. In addition, the affidavit shall be supported by stream or canal
24 gaging records, water or electric meter readings, static level measurements, system
25 capacity calculations, a summary of field investigations, photos, maps, or other relevant
26 data covering each year of the period of alleged nonuse.

27
28 **(5) The Department shall initiate proceedings to cancel a water right under ORS**
29 **540.631 within 180 days of receiving the evidence required under sections (1) and (2)**
30 **of this rule.**

31
32 **(6)** ~~(4)~~ The Department shall notify the record owner of the land to which a perfected
33 water right is appurtenant that it intends to cancel all or a portion of the water right. The
34 occupant of affected lands, if other than the owner, shall also be notified. **If the subject**
35 **water right is within the boundaries of a district or federal reclamation project, the**
36 **Department shall, as applicable, mail a copy of the cancellation notice to the district**
37 **and the United States Bureau of Reclamation.** Notice shall be sent to **the record**
38 **owner of the land or occupant** each by certified mail, return receipt requested. The
39 notice to the record owner shall be addressed to the owner at the owner's last address or
40 record in the office of the county assessor of the county in which the lands are located.
41 The notice shall contain the following:

42
43 (a) A description of the water right and the land to which the water right is appurtenant;
44

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1 (b) A statement that the information before the Director creates a rebuttal presumption of
2 forfeiture;

3

4 (c) A statement that the record owner or the occupant has a period of 60 days from the
5 date of the mailing of the notice within which to protest the proposed cancellation either
6 by asserting that the water right has been used, or by making rebuttal in the manner and
7 on the grounds provided in OAR 690-017-0600 and 690-017-0800;

8

9 (d) Notice that if the record owner intends to rebut the presumption of forfeiture, the
10 protest shall include a statement of the grounds for rebuttal relied upon, and shall be
11 accompanied by appropriate supporting documentation; and

12

13 (e) A statement that, following receipt of a protest against the proposed cancellation and
14 determination that the presumption of forfeiture has not been rebutted, a contested case
15 hearing will be scheduled.

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