



# Staff Report

**TO:** Water Resources Commission

**FROM:** Ivan Gall, Director

**DATE:** December 11, 2025

**SUBJECT:** Agenda Item B  
Water Resources Commission

IN THE MATTER OF THE PROPOSED CANCELLATION OF WATER RIGHT CERTIFICATE 3943, ANDREAS AND CAROLE BLECH, PROTESTANTS, WATERWATCH OF OREGON, PROPONENT: CONSIDERATION OF EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER AND DETERMINATION OF NEXT STEPS

## I. Introduction

The Commission is asked to consider exceptions to the administrative law judge's proposed order and determine next steps in the proposed cancellation of water right certificate 3943.

## II. Integrated Water Resources Strategy Recommended Action

Not applicable.

## III. Background

Below is a timeline of significant events related to this topic:

- **July 2022:** WaterWatch of Oregon (WaterWatch) filed a timely protest of the Department's proposed approval of Andreas and Carole Blech's application to change the place of use, character of use, and point of diversion of water right certificate 3943 (Certificate 3943). Certificate 3943 allows use of water from Grave Creek, tributary to the Rogue River, for irrigation of 65 acres in Josephine County. WaterWatch's protest alleged, in part, that Certificate 3943 has been forfeited by nonuse and should be cancelled.
- **November 2023:** WaterWatch provided three affidavits asserting nonuse of Certificate 3943 to support WaterWatch's allegation of forfeiture.
- **October 2024:** The Department issued a notice of proposed cancellation of Certificate 3943.
- **November 2024:** The Blechs filed a protest of the Department's notice of proposed cancellation.
- **December 2024:** The Department referred the proposed cancellation to the Office of Administrative Hearings for a contested case hearing.
- **March 2025:** The Office of Administrative Hearings administrative law judge (ALJ) assigned to the matter conducted a five-day hearing.

- **June 2025:** The ALJ issued a proposed order recommending that no portion of Certificate 3943 be cancelled for nonuse during the period in issue.
- **July 2025:** WaterWatch filed exceptions to the proposed order, and the Blechs filed a response to WaterWatch's exceptions.

#### **IV. Discussion**

In a cancellation proceeding, if a party files exceptions to the ALJ's proposed order, the Commission must consider the exceptions and issue a final order. ORS 540.641(2); OAR 690-017-0700, 137-003-0650, 690-002-0175. The Commission may form a subcommittee to review the exceptions and provide a report to the Commission prior to issuing a final order. OAR 690-002-0175(5). The Commission may adopt the proposed order as the final order, issue a final order that adopts the proposed order's recommended determination but modifies the bases for the determination, or decide to issue an order that makes a final determination different than the proposed order's recommended determination. OAR 137-003-0665(3) & (4). If the Commission decides to issue an order that makes a final determination different than the proposed order's recommended determination, the Commission must enter an amended proposed order and provide the opportunity to file exceptions to the amended proposed order. OAR 137-003-0655(3). Alternatively, if the Commission believes an additional hearing is necessary before issuing a final order, the Commission may ask the ALJ to conduct a further hearing. If the Commission asks the ALJ to conduct a further hearing, the Commission must specify the scope of the hearing and the issues to be addressed. OAR 137-003-0655(2).

Here, WaterWatch's exceptions assert that the proposed order contains many errors related to the Department's and the ALJ's authority, the evidentiary standards applied, whether findings of fact are supported by evidence in the record, the admissibility of evidence, the reliability of witnesses, the legal standards applied, and other issues. WaterWatch contends the Commission should enter a final order cancelling Certificate 3943 in whole or in part. The Blechs argue that the Commission should deny WaterWatch's exceptions and adopt the proposed order's recommended determination that no portion of Certificate 3943 shall be cancelled due to nonuse during the period in issue.

The parties submitted their exceptions and response in writing. Prior to the meeting, the Commission will receive electronic copies of the proposed order, WaterWatch's exceptions, and the Blechs' response. If the Commission would like, the Commission may allow the parties to present oral argument concerning the exceptions during the meeting.

#### **V. Conclusion**

The Commission must consider the proposed order, WaterWatch's exceptions to the proposed order, and the Blechs' response to WaterWatch's exceptions and determine how to proceed. Available options for next steps are listed in the "Alternatives" section below.

#### **VI. Alternatives**

The Commission may consider the following alternatives:

1. Deny WaterWatch's exceptions and adopt the proposed order as the final order without changes to the ALJ's findings.
2. Issue a final order that adopts the proposed order's recommended determination

that no portion of Certificate 3943 shall be cancelled due to nonuse during the period in issue but alters the proposed order's findings of fact, conclusions of law, and/or opinion to address issues noticed by the Commission or raised in WaterWatch's exceptions or the Blechs' response.

3. Issue an amended proposed order proposing to cancel in whole or in part or modify Certificate 3943.
4. Ask the ALJ to conduct a further hearing as specified by the Commission.

## **VII. Recommendation**

Legal advice regarding alternatives available to the Commission will be provided and discussed in the associated executive session or exempt session on this topic.

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