



Staff Report

TO: Water Resources Commission
FROM: Ivan Gall, Director
DATE: June 11, 2026
SUBJECT: Agenda Item A

DELEGATION OF AUTHORITY TO ISSUE FINAL ORDERS IN CANCELLATION PROCEEDINGS

I. Introduction

During this agenda item, the Commission will be asked to adopt a proposed order delegating authority to the Water Resources Director to consider exceptions and issue final orders in cancellation proceedings initiated pursuant to ORS 540.610 through 540.670. *This is an action report.*

II. Integrated Water Resources Strategy Recommended Action

- 10.G – Strengthen Oregon’s Water Quantity and Water Quality Permitting Programs.

III. Background

ORS 540.610 through 540.670 govern cancellation of perfected and developed water rights that have been forfeited by nonuse. Under ORS 540.631, when it appears to the Commission that a perfected and developed water right has been forfeited by nonuse, the Commission shall initiate proceedings to cancel the water right by issuing a notice of proposed cancellation to the owner and occupant of the land to which the water right is appurtenant. If the owner or occupant protests the proposed cancellation, a contested case hearing is held to determine whether the water right should be cancelled. The hearing is conducted by an administrative law judge (ALJ) employed by Office of Administrative Hearings. At the end of the hearing, the ALJ issues a proposed order recommending that the water right be cancelled in whole, cancelled in part or modified, or not cancelled or modified. The parties to the hearing may file exceptions to the ALJ’s proposed order. After considering any exceptions, the current practice is that the Commission issues a final order. The Commission’s final order may adopt or modify the ALJ’s proposed order.

The Commission has in the past, by rule, delegated many of its cancellation authorities to the Water Resources Director (Director). Under the version of OAR chapter 690, division 17 in effect prior to April 1, 2026, the Commission delegated authority to the Director to issue notices of proposed cancellation, initiate cancellation hearings, and issue final cancellation orders when no protest is filed, the protestant defaults, or no party files exceptions to an ALJ’s proposed order. The Commission retained authority to issue final cancellation orders when a

party files exceptions to a proposed order.

The current version of OAR chapter 690 division 17 removes the Director's authority to issue final cancellation orders where no party files exceptions to an ALJ's proposed order. As such, the current division of cancellation authorities between the Director and the Commission is:

- **Director:** Issue notices of proposed cancellation (which automatically become final if not protested); initiate cancellation hearings; issue final cancellation orders when a protest is filed and the protestant defaults.
- **Commission:** Issue final cancellation orders for all cancellation cases in which a hearing is held and a proposed order is issued, regardless of whether a party files exceptions to the proposed order.

During discussion of the rules that led to the current version, the Commission desired to delegate to the director the authority to issue final cancellation orders in all instances, however, it wanted to be able to retain some oversight in the process. It was discussed that the best way to do this was to delegate using a delegation order instead of via rule. Department staff agreed to bring a draft delegation order before the commission following rule adoption.

IV. Discussion

Department staff, working with the Department's Oregon Department of Justice contact counsel, have prepared a proposed delegation order (Attachment 1) that delegates authority to the Director to consider exceptions and issue final orders in all cancellation proceedings initiated pursuant to ORS 540.610 through 540.670. Adopting Attachment 1 will increase efficiency by removing the need for the Commission to consider cancellation hearing records and enter final cancellation orders for all cancellation proceedings in which a hearing is held and a proposed order is issued. Attachment 1 includes reporting requirements to ensure the Commission may monitor how the Director exercises the delegated authority. Should the Commission determine in the future that the delegation should be withdrawn, the Commission may do so by issuing another order.

If the Commission chooses not to delegate authority to the Director to issue final orders in all cancellation proceedings but wishes to retain the pre-April 1, 2026 status quo, the Commission may modify Attachment 1 to delegate authority to the Director to issue final orders for cancellation proceedings initiated pursuant to ORS 540.610 through 540.670 in which no exceptions to the ALJ's proposed order are filed.

V. Conclusion

The Director asks the Commission to consider delegating additional authority to the Director to issue final orders in cancellation proceedings initiated pursuant to ORS 540.610 through 540.670.

VI. Alternatives

The Commission may consider the following alternatives:

1. Adopt the proposed delegation order included as Attachment 1

2. Adopt the proposed delegation order included as Attachment 1 as modified by the Commission.
3. Choose not to delegate cancellation authorities to the Director at this time.

VII. Recommendation

The Director recommends Alternative 1, that the Commission adopt the proposed delegation order included as Attachment 1.

Attachments:

1. Proposed delegation order

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DELEGATION OF FORFEITURE AUTHORITY

WHEREAS ORS 540.610 - .670 provides processes and standards for the cancellation of perfected and developed water rights;

WHEREAS the Water Resources Commission (“Commission”) has delegated certain of its authorities with respect to cancellation to the Water Resources Director (“Director”) by rule;

WHEREAS the Commission has retained the authority to consider exceptions and issue final cancellation orders where the Director’s proposed cancellation order has been protested and the protestant has not defaulted;

NOW THEREFORE, the Commission delegates to the Director authorities as follows.

ORDER

Pursuant to the Water Resources Commission’s authority under ORS 536.025(2) to delegate the exercise, in the Commission’s name, of “*any power, duty or function of whatever character, vested in or imposed by the law upon the commission,*” the Commission hereby delegates to the Water Resources Director, the authority to consider exceptions and issue final orders in all cancellation proceedings initiated pursuant to ORS 540.610 - .670.

This delegation is pursuant to action taken by a vote of the Commission during its regularly scheduled Commission meeting on June 11, 2026.

This delegation of authority is in effect until rescinded by the Commission.

The Director shall report from time to time as requested by the Commission on the Department’s exercise of its delegated authority.