



Oregon State Legislature
Representative Helm and Representative Owens

WATER RIGHT CONTESTED CASE PROCESS IMPROVEMENTS
HOUSE BILL 3544-4 SUMMARY AND REVISIONS

The water right transactions contested case backlog has grown steadily over the years, with more than 200 protests now pending. The current process is not providing timely decisions and is expensive. To resolve the backlog in a timely and cost-effective manner, while still providing adequate process, this legislative package refines contested case processes to:

- 1) **Save time and resources** for all parties to contested cases;
- 2) **Reduce current and prevent future backlogs** of water rights transaction protests; and
- 3) **Provide a clear, consistent process** for parties to present evidence and arguments and for the Water Resources Department (OWRD) to make timely and informed decisions, while providing due process.

Uniform Processes: Currently, each water right transaction type has separate protest and hearing statutes with varying requirements. HB 3544 establishes uniform protest and hearing requirements for many water right transaction types to improve consistency, transparency, and administrative efficiency.

Standardized Schedule and Timelines: Current statutory timelines for some processes can be arbitrary and there is no default schedule. Schedules can vary widely, with frequent delays and costly hearings. HB 3544 creates a default schedule for specified cases of no more than 180 days from case referral to completion of the hearing. Exceptions to the schedule are allowed when justified as specified in the bill.

Efficient Final Orders: HB 3544 provides that, for water right transaction processes covered by the bill, an OWRD proposed final order will automatically become a final order if no protest is received.

Settlement Opportunities: HB 3544 clarifies that contested case hearings are not necessary if all issues were already resolved by settlement, withdrawal, or default. It also provides clear authority for settlement judges to be assigned through the Office of Administrative Hearings when beneficial to do so.

Accessible Hearing Locations: Currently, hearings on transfers must be physically held where the water right is located, adding cost and logistical challenges such as finding suitable locations that meet American Disabilities Act requirements. HB 3544 establishes a preference for remote hearings, with exceptions allowed and preference for established hearing office locations for in-person hearings.

Standing and Intervention: HB 3544 replaces the current cumbersome two-step process to intervene in support of a proposed final order with a more efficient one-step process, requiring that requests and fees for party status must be received within 30 days of the protest deadline. If requests for party status are denied, fees related to participation in the case are refunded.

Streamlined Issue Identification: Proceedings can be time-consuming and costly if issues are not identified clearly and specifically. HB 3544 requires protestants to raise reasonably ascertainable issues and submit reasonably available arguments in support.

Applicability to Backlog: The process improvements in HB 3544 above will improve timeliness of future proceedings as well as applying to the existing backlog of cases where appropriate.

Summary of Revisions Following Public Hearing

A variety of technical fixes and cleanups were identified in memoranda dated March 7th and April 1st, which were previously presented to the House Committee on Agriculture, Land Use, Natural Resources, and Water. Those revisions were already integrated into previous versions of the bill amendments.

Additional revisions responsive to stakeholder input and public testimony at the bill's Public Hearing on April 2nd have been identified below and included in final -4 amendments.

- Section 2(5)(a): This subsection was updated to clarify the intent that OWRD should consult with parties on contested case processes and timelines, and that any Department request for an exception from the default hearing schedule should only be made after consulting with the parties.
- Section 2(6): This subsection was updated to clarify that an administrative law judge shall give preference for testimony to be provided orally as practicable, rather than previous language that allowed a judge to require oral testimony in lieu of written testimony.
- Section 2(8): This subsection was updated to clarify that OWRD would consult with the parties when considering whether to request the assignment of a settlement administrative law judge through the Office of Administrative Hearings.
- Section 2(9): This subsection has been removed after review and consideration of stakeholder input. The final amendment will leave in place the status quo that parties may file with the Water Resources Commission exceptions to a final order that address issues of fact as well as interpretation of a statute or rule.
- Section 3(1)(a): This subsection has been removed after review and consideration of stakeholder input. Deleting the previous reference to "adversely affected or aggrieved" will leave in place current eligibility for any person to protest a proposed final order.
- Section 3(3)(b)(B): This subsection was revised to clarify that it does not require every provision of law to be known upfront. Rather, the subsection only requires parties to explain how the issues they raise are within the Department's jurisdiction.
- Section 13: This subsection was revised to eliminate confusion about the timing of protests and hearings in the context of permit cancellations. The language was updated to provide the same notice and 60-day protest period for permits as is currently provided for certificates.