



Oregon

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Testimony for House Bill 2803

House Committee on Agriculture, Land Use, Natural Resources and Water

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Thank you for the opportunity to provide informational testimony on House Bill 2803, which increases water right transaction and dam safety fees administered by the Oregon Water Resources Department. Processing water right transactions and conducting dam safety activities are programs partially supported by fees, with the remainder coming from general fund dollars. HB 2803 proposes fee increases of 56% for dam safety and 135% for water right transactions to maintain existing staffing and service levels through the 2027-29 biennium; these proposals do not add to Department capacity.

In considering the water right transaction fee increases, it is important to remember that these fees were intended to cover half of the cost for this program's staff. For at least the past four biennia (including 2023-25), the fees have not been sufficient, and a greater proportion of the program has been funded by general fund dollars to accommodate for fee shortfalls. The Department continues to evaluate and implement internal efficiencies to help streamline the application review processes and is engaged this session on bills also intended to improve processing efficiency. The Department is also incorporating into the Integrated Water Resources Strategy update and Strategic Plan update priorities that will focus on process efficiencies and investment in IT to reduce processing times and improve the customer experience.

We recognize that this fee increase is large; however, without it this program will lose essential staffing in a program that is already understaffed, and already long processing timelines will increase. Five main factors are contributing to the need to increase fees at this scale:

- 1) *Past fee increases have been inadequate to keep up with costs.* In 2021, fees were raised by 17%, but the Department had to reduce 6.33 FTE as the 17% increase was inadequate to maintain existing staffing. In addition, even with the increase and a reduction in positions, there was still a shortfall which was covered by ARPA funds (see below). Not increasing fees for 2025-29 will build and compound shortfalls in future biennia and which will warrant a need for larger increases to fill those shortfalls.
- 2) *Need to rebuild ending fund balances.* To help keep past fee increases smaller, the Department has partially paid for revenue shortfalls by not keeping an adequate ending fund balance (EFB). EFBs are projected to be fully depleted a few months into the 2025-27 biennia if fees are not increased. Budget instructions recommend agencies with programs supported by Other Funds revenues retain enough ending fund balance to cover cash flow needs and contingencies. Due to the seasonality of the water rights fees, the desired ending fund balance is six months' worth of expenditures.
- 3) *Labor costs have increased.* There have been significant staff cost increases as a result of the collective bargaining agreement negotiations, including two COLAs each over 6.5% this biennium. DAS cost projections also anticipate increases to staff costs by 14.5% for 25-27 and 9.0% for 27-29.
- 4) *Trends of an overall reduction in transactions.* The Department anticipates an overall net reduction in the number of applications for new water rights. As a result, higher fee increases will

be needed to maintain services to continue working on existing backlogs and to deal with increased time spent on applications which are increasingly more complex.

- 5) *One-time funding.* In 2021, the legislature provided ARPA funds to support various agency functions, including processing water right transactions. Of these funds, the Department used \$1M to offset costs in 21-23 for processing water right transactions, as the fee increase in 2021 was insufficient to cover the costs to maintain staff. This one-time support is no longer available, and fees need to be raised to cover this shortfall too.

HB 2803 -1 Amendments

The -1 amendments propose a 2025-2029 fee schedule to support water right transaction processing by increasing fees 135% and to support dam safety by increasing annual fees by 56%. These amendments fix rounding errors identified in the base bill, propose adjustments to the claim of beneficial use fee, and propose a third tier of reduced fees to exclusively store water, as a result of negotiations with stakeholders. These fee increases are required to address revenue shortfalls to maintain existing staffing levels.

If revenue shortfalls are not filled for water right transactions, the Department will need to reduce 7 FTE staff July 1, 2025. This staffing reduction accounts for half of the positions currently supported by these fees and equates to roughly 25% of the Water Right Services Division. Farmers, water providers, municipalities, and others will face longer waits for water supply and water right transfer decisions. Processing times will nearly double, backlogs will increase, responsiveness to applicants will decrease, and customer service will lag. In addition, not increasing fees for 2025-29 will build and compound shortfalls in future biennia and which will warrant a need for larger increases to fill those shortfalls.

If dam safety program revenues fall short, existing staffing services cannot be maintained into 2027-29, and the Department will need to evaluate impacts and potential service reductions. Service reductions may include the following: reduction in the number of yearly dam safety inspections; reduction or elimination of support for emergency action planning; reduction in capacity to administer federal grant programs for dam safety repairs; increase in timeframes to review and approve designs for new dams and modifications to existing dams; and reduction in the number of engineering analyses completed each year.

Table 1. Water Right Transaction and Dam Safety Annual Fees

Fee Name	Current Fee	Proposed Fee (HB 2808)	Last Two Increases
Water Right Transaction Fees	Over 50 different fees; see -1 amendment	Over 50 different fees; see -1 amendment	2017, 2021
Low Hazard Dam	\$120	\$190	2017, 2021
Significant Hazard Dam	\$230	\$360	2017, 2021
High Hazard Dam	\$790	\$1,235	2017, 2021

Dam Safety Program

The Dam Safety Program oversees the safety of over 950 state-regulated dams across the state that are authorized to store water for agriculture, cities, industry, recreation, fisheries, and other purposes. These dams include low-hazard, significant-hazard, and high-hazard dams. Low-hazard dams are dams that, if they were to fail, are unlikely to result in loss of life, and damage to property or public infrastructure would not be extensive. Significant-hazard dams are dams that are unlikely to result in loss of life but damage to property or public infrastructure would be extensive if they were to fail. If a high-hazard dam were to fail, there likely would be loss of human life. Dam safety staff conduct inspections on existing dams, administer contracts and grants for engineering analysis and rehabilitation work, review designs for new dams and modifications to existing dams, complete safety-related engineering analyses, and work with dam owners on emergency planning.

The dam safety fees are paid annually by state-regulated dam owners and are tiered based on the hazard rating of a dam. These fees pay for staff that work with dam owners to protect people, property, and infrastructure below those dams as well as contracting for engineering analyses and staff training as resources allow. The current fee schedule supports 0.95 FTE of the total 4 FTE within the Dam Safety program (0.59 FTE are federally funded, and 2.46 FTE are funded with general funds). Since establishment in 2009, the Department has brought forward modifications to the dam safety fee schedule every four years. The fees were last increased in 2021, and the current fees are as follows: \$120 low hazard, \$230 significant hazard, and \$790 high hazard.

Water Rights Services Division

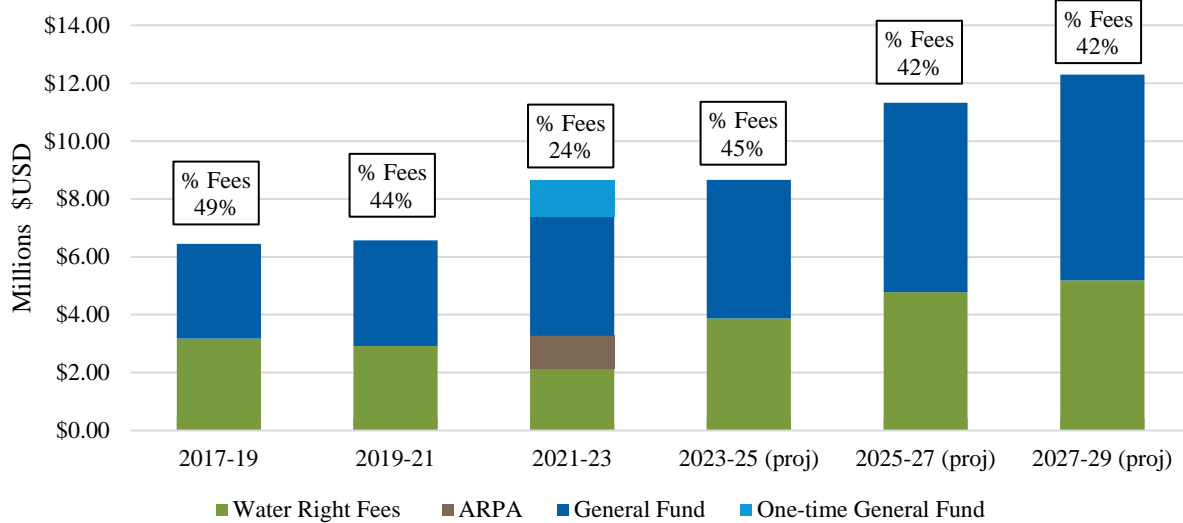
The Water Right Services Division is responsible for processing applications for new water right permits and transfers, instream water rights, instream transfers and leases, permit extensions, allocations of conserved water, and limited licenses, and for processing claims of beneficial use, water management and conservation plans, and protests. Technical reviews of these applications and transactions are critical to ensuring water is being allocated, used, and moved in accordance with law and to protect existing water users and instream needs. The Division has 29.4 FTE to carry out this work. The current fee schedule funds 14.93 FTE, of which 12.43 FTE are in the Water Right Services Division.

In 2009, the legislature restructured many of the Department's water right fees with an agreed upon target 50/50 split between fees and general fund to pay for the positions supporting this work. Since 2009, the legislature has adopted increases to the water right transactions fee schedule every four years. These modifications have been based primarily on Department of Administrative Services projected inflationary cost increases and the target 50/50 split. For the last several biennia, the 50/50 split has not been maintained, and the Department has relied on more general fund to supplement insufficient revenues. Currently, the funding split is closer to 55% general fund/45% fees. Fees were last increased in 2021 by 17%.

In 2021, the legislature also reduced 6.33 FTE that had been vacant due to a lack of fee revenues, despite the 17% fee increase. At that time, fee revenues and fee increases were insufficient to keep up with staff costs. To address some of the shortfall, the legislature provided one-time American Rescue Plan Act (ARPA) funding to hire temporary employees and cover the anticipated fee shortfalls. ARPA subsidized fees in the water transactions program in the amount of \$1.15 million dollars in the 2021-2023 biennium. Vacancy savings were also used to temporarily cover costs, with the intent of increasing the beginning fund balance for fee supported positions for the 2025-2027 biennium (Figure 1; Tables 1 and 2).

To accommodate for reduced staff capacity, significant effort has gone into administrative and internal streamlining, contributing to improved processes and clarity of external materials. In addition, in 2024, the Department repurposed 2 FTE assistant watermaster positions in the Field Services Division to add capacity for water right and transfer caseworkers to assist with the application backlog. This re-prioritization adds capacity at the expense of general funds and field services capacity. These additional staff are **not** included in the Departments calculations of the GF/Fee ratio, because they were not part of the original negotiations on the split – however, this means that the program is supported by general fund in greater amounts than what is show in calculations in this testimony. The Department has also been meeting with interested stakeholders since March 2024 attempting to find creative solutions for dealing with the fee revenue shortfall.

Figure 1. Water Right Transaction Staff Related Spending



Fee Revenue and Cost Drivers

Increased employment costs: For 2023-2025, the Department saw costs of projected personal services (salary, PERS, health care, etc.) and of related supplies and service increase much higher than the standard biennial projections had forecasted. This increase was due to statewide compensation changes resulting from collective bargaining agreements, increased inflationary costs reflective of current economic conditions, and a DAS equal pay (Pay Equity) analysis that increased salaries for some staff. The 2025-27 budget instructions from DAS included inflation factors for personal services costs and for related supplies and service costs for the 2025-27 biennium (i.e., 14.5% and 4.2%, respectively) and the 2027-29 biennium (i.e., 9% and 4.1%, respectively). DAS inflation factors provide data on which projected cost increases for the fee packages are calculated.

The statewide salary pot typically provides most of the resources to cover increased costs of personal services for general fund positions but does not provide funding for cost increases associated with fee-funded positions. As such, higher projected labor costs over the 2023-2029 period are compounding the need for even higher fee increases.

Rebuilding ending fund balances: Budget instructions recommend agencies with programs supported by Other Funds revenues retain enough ending fund balance to cover cash flow needs and contingencies. Due to the seasonality of the water rights fees, the desired ending fund balance is six months' worth of expenditures, and for Dam Safety, nine months. Failure to maintain adequate ending fund balances can result in insufficient reserves to cover program costs. For example, during times when fewer water right applications are being submitted, inadequate reserves could lead to service reductions or the need to seek additional funding to cover the gap.

Over the years, the Department has spent down EFBs and increases have not accounted for the need to rebuild them. The proposed fee increase would result in building the EFB up to meet budget instruction recommendations.

Water Right Transaction Fee Specific Drivers

Increased complexity of work: As water scarcity increases, some applications become more complex, increasing processing time for water right transaction caseworkers and technical staff. Increased processing time includes evaluating applications, communicating with the applicant or their agent(s) to acquire more information as needed, responding to application inquiries from the applicant, consultants, and attorneys, and as needed, participating in contested cases.

Water Right Transaction Fees have not been increased to the degree necessary to maintain service levels. The following information shows how fee revenue has been inadequate for years, requiring the Department to adapt, often with salary offsets and vacant position savings. In the 2021 legislative session, a 17% fee increase still resulted in permanent loss of 6.33 FTE. For the same year, the Department used nearly \$550k in general fund salary offsets and vacant position savings to manage revenue shortfalls, in addition to the \$1.15 million federal ARPA dollars used. For 2019-2021, the Department also used \$500k in general fund salary offsets and vacant position savings to manage revenue shortfalls. Vacancy savings were also used in 2013-15 and 2017-19 biennia to meet revenue needs that resulted from revenue shortfalls and inadequate fee increases.

Trends of an overall reduction in transactions. The Department analyzes transaction trends, based on historic and new actuals data for both revenue and expenses. The Department anticipates an overall reduction in water right transactions, driven in part by an expected reduction in the number of groundwater applications. The projections also suggest a slight increase in transfer applications. As a result of less applications overall, higher fee increases will be needed to maintain current staffing levels to work on new applications and existing backlogs and reduce application processing timelines that result from increasingly complex applications.

Why do the fees continue to rise over the years? Continuing trends observed include increased staffing/service costs, inadequate past fee increases, exhausted ending funds, and reduced revenue from water right transaction fees. Table 1 provides an overview of fee revenues, available ending fund balances, and program expenditures, projected without the proposed fee increase. Table 2 does the same with the projected fee increase considered in HB 2803. Note that ending fund balances provide a positive beginning fund balance for the next biennium, which supports stability of staffing.

In Table 1, note the ending fund balance from 21-23 helped sustain program expenditures in 23-25. However, because 23-25 will finish with a limited ending fund balance, and assuming no fee increase, significant funding shortfalls are projected in 25-27 and 27-29, resulting in the necessary reduction of staff. In Table 2, fee increases proposed in HB 2803 provide adequate ending fund balances necessary to provide program stability through 27-29.

Table 1: Water Right Expenses and Fee Revenue Table – Without Fee Increase in HB 2803

Biennium	2019-2021	2021-2023	2023-2025 (Projected)	2025-2027 (Projected)	2027-2029 (Projected)
Revenue					
Fees (& interest)	\$2,541,191	\$3,138,185	\$2,650,000	\$2,450,000	\$2,259,000
Beginning Fund Balance	\$771,351	\$388,829	\$1,409,753	\$185,140	\$0
<i>Total Available Revenue</i>	\$3,312,542	\$3,527,014	\$4,059,753	\$2,635,140	\$2,259,000
Expenditures					
Personal Services	\$2,635,631	\$1,783,341	\$3,465,692	\$4,355,909	\$4,747,941
Services & Supplies	\$288,082	\$333,921	\$408,921	\$426,096	\$443,566
<i>Total Expenses</i>	\$2,923,713	\$2,117,261	\$3,874,613	\$4,782,005	\$5,191,507
Ending Fund Balance	\$388,829	\$1,409,753	\$185,140	-\$2,146,865	-\$2,932,507

Table 2: Water Right Expenses and Fee Revenue Table – With Fee Increase in HB 2803

Biennium	2019-2021	2021-2023	2023-2025 (Projected)	2025-2027 (Projected)	2027-2029 (Projected)
Revenue					
Fees (& interest)	\$2,541,191	\$3,138,185	\$2,650,000	\$5,757,500	\$5,308,650
Beginning Fund Balance	\$771,351	\$388,829	\$1,409,753	\$185,140	\$1,160,635
<i>Total Available Revenue</i>	\$3,312,542	\$3,527,014	\$4,059,753	\$5,942,640	\$6,469,285
Expenditures					
Personal Services	\$2,635,631	\$1,783,341	\$3,465,692	\$4,355,909	\$4,747,941
Services & Supplies	\$288,082	\$333,921	\$408,921	\$426,096	\$443,566
<i>Total Expenses</i>	\$2,923,713	\$2,117,261	\$3,874,613	\$4,782,005	\$5,191,507
Ending Fund Balance	\$388,829	\$1,409,753	\$185,140	\$1,160,635	\$1,277,778