



WaterWatch of Oregon

Protecting Natural Flows in Oregon Rivers

Testimony of WaterWatch of Oregon on House Bill 3544-3 House Committee on Agriculture, Land Use, Natural Resources and Water

April 1, 2025

Chairs Helm and Owens, Vice Chair Finger McDonald, and Members of the Committee:

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and Oregon's rivers and aquifers to sustain fish, wildlife, recreation and other public uses of Oregon's waters. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch regularly participates in the contested case process that HB 3544-3 seeks to change.

WaterWatch previously submitted comments on HB 3544 with the proposed -2 amendments. Most of those comments remain applicable and WaterWatch incorporates them by reference. WaterWatch submits these supplemental comments to specifically address changes in the proposed -3 amendments, which were made available to us late Friday, March 28.

WaterWatch supports efforts to improve the efficiency of the contested case process. WaterWatch appreciates the efforts of the co-chairs and their staff to address this complex area of law. However, WaterWatch continues to have concerns about HB 3544.

WaterWatch's specific concerns with the proposed -3 amendment include:

- Section 3(1)(a) would allow only a person "adversely affected or aggrieved" to file a protest. This is new to the -3s and would be a major change in substantive law, which currently allows "any person" to file a protest. It would lead to protracted litigation in many contested cases over whether a protestant satisfies the standard for participation, contrary to the stated efficiency goals of the bill. *See, e.g., IBEW Local 89 v. Wallan*, 326 Or App 796, 800, *rev. denied*, 371 Or 509 (2023) (applying similar language in standard for *court review* of administrative actions generally under ORS 183.480). It could also impose significant new barriers to participating in the contested case process on behalf of public interests. If HB 3544 moves forward, it should continue to allow "any person" to file a protest to proposed agency action.

- Section 2(9) would limit “exceptions” to a proposed or final order to “interpretation of a statute or rule.” The right to file exceptions to proposed orders by an administrative law judge, and to some final orders by the Department, provides an important check in the process to correct errors without requiring parties to seek court review. The grounds for exceptions frequently go beyond “interpretation of a statute or rule” to findings of fact, application of law to facts, decisions on admissibility of evidence, etc. Also, the lines between "interpretation of a statute or rule," application of law to facts, and finding of fact are often blurry, which would be another area of potential dispute that could extend instead of shortening the contested case process. Exceptions, when permitted, should be allowed for any aspect of a proposed order or final order.
- Having been through many contested cases, WaterWatch continues to believe that a default time limit of 180 days to complete every contested case is unreasonable. WaterWatch appreciates the additional language in the -3 amendments allowing exceptions, (Section 2(4)), but the proposed language gives OWRD and/or OAH too much unreviewable discretion over whether to allow more time. The default should be at least one year, allow any party to request a shorter or longer schedule, and provide objective criteria for granting or denying that request (e.g., complexity and significance of the matter, need for discovery, and preferences of the parties).
- Throughout the bill, protests by applicants are treated differently (e.g., a right to hearing even if there are no significant issues) than protests by non-applicants. They should be treated the same.

Beyond these specific concerns, WaterWatch continues to believe that: (a) the existing contested case process is not a significant contributor to the contested case “backlog,” which is primarily about the time it takes to refer a protest to contested case; (b) HB 3544 will not have a significant impact on the backlog; (c) HB 3544 creates significant risks of unintended consequences given the scope of the proposed changes and number of statutes affected; and (d) a better way for improving the efficiency of the contested case process would be through a facilitated interim workgroup of agencies and practitioners with experience in the contested case process, starting with the work done on this bill.

Thank you for considering our further comments.

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