



**Oregon State Legislature**  
**Representative Helm and Representative Owens**

**WATER RIGHT TRANSACTION PROCESS IMPROVEMENTS**

*The -1 amendment to House Bill 3342 is a starting place for discussion/revision as input is received.*

**BACKGROUND**

Various “water right transaction” processes exist in connection with the right to use water in Oregon, such as applications for new water rights, extensions to complete development under a permit, and transfers or changes to a water right. OWRD and those utilizing their services have expressed concerns about the costs and time these processes take. Water right and transfer applications may take anywhere from 6 months to 3 years, depending on the type and complexity of the proposed water use. There are currently over 2,500 applications in the backlog for all types of transactions. This bill seeks to provide more timely and cost-effective services and improve water management outcomes.

**OUTLINE OF LEGISLATION**

- **Sections 1-2, Default to electronic documents:** Printing and mailing increases costs and processing times. The amendment shifts to providing electronic documents, unless an applicant requests paper copies, for initial reviews, proposed final orders, draft preliminary determinations, preliminary determinations, final orders, and draft certificates. NOTE: Final certificates would still be mailed.
- **Sections 3-7, 18, Provide notice in OWRD weekly notice for transfers, hydroelectric projects, and some certificates:** OWRD staff spend significant time coordinating notice and publishing with local newspapers, and applicants bear the cost of notice. The amendment would require notice in the OWRD weekly public notice, rather than newspaper notice for two consecutive weeks. NOTE: The amendment does not change existing newspaper notice requirements for new water rights.
- **Sections 8-9, Allow OWRD to pass along credit/debit card processing fees:** The bill addresses costs to allow voluntarily use of these payment options that OWRD could not previously afford to offer.
- **Sections 10-11, Fix statute that allows Commission to withdraw water from further appropriation:** The current withdrawal statute requires an “order” of withdrawal. At the time the statute was adopted an order included rules, but the APA was later changed to separate those terms. An order is required to name specific individuals. Because the withdrawal order is for future use, there are no individuals able to be named in the order, rendering the tool not implementable for new withdrawals. The amendment fixes that issue by changing the withdrawal process to occur by rule rather than order.
- **Sections 12-16, 20-22, Return applications for new water rights in CGWA, withdrawn or restrictively classified areas:** OWRD is required to process applications even when an area no longer allows for that water use to be approved. It is frustrating for applicants to go through the entire review process, just to find that their application is not allowed. It also causes the agency to spend time on these applications, while the backlog has continued to increase. The amendment provides authority that OWRD return an application along with a portion or all the fees, for filing if an application is in these areas. NOTE: This provision only applies to new water right applications.

- **Section 17-19, 23-24, CGWA, withdrawn, restrictively classified, and groundwater management areas:** In some cases, transfers and permit amendments may exacerbate water management issues by transferring use from a non-restricted area into a restricted area. While these types of applications may currently be approved, they often require heavy conditioning and management to prevent injury. It also requires agency time, while backlogs have continued to increase. The amendment provides authority for OWRD to deny a proposed point of appropriation transfer or permit amendment into a CGWA, restricted or withdrawn area, or groundwater management area (water quality), when the original water use was occurring outside those areas. Additionally, a change in point of appropriation may be denied due to injury if a CGWA is in the process of being assessed or declared.
- **Sections 25-27, Limit non-municipal water right extensions:** Vague criteria exacerbate processing time and costs, while increasing the potential for protests and litigation. Long extensions or continued extensions allow for speculation and can be detrimental to junior users with timelier development. This amendment increases the development timeline to 7 years for new permits but eliminates extensions for non-municipal water rights. For pending extension requests where a proposed final order has not been issued, extensions may be granted for a maximum of 2 years if: a portion of water has been used within the original development period, the original before-use fish protection conditions were satisfied and use is not in management area (CGWA, restrictive classification, withdrawal). NOTE: This provision does not apply to pending extensions if PFO was issued prior effective date of bill; revisions are being considered for quasi-municipal and group domestic permits; and a drafting error on applicability will be fixed to ensure this provision only applies to nonmunicipal water right extensions.
- **Sections 5, 14, 20-22, 28-29, Phased processing for new water rights and transfers; phased fee payment for new water rights:** Current processes require all fees to be paid before an applicant has received initial review revealing likelihood of success and assumes desire for processing even if the review was unfavorable. The amendment requires an affirmative confirmation that the applicant would like OWRD to continue processing the application within 30 days after the initial review is issued. For new water right applications, a portion of fees would be paid upfront, and remainder must be paid within 30 days of the initial review. If an applicant chooses not to move forward, OWRD closes the file without further action.
- **Sections 30-31, Apply process improvements to new and existing applications:** While prospective process improvements would improve timeliness and transparency of water right decisions in the future, a backlog of applications remains. Therefore, the amendment allows process improvements to apply retroactively to applications received by OWRD that have not received a PFO prior to the effective date of the bill. This applies efficiency/transparency measures to the backlog as well.
- **Sections 32-33, New water right applications in groundwater management areas:** Makes explicit authority that OWRD may deny an application for new water rights when justified in a groundwater management area (water quality). NOTE: A drafting error will be fixed to ensure bill only grants permissive authority to deny applications after considering public welfare, safety, and health.
- **Sections 34-46, Conforming amendments:** Parallel updates to account for changes above.
- **Section 47, Captions:** Non-substantive captions provided for reference.