



Oregon State Legislature
Representative Helm and Representative Owens

WATER RIGHT CONTESTED CASE PROCESS REFINEMENTS (HB 3544-3)
Input will continue to be reviewed through the public hearing to inform updates.

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, that provide due process.

Uniform Processes: Currently, each water right transaction type has separate protest and hearing statutes with varying requirements. This package 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 not a default schedule established. Schedules can vary widely, with frequent delays and lengthy, expensive hearings. This package requires OWRD to establish a default schedule for different types of cases, with no more than 180 days between case referral and completion of the hearing. Exceptions to the default schedule are allowed when justified as specified in the bill.

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

Settlement Opportunities: While most settlements occur before referral, this package provides clear authority that OWRD can utilize the Office of Administrative Hearings to conduct settlement conferences for OWRD water right programs by allowing a settlement judge to be assigned when beneficial to do so. In addition, it clarifies that there is no need for a hearing if all contested case issues were already resolved by settlement, withdrawal, or default.

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. This package establishes a preference for remote hearings for the types of transactions covered in this bill, with exceptions allowed and established hearing office locations preferred for in-person hearings.

Standing and Intervention: The current process to intervene in support of a proposed final order (PFO) is cumbersome, allows late intervention that can cause delays, and creates more administrative work. This package changes the current two-step process to a one-step process and combines the existing fees to intervene in support of a PFO, requiring that the request for party status and associated fees must be received within 30 days of the protest deadline. If requests for party status are denied, the portion of the

fee related to participation in the contested case will be refunded. This is more efficient than the current process, as party status is granted more often than not, and it allows for earlier identification of parties.

Streamlined Issue Identification: Proceedings can be time-consuming and costly if relevant issues are not identified clearly and specifically. This package requires all reasonably ascertainable issues to be raised with specificity in the protest.

Streamlined Exceptions: This package limits exceptions filed with the Commission to issues of interpreting statutes and rules, which is more consistent with the Commission's role as a policy-making body.

Applicability to Backlog: The process improvements above will improve timeliness of future hearings and processes. However, the current backlog of contested cases remains. Therefore, this package applies provisions, where appropriate, to pending contested cases and protests.

Conforming Amendments: Much of the amendment draft is comprised of conforming amendments that point toward Sections 2 and 3 and address text that is repetitive or conflicting.

Anticipated Updates and Technical Fixes

Our offices are continuing to review content and anticipate that additional potential updates may include:

- Section 2(5)(b) – adding “upon referral” after chief administrative law judge to clarify that this would be at referral, not once the case has been assigned to an administrative law judge, who would then have jurisdiction in 2(5)(c).
- Section 2(7) – adding “subject to the approval of the department” after hearing. This is consistent with current approach taken in the APA.
- Section 3(1)(b) striking “under this section or section 2 of this 2025 act”; replace with “by ORS Chapters 537, 540, and 541.” Add at the end: “or if weekly public notice is not required, issuance of the proposed final order.”
- Section 3(2)(b)(C) – Add “and (1)(o).” This would result in the request for standing fee and the participation in the contested case fee to be collected upfront in one step. If party status is denied, the (1)(o) fee would be returned as provided in subsection 6 (this is already included in the bill). Note that some processes already have fees, while others do not. This would apply to all requests for standing in processes under the bill.
- Section 3(2)(c) – strike “or a request for party status”
- Section 3(2)(d) – strike “that is based on the reasonably ascertainable issue” and replace with “on the issue.”
- Section 6(5) and Section 18(2) strike “that would result in” and replace with “based on the” after issues.
- Section 12 (7 to 9) – Current statute does not conform to the APA, which only addresses proposed final orders. Further revisions will be needed to achieve consistency.
- Section 20 – Current statute is silent on process. With the addition of the clarity on protests, it would be helpful to clarify the process by adding: “The department shall issue a proposed final order approving or denying the application or approving the application with modifications or conditions.”
- Section 26 and 29 – Re-establishing references to ORS 537.170 where deleted in section 26, and 537.622 where deleted in section 29.