

## HB 3342 A -A8 STAFF MEASURE SUMMARY

### Senate Committee On Natural Resources and Wildfire

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**Meeting Dates:** 4/29, 5/8

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#### **WHAT THE MEASURE DOES:**

The measure modifies the Water Resources Department's (OWRD) management of Oregon's water rights system by updating application processes, allowing electronic communication and payments, and revising deadlines. It updates public notice rules and requires the OWRD to maintain a list of restricted water sources. It also authorizes the Water Resources Commission (WRC) to withdraw water by rule and updates legal procedures for protests, public comments, and final orders. The measure takes effect on the 91st day following adjournment sine die.

Fiscal impact: Has minimal fiscal impact.

Revenue impact: No revenue impact.

HOUSE VOTE: Ayes, 37; Nays, 20; Excused, 3.

#### Detailed Summary:

#### **Modifications to the Water Resources Department Authority:**

##### Electronic Documents, Communication and Payments:

- Transfers rulemaking authority for electronic documents from OWRD to WRC and authorizes WRC to adopt rules.
- Allows both WRC and OWRD to send and receive documents electronically unless a recipient requests paper copies.
- Removes provision preventing OWRD from requiring electronic submissions, but maintains that OWRD may not use electronic means for summons, or to provide notice to parties before a contested case hearing.
- Authorizes OWRD to publish public notices in newspapers if an applicant pays the publication costs in advance.
- Authorizes OWRD to accept debit and credit card payments for any department services or fees and permits the department to add a nonrefundable processing fee to offset transaction costs.

##### Examination Fees:

- Allows OWRD to collect examination fees for water right applications at the time of application submission or after the initial review.
- Requires applicants to pay the remaining balance within 90 days of the review notice to continue processing.
- Failure to pay results in the application file being closed with no further action taken.

##### Restricted Water Source Listing:

- Requires OWRD to publish, regularly update, and make publicly available a list of water sources with usage restrictions, including:
  - Critical ground water areas
  - Areas classified as subject to ground water restrictions
  - Areas withdrawn from appropriation

##### Ground water and Use Restrictions:

- Authorizes OWRD to deny a transfer to the point of appropriation for a water right if the proposed new point is:

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- In a critical groundwater area
- In an area classified as subject to ground water restrictions
- In an area withdrawn from appropriation.

### Final Order Procedures:

Finds that a proposed final order issued by OWRD becomes a final order by law 33 days after the protest period ends, provided that the order includes a statement explaining this outcome, or no protest is received. Authorizes OWRD to withdraw and issue a revised order within the 33-day period if needed.

### Modifications to the Water Resources Commission Authority:

Authorizes WRC to withdraw water from appropriation by allowing it to do so through a rule instead of an order, and allows WRC to amend or repeal the rule to change or end the withdrawal. States that while the withdrawal rule is in effect, no one can apply for, and OWRD cannot process, any permits or licenses to use the withdrawn water for the specified purposes.

### Public Notice Posting Requirements:

Removes requirements to publish public notices of specific water applications in a newspaper of general circulation, but requires OWRD and WRC to include notices in OWRD's weekly public notice for most water right applications.

### Application Closure and Response deadlines:

- Requires applicants to respond within 90 days of OWRD's preliminary notice. Failure to do so results in the application file being closed with no further action taken.
- Provides applicants an option to proceed with an application by paying outstanding fees. If paid, OWRD must publish a notice and open a 30-day public comment period.
- Requires OWRD to return and refund applications submitted before April 1, 2026, if:
  - No proposed final order has been issued.
  - The proposed water use is prohibited.
  - The use does not involve groundwater recovery through artificial recharge or aquifer storage.
- Sunsets OWRD's ability to reject applications January 2, 2050.
- Requires applicants to respond within 30 days of WRD's preliminary notice on change applications (Changes in Water Use, Place, or Point of Diversion).
- Authorizes OWRD to grant a 60-day extension if reasonable efforts are being made, and close an application if no response is received.

### Public Notice and Comment Process:

- Requires OWRD to publish notice of all water right applications in its weekly bulletin and allow for a 30-day public comment period, including information on how to receive future updates, and how to request the proposed final order.
- Retains two-week newspaper publication for change applications that may affect more than five existing water rights, with costs paid by the applicant.

### Review of Application and Prohibited Uses:

- Upon completeness, OWRD must assess whether the proposed use is prohibited due to it being in:
  - A critical groundwater area
  - An area classified as subject to ground water restrictions
  - An area withdrawn from appropriation.
- Authorizes OWRD to deny changes in point of appropriation if the new location is in a restricted ground water area and subject to existing use restrictions.

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### Protest and Standing Provisions:

Specifies that if a protest is filed against a proposed final order, any person may submit a request for standing within 30 days after the protest deadline. Finds that if all contested case issues are resolved by settlement, or protests are withdrawn or defaulted, no hearing is required.

### Modifications for Permit Holders:

- Authorizes individuals to apply for a reservoir permit if the reservoir is not prohibited by being in an area withdrawn from appropriation.
- Extends the construction timeline for most water permit holders from 5 to 7 years and sets a 7-year deadline for municipal, quasi-municipal, group domestic, or group domestic expanded users to complete construction and begin using water. It also allows for one extension under certain conditions and clarifies how these changes apply to existing projects.
- Clarifies proposed statute changes and adopted rules specifically apply to applications and petitions that were submitted prior to April 1, 2026.

### Makes conforming amendments to modified WRC and OWRD public notice requirements:

Makes conforming changes to existing laws to ensure consistency with proposed provisions.

### Operative Date, Early Agency Action, and Effective Date:

Becomes operative on April 1, 2026 and authorizes OWRD to take any action necessary for implementation prior to the operative date. Takes effect on the 91st day following adjournment sine die.

### ISSUES DISCUSSED:

- Proposed authorities for the Water Resources Department (OWRD)
- Proposed OWRD administrative and technical changes' effect on water right application timelines

### EFFECT OF AMENDMENT:

-A8 amendment updates sections 17, 19, and 24 by modifying when the Water Resources Department (OWRD) can deny changes to a point of appropriation. It removes the requirement for some water to be developed to obtain a 2-year water right extension for pending permits and extension applications and adds that OWRD is authorized to approve water right permits and extension applications if good cause is shown. Specifies that OWRD will not consider basin program classifications when determining if a proposed water use is prohibited. Additionally, it makes stylistic and technical edits.

### Detailed Summary:

Modifies OWRD's authority to deny a request to change the point of ground water appropriation if the new location falls under restricted use rules, unless one of the following applies:

- The new point is within a designated critical ground water area, in the same aquifer, and in the same portion of that area as the original point;
- The area is covered by a legally established ground water bank that mitigates ground water use impacts; or
- The change relates to recovering stored ground water from an artificial recharge or aquifer storage project.

Removes requirement to develop some water in order to qualify for a two-year extension on pending water right permits and extension applications adds that OWRD is authorized to approve water right permits and extension applications if good cause is shown. Specifies that OWRD will not consider basin program classifications when determining if a proposed water use is prohibited. Makes stylistic and technical edits.

### BACKGROUND:

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In Oregon, water rights are tied to the land where the water is used and typically transfer with the property unless otherwise stated in the deed or disclosed to the buyer. To change the place of use, type of use, or point of diversion, a landowner must apply for a transfer through the Oregon Water Resources Department (OWRD), and must either own the land, have consent from the landowner, or show legal interest in the water right. Transfers cannot expand the original water right or harm other rights.

All water in Oregon is publicly owned and may be used only with a permit for beneficial use, issued by OWRD. Surface water rights have been regulated since 1909, and ground water permits were required starting in 1927.

The water right process involves:

- Applying for a permit.
- Constructing the water system and beginning use.
- Hiring a certified examiner to verify use matches the permit.

If all conditions are met, OWRD issues a water right certificate, which defines the allowed place, use, and source. Any change to these terms requires a formal transfer application.