

Submitter: Miles Johnson

On Behalf Of:

Committee: House Committee On Agriculture, Land Use, Natural Resources, and Water

Measure, Appointment or Topic: HB3544

Columbia Riverkeeper is a non-profit organization whose mission is to protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific. Columbia Riverkeeper truly appreciates the much-needed effort by Representatives Helm and Owens to modernize Oregon's water law and water rights procedures. We hope that these efforts will lead to a system of regulations that protects, and facilitates the efficient use of, Oregon's valuable and increasingly scarce water resources. However, as currently written, the language of HB 3544-3 appears unlikely address some of the major issues with Oregon's water right system--and make others worse.

Specifically, the -3 amendments' addition of a new "adversely affected or aggrieved" standard for people or organizations filing protests would (at best) increase the procedural burden and lead to protracted litigation in many contested cases over whether a protestant satisfies the standard, 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). If HB 3544 moves forward, it should continue to allow "any person" to file a protest to proposed agency action.

Another, potential outcome of the new "adversely affected or aggrieved" standard is that it could significantly restrict individuals and public interest organizations from protesting problematic OWRD decisions. In *Local No. 290 v. Ore. Dep't of Env'tl. Quality*, 323 Or. 559, 564, 919 P.2d 1168, 1170 (1996), the Oregon Supreme Court relied on identical "adversely affected or aggrieved" language in the Oregon APA to conclude that organizations, like Columbia Riverkeeper or the Oregon Farm Bureau, do not have representational standing--meaning that such organizations may not be "adversely affected or aggrieved" by decisions even when individual members of those organizations are. The upshot of importing this language (and caselaw) into HB 3544 could be to make it much more challenging--both substantively and logistically--for public interest organizations with decades of expertise and clear interest in protecting Oregon's water resources to protest problematic decisions. If the goal of HB 3544-3 is to improve the management of Oregon's precious water resources, making it more difficult for the public and public interest groups to participate in key decisions does not support that goal.

Beyond these specific concerns, Columbia Riverkeeper believes 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) a better way to improve 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.