

Areas for improvement developed by OWRD related to water right transaction process

Item	Problem	Notes
Online/Credit Card payment	<p>Processing mail and recording checks requires two staff members, followed by work by fiscal staff to process the payment. Currently, the Department can only accept payment by cash or check for many of its programs. This process is time consuming for staff in multiple divisions who assist in processing payments and is inconvenient for customers.</p>	<p>OWRD would need to implement online payment system and establish workflows to allow for credit card payments. The Department would also need to pursue legislation to obtain the authority to pass on credit card fees onto customer. Developing an online payment system would require IT staff time; this would need to be prioritized in the context of other projects as IT has too many projects and insufficient resources. Contracting for a system would be more expensive and OWRD does not have funds for that. (likely high impact, but resourcing a challenge). Is this something we should incorporate the needed legislative authority for in the fee bill now, so the authority will exist as we figure out how to implement?</p>
Protest Backlog Reduction	<p>Lack of funding for DOJ/OAH services to continue referring protests to OAH stagnates the process and exacerbates the protest backlog. However, even with more resources for backlog reduction, the contested case process takes significant time and resources for both staff and for applicants and third party protestants. While resources is an important factor, they should also be accompanied by processes to make the protest process more efficient. In addition, by making the protest process more efficient, some of the transactions could then offer a protest opportunity that do not currently.</p>	<p>Note: These ideas are in the idea generation phase and have not been vetted. Some may require rulemaking, waivers of AG model rules, or statutory changes. While funding remains an obvious issue, ideas on how to make the process more cost effective for everyone should be considered. OWRD is still in a mode of brainstorming but here are some possible ideas: (1) Many have talked about a water court. Instead of setting up a new bureaucracy; utilize existing systems. Designate an OAH section that specializes in water. Designate a water panel for Marion Circuit Court with procedures that address unique needs of OWRD's cases (2) Implement provisions that reduce the time and costs such as: defining scope of discovery, establishing length limits on certain documents such as testimony, limiting motions for summary determination except in unusual circumstances, and limiting appeals of ALJ discovery orders. Idea would be to make it as efficient as possible while also providing for due process and a fair process. (3) Consider holding to timelines provided in statute to prevent processes from getting drawn out. (likely high impact for changes; resourcing a challenge if consider budget need) Does anyone have ideas on how to make the protest process more effective, reducing the costs to all parties, while also ensuring fair outcomes/due process?</p>

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<p>Integrated Mapping Tool</p>	<p>Statutes and rules are very broad about what is required in a map and there is not standard tool for applicant's to use. Low quality maps require a lot of upfront staff time deciphering.</p>	<p>Develop an interactive mapping tool available online for applicants to provide a more accurate location. This requires IT staff time and will need to be prioritized in the context of other IT projects, as IT as too many projects and insufficient resources. Consider whether there is a need for modification of map requirements / standardization. (likely high impact, but resourcing a challenge) Would be interested in hearing from districts, CWREs, streamflow restoration partners, and others on mapping improvements.</p>
<p>Customer Service Webportal/ Online App</p>	<p>OWRD has identified a number of improvements for the water rights process which require IT resources. OWRD's IT POP is essential to creating the capacity for the section to be able to undertake this and other work on data. Lack of a web portal for Oregonians to submit applications and check the status of their application is both inconvenient for customers, but creates more paper documents, increased probability for incomplete/incorrect applications or maps, and results in more time spent interacting and responding to customers on their application. In addition, staff spend a lot of time answering questions about application status. Further, OWRD does not have an automated system to remind permit holders of critical deadlines such as the need to submit a COBU/extension. This causes additional work when the agency doesn't have sufficient resources to remind folks of deadlines, permit conditions, etc.</p>	<p>Conduct a business case assessment for the creation of an online application and customer service portal with internal workflow/case management software: features could include integrated mapping, applicant and reviewer notices, public facing for transparency, automated QA/QC, completedness checks. This requires IT staff time and will need to be prioritized in the context of other IT projects, as IT as too many projects and insufficient resources. Likely a large project that would require resources for a Business Case Assessment first. (likely high impact, but resourcing a challenge)</p>
<p>Extension Improvements</p>	<p>Extensions are currently the second largest type of transaction in the protest backlog, which in part is likely due to the permits being issued before water realities in a basin changed and due to the complexity and broadness of the criteria. Water right extensions may allow permit holders to sit on undeveloped water, sometimes for decades. This is appropriate for munis, but for other applicants it ties up water that others could put to immediate beneficial use. It can also be disruptive for junior users that more timely develop their water.</p>	<p>Are there opportunities to improve extensions process, criteria, rules, statutes? Should we be limiting the number of extensions that can occur? Should we be limiting the amount of time? Do we need to change the development timelines if we do that? (Likely a high impact)</p>

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Review bottlenecks due to staffing	Bottlenecks are occurring across WRSD sections because there are not adequate senior level staff to support the work that needs to get done; including final reviews, policy and modernization work to improve customer service and work on complex issues	Process improvements are important but ensuring adequate staffing to keep up with workloads is also critical. This item requires budget resources to create NRS 4 position(s); given current revenue forecasts and budget instructions, this item may not be ready. Department is flagging as a challenge for WRSD (likely high impact but resourcing a challenge)
Time spent on follow up	Staff spend a significant amount of time answering questions, following up on problems in the applications, reminding applicants/waiting on applicants for required info, responding to asks for re-evaluating our decisions outside of the formal process, and reacting to requests and complaints. This reduces staff productivity to reduce the backlog, but may be interpreted as poor customer service if not provided.	
Protest criteria	Protest backlog has increased in recent years. Are there changes to the criteria, process, etc that should be considered?	
Protests for Temporary Transfers and Permit Amendments	There are several appeal/hearing pathways across processes, including some processes where the ability to protest a Department decision does not actually exist. In some cases, results in increased DOJ costs when an applicant's only form of recourse is to file a petition for judicial review.	Could allow for temporary transfers and permit amendments (need to verify what others) to be protested rather than the default being a petition for judicial review. While this could potentially increase the number of protests, overall, it could also reduce the amount of money being spent on litigation. Would have to be paired with improvements to the protest process to actually result in cost/time savings. (likely a medium to high impact)
District keep quit claims on file	Evaluating quit claims for instream leases can be a large undertaking when many parcels are involved and ownership/timing has to be determined (one extreme example had 75 quitclaims that had to be reviewed to ensure ownership of water rights and validity of quitclaims). This creates a lot of work (for both irrigation district staff and OWRD staff) to process temporary leases that is more stringent than what is required by a permanent instream transfer.	Amend the OAR Chapter 690, Division 77 rules to streamline the temporary instream leasing process for applications submitted by an Irrigation District or other similar organization so that landowner (and other) consent be kept on file at the District office. This would make it consistent with the permanent and temporary District transfer processes.

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<p>Updated maps for district lands and living certs</p>	<p>It is a difficult and time-consuming task to review maps from all the various irrigation district transactions that have taken place since the HB 3111 certificate and maps were issued/prepared (20+ years ago). In many instances staff can spend several hours, up to a day or more, cobbling together which lands shown on the older HB 3111 maps are actually no longer there because they've been moved via transfer or placed instream. Additionally, districts are issued updated Living Certificates periodically, but there is no rule or statutory requirement for them to submit a new matching set of maps. If a district has 100 transfers over the course of 20 years, it's extremely challenging to locate an authorized POU on the original Certificate map.</p>	<p>OWRD is interested in talking more with districts about options. Some ideas could include require districts to provide an updated map when a new certificate (commonly referred to as a "living certificate") is issued in accordance with 540.530(2)(a) and OAR 690-385-7600[1], to a district as defined in ORS 540.505. The updated maps must reflect the place of use as described in the new certificate. Updated maps are to be filed with the Department within one year of new certificate issuance. Insert the requirement in 540.530(2)(a) and/or 690-385-7000 for living certs to be issued every 5 years unless there are less than 5 transfers in 5 years with new maps. (likely a medium to high impact for district transfers)</p>
<p>Fee alignment</p>	<p>There are some fees that exist in rule (limited licenses, drought authorizations, road watering) that have not been increased since 2001 and 2014 due to lack of rulemaking capacity. This results in other WR transaction fees being increased every four years, while some have remain unchanged. Likewise, some transactions, such as pre-CWRE program (July 9, 1987 - see ORS 537.799 & ORS 536.050(1)(x)) COBUs are exempt from COBU fees.</p>	<p>Not really an efficiency issue, more applicable to revenues. For discussion... put in statute? Leave as is?</p>
<p>Streamline administrative holds</p>	<p>Allowing for mulitple administative holds stalls forward progress on applications and cotnributes to backlogs. ORS/OARs establishes "may extend the 180-day period... for a reasonable period of time" but does not establish what is reasonable.</p>	<p>Would need to assess whether policy or legislation. Should the Dept place specific limit on the number of administrative holds an applicant can request and timelines?</p>
<p>Pump test requirements</p>	<p>Pump test provide limited benefit, are relatively time intensive to complete, and have created backlogs.</p>	<p>Update statutes and rules to establish criteria to pump test waivers and a process for requiring strategic pump tests in certain areas in the state.</p>

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Newspaper Public Notice	Processes associated with providing public notice to local newspapers is time consuming and it is not clear if it provides value add to the public process. In recent years, fewer newspapers are available for running public notices. So, there are fewer options for applicants to choose from and those left are getting more expensive.	Local newspapers rely on revenue from this. What would be the best process for public notice?
Place of Use changes for irrigation districts	A lot of TACS staff time is spent each year tracking place of use changes within irrigation district boundaries.	Consider ways to make process more efficient for all interested parties and the agency. Would a mapping solution help?
Paper PDs/Fos	Mailing paper PDs and FOs is time intensive for staff responsible for handling paper copies.	Remove requirement for paper PDs and Fos. This is linked to the administrative procedures act. ORS 536.040(3) also requires that the Department "maintain a paper copy of each final water use permit, certificate, order of the Water Resources Commission or Water Resources Director, decree or certificate of registration."
Hearing for settled protests	Currently, OWRD is arguably required to hold a hearing on protested transfers, even when there is a settlement or a protest is withdrawn. This uses staff time and DOJ resources to participate in.	Amend ORS 540.520(7) from "shall" to "may" to provide the flexibility for us to refrain from holding a hearing in the event a settlement can be reached and the protest is withdrawn.
CGWA	Current statute conflicts and it is unclear if OWRD is required to accept applications even if the areas is closed per a Critical Groundwater Area.	
Protests/ Appeals	WR transactions have numerous formal and informal appeal steps that increase the cost and time of processing water right transactions. For example-> Initial Review -> comment->Proposed Final Order ->Protest->Contested case-> ALJ PFO->Exceptions to ALJ PFO->Directors FO -> Exceptions to DO FO->Commission FO-> Appeal to Court of Appeals	Can processes be streamlined/improved?
Rulemaking	OWRD acknowledges that some areas may be improved through rulemaking (transfers, leases, etc)	OWRD has long rulemaking list; concerned about impact as well on stakeholders...should we form an ongoing RAC for statewide rulemakings? Other ideas?

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Clarity on process	Requires more research, it has been noted that some of our statutes are not clear from a process standpoint which takes extra effort to interpret. In addition, it has been noted that perhaps rule clarity is needed for public interest criteria.	
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