

Concepts submitted to Department via public survey on water right transaction process improvements

Topic Area	Idea
Basin Rules	Update basin rules
Basin Rules	Water use efficiency standards for all basins
Contested Case/ Protest	How can the Department move protests to resolution more quickly under existing statutes and rules without a significant influx of additional resources? Are there statute or rule changes that would assist with that?
Contested Case/ Protest	Searchable database of ALJ opinions on water contested cases
Contested Case/ Protest	ALJ training on water law
Contested Case/ Protest	Enforce standards for legal sufficiency of protests!
Contested Case/ Protest	Transparent, fair, predictable, efficient process for referral of protests for contested cases
Contested Case/ Protest	For ISWR applications, elevate role of applicant (usually ODFW) in sequencing/batching protest referrals
Contested Case/ Protest	Require a bond for protest of instream water right
Contested Case/ Protest	Standing statement deadline 15 days after Protest deadline
Contested Case/ Protest	Standing statement gets you a seat in settlement discussions
Contested Case/ Protest	Timeline for party status request and ruling on party status request
Contested Case/ Protest	Adjustments to statutory timelines for OWRD responses (e.g. if settlement discussions ensue then XX amount of time for additional process)
Contested Case/ Protest	Include all settlement agreement points as conditions of the water right (e.g., bypass flows required by state/federal agencies, etc.)
Contested Case/ Protest	Develop, publish and implement a transparent and accountable system for determining the order in which matters are referred to contested case hearing (eg. by order in which protests are received, or in order by which received in different categories such as transfers, extensions, new surface water applications, etc.). Post a list of pending protests and the order and projected schedule (as known) in which they will be referred to a publicly available docket
Contested Case/ Protest	Require ALJs that work on water permitting issues to have water law training by neutral entities

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Contested Case/ Protest	District Transfers—allow non-patrons to protest.
Credit Card	Allow for the payment of fees via credit card within the online application system.
Customer Service	Better communication with applicants or agents is needed and should be part of the training for new caseworkers. We have seen a trend toward much more formal processes which has created a lot of unnecessary work for the caseworkers (i.e. creation of a denial document over a fix that could have been resolved by a phone call). Now the applicant must amend the application which forces it back through the same process twice. A lot of agency time is wasted this way.
Customer Service	Establish a formal process for any communications about an application once it is filed (and continuing through issuance of Initial Review, Proposed Final Order and Final Order). Restrict communications between agency staff and the applicant (or anyone of behalf of the applicant such as an agent, attorney or consultant) or public (defined as anyone other than OWRD or other agencies related to the processing of the application) to designated, formal meetings: initiated by agency staff should agency staff need clarification or additional information; or upon request for a formal meeting by the applicant or the public. Require the request for such a meeting and the substance of the meeting to be recorded in the application file. Consider making any such meeting open to the public.
Data	There should be a lot more research into how much water that is taken out of the area by way of pivots before the permits are issued. How it will effects the other water peoples needs including the people with domestic wells. To many pivot in one area will always create lots of water problems. Over pumping the aquifer destroys it.
Data	Integrate groundwater in WARS
Data	Measurement & reporting
Data	Continue/elevate investment in data (gw studies, stream/temp gauges, IT, etc).
Data	Improve Measurement/Reporting of water use
Div 33 Mitigation	Eliminate non-flow mitigation under Division 33
Div 33 Mitigation	Eliminate mitigation option in Div 33
Drought	Enhance drought statutes to better protect streamflows/fish
Drought	More vigorous implementation of existing drought statutes (e.g. Gov and/or Commission curtailment orders, required conservation, etc)
Drought	Evaluate “parking lot” of 2015 Drought Task Force Legislative Report
Enforcement	If false claims/representations in a water right application are made, OWRD to reject the application. If false statements come to light after permit issuance, cancel permit and, if certificated, cancel the certificate. Additionally, impose civil penalties
Enforcement	Making false claim in certification process results in invalidation of certificate
Enforcement	Continue/improve vigorous enforcement of permit conditions.
Enforcement	Continue/improve enforcement against illegal use including using water right without a permit, waste, etc.
Enforcement	Continue to improve this enforcement/compliance division including through use of available technology such as satellite data.

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Enforcement	Impose available penalties and seek increased penalty amounts/tools.
Exempt Uses	Small scale landscape water retention of a ¼ acre feet of water or less should be allowed on a property for fire mitigation, landscape restoration and micro-farming without filing for an alternate or standard reservoir when not in channel of a stream.
Exempt Uses	Properties should be allowed ¼ acre commercial irrigated garden as a replacement for their ½ acre domestic well, non-commercial lawn and garden exemption if a working meter is placed on the well and the 15,000 gallon exemption is brought down to 1,000 gallons a day. This reduces OWRD enforcement costs, constant public PR battles, simplifies the rules, and assists small farmers. This exemption amendment would not apply to those in critical groundwater areas
Extensions	Where basins are fully allocated, how can the Department more efficiently handle extensions?
Extensions	Do not allow extensions of time beyond statutory time for initial development (5 years or 20 years for municipal use)
Extensions	Except in extenuating circumstances, condition all extensions of time to be the last extension (i.e. add the “last extension” condition to all extensions).
Extensions	Except in extenuating circumstances, deny each extension where the permit holder has not complied with all permit conditions (e.g. failure to file required water use reports, failure to install a required fish screen, use of an illegal/unauthorized point of diversion).
Fish Passage	Ensure transfers are a fundamental change in permit statute as far as fish passage triggers
Forfeiture	Lose the 5-year non-use rule. Many water rights have been developed over or sit unused; however, they cannot be transferred due to non-use. More ability to complete transfers can create more revenue. Users should not be required to waste water once every 5-years if it is not necessary just to protect their right to use water.
Forfeiture	Forfeiture of unused water at time of transfer application
Funding	Annual maintenance fee for water rights/permits/claims
Groundwater Reviews	The groundwater review is a major bottleneck in the process. Many of our groundwater applications in the last few years have been groundwater reviewed more than once. We provide ample static water level data to the department on an annual basis and feel that it is not used efficiently to provide answers on future applications. It seems with the inflow of data that this part of the process could be automated or invest in modeling capabilities to speed up the groundwater review findings.
Incentives	Many of the applications that we formerly used are no longer an option for certain applicants (i.e. new groundwater application). OWRD needs to incentivize more modern applications that can be approved. Shutting off the ability to get applications approved is going to further reduce the fees coming in the door. Drip projects are so prevalent today's ag industry; however, many won't use the allocation of conserved water because nobody wants to give up 25% of their conservation back to the state. Make efficiency programs more attractive to applicants to a.) supplement some of the lost fees from a decrease in other types of applications being submitted and b.) lean into conservation efforts that will be a win-win for the applicants and the state's resources.
Instream Flows	Establish minimum streamflows for fish survival, especially during drought
Instream flows	Minimum streamflows for fish: set minimum flows across the state to which any consumptive use appropriation would be subject to

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Instream Rights/ Transfers/Leases	For irrigation district instream leasing, which may include a large number of landowners and additional documentation, bring these a bit more in line with other temporary movements of water. Allow the districts to submit a place of use table and maps, but hold the additional documentation in their files (signed landowner forms, quitclaim documents, Secretary of State or Trust background documents). These could be requested at any time by OWRD. This will reduce OWRD staff workload and also reduce the time it takes the districts and others to compile these large leases. The lease submitted would include the district and lessee signatures. Renewal leases could also just include district and lessee signatures with landowner signature on file, or these could include the landowner signature since they are already in a simplified format.
Instream Rights/ Transfers/Leases	District quitclaim deed leases. Similar to above. The District holds all of the quitclaim documents on file and provides the quitclaim and warrantee deed county clerk filed numbers. These could be included in a place of use table. The documents would be available if OWRD wanted to do a random check on these.
Instream Rights/ Transfers/Leases	District leases. Allow the district to submit a lease for water that may be subject to confiscation without a landowner signature (5th year of non-use for example) - providing the district has records that they tried to get a landowner signature but have failed to do so (sending certified notifications). Currently, it is easier for a District to confiscate water than it is to just lease that water instream. They would rather not take the water away from the landowner.
Instream Rights/ Transfers/Leases	One district has suggested moving away from quarter-quarter balancing with pooled lease applications. That process takes a lot of time and the districts go through a year-end process with OWRD to address changes to district water rights
Instream Rights/ Transfers/Leases	Streamline or automate the process related to instream lease renewals. I would suggest automatic approval of instream lease renewals that were initially approved less than 5 years previously. This would decrease the amount of times the watermaster would need to review these applications where no changes to rate or instream period were requested.
Instream Rights/ Transfers/Leases	Allow for split season leases to occur for more than 5 years at a time and the option for permanent split season leasing. Permanent split season leases may have to meet certain requirements to account for monitoring over long periods of time but there are circumstances, like water rights that have split duties, where this approach could be relatively straightforward and provide irrigators with more options for managing their water for instream and out of stream needs in the long term.
Instream Rights/ Transfers/Leases	Restore original purpose of "consent to injury" for instream water rights (to enable restoration projects to happen)
Instream Rights/ Transfers/Leases	Align Division 77 with statute (remove arbitrary reduction of instream water right applications to "estimated average natural flow")
Instream Rights/ Transfers/Leases	Streamline process for applying for new instream water rights
Instream Rights/ Transfers/Leases	Protect instream leases/transfers into receiving stream
Instream Rights/ Transfers/Leases	Align Div 77 with statute, remove any limitation to ENAF

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Instream Rights/ Transfers/Leases	Do not impose additional process requirements not found in statute
Instream Rights/ Transfers/Leases	Support ODFW rule changes to enhance instream flow methods (e.g. best available science)
Instream Rights/ Transfers/Leases	All process points related to consumptive use water rights above apply here too
Instream Rights/ Transfers/Leases	Remove Div 77 rule language that limits to ENAF, no such restriction in statute
Instream Rights/ Transfers/Leases	Remove Div 77 rule language that limits additive ISWR, no such restriction in statute
Instream Rights/ Transfers/Leases	Remove Div 77 measurability standard to carry to next stream, no such restriction in statute
Instream Rights/ Transfers/Leases	Allow pre-approval so in times of drought they can be employed speedily
Instream Rights/ Transfers/Leases	Develop and implement a transparent process for OWRD evaluation of requests for consent to injury of instream water rights that includes standards that fulfill OWRD's trust duty to the people of Oregon.
Mitigation	Deschutes Groundwater Mitigation Bank could have online forms for tracking temporary mitigation projects and GW applicants assigned to those projects on an annual basis (submitted mid year) with the full report due at the end of the year. There may be some ways to streamline the full report as well.
Mitigation	Tighten up groundwater mitigation program to account for timing and zone of impact
Online Application System	Establish an online system for submitting instream lease, transfer and ACW applications that would allow the applicant to track their application as it moves through the review process, see the details of the watermaster review and allow for the applicant to make updates as requested by OWRD staff.
Permit	Do not allow additional POA/POD on permit amendments
Petition for Reconsideration/ Review	Provide public notice of the filing of petitions for reconsideration and/or review and of any order issued regarding a petition for reconsideration.
Petition for Reconsideration/ Review	Post petitions for reconsideration and/or review to WRIS upon receipt and post any order issued regarding a petition for reconsideration in WRIS upon issuance.
Prioritization	Prioritize/expedite the processing of leases, transfers and ACW applications that protect water instream. These projects have significant public and environmental benefits and should be prioritized in order to realize those benefits as soon as possible.
Public Comment	Retain comment period
Public Comment	Require supervisor review of proposed actions receiving significant public comment (either in substance or volume).

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Regulation	Define and regulate waste
Stored Water Right Application	Allow entities to apply for a storage right and a secondary right at the same time. This will allow all users to know the specific intent for the storage. Otherwise all you know is someone is filing for a storage right for . . . . This leaves questions that can't be answered for reviewers. Knowing the what and the for at the same time will allow one to know where the irrigation will occur, location and what kind of commercial use is intended. This will also allow the applicant to expedite the use of the storage water since the review and OWRD decision will be much shorter.
Transfers	Public interest test on transfers of existing water rights that recognizes that all water is owned by public
Transfers	Public Interest/Environmental Review of Transfers
Transfers	Grant OWRD broad conditioning authority on transfers
Transfers	Establish/improve/enforce requirements for contents of evidence of use that applicant must file with transfer application. Evidence should cover the full forfeiture period (15+5) and provide OWRD with adequate information to make required determinations.
Water Availability	How can basin plans and program rules be used to set/manage expectations at a basin-scale for new permits and increase efficiencies in the water rights processes or transfers?
Water Availability	Evaluate whether current standards for surface water availability are sufficiently protective of existing supplies given increasing variability in precipitation
Water Availability	Close basins to new consumptive appropriations where no water availability (reject permit application outright)
Water Availability	Surface water: Close over-appropriated Water Availability Basins to new applications for consumptive use appropriation
Water Availability	Groundwater: Parallel to surface water applications, close Water Availability Basins where surface water is over-appropriated to new groundwater applications if proposed wells are hydraulically connected to surface water.
Water Right Application Criteria	Limit applications to one point of diversion, point of appropriation and/or reservoir.
Water Right Application Criteria	Develop systematic standards for applicants to use to prove need for the permit and incorporate as a requirement in the application process.
Water Right Application Criteria	Develop and implement a more robust requirement for applicants to prove demand for the undeveloped water.

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Basin Specific Program - Deschutes	Conserved Water in Deschutes Basin - Have a basin specific program that with ODFW review, allows water to move from a water conserving district to another junior district as a supplemental water right to use across acres (irrigation season) in exchange for an equal amount of water protected with potentially different timing in the same stream (winter flows). This could also include that 5-25% of the water protected must remain in the reach below the point of diversion during the irrigation season with the remaining amount passing to the junior district as a supplemental right in exchange for them transferring water permanently instream to help winter flows during the storage season (Deschutes River Specific. Could even restrict to particular districts participating). Also stipulate that water protected cannot be submitted as plus 1 minute water (for this or any publicly funded conserved water) but must be submitted at full face value priority date of the originating water.
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