

Summary of Water Legislation



2003 Legislative Session

S B 82

S B 820

H B 2210

H B 2268

H B 2456

H B 2551

H B 2945

H B 3201



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Foreword

2003

Legislative Summary

The Summary of 2003 Oregon Water Legislation includes summaries of eight water-related measures enacted during the regular session of the 72nd Legislative Assembly. The summary for each measure contains the effective date of the bill, background information, an analysis of the effects of the bill, the 2003 Oregon Laws chapter number, committee history, and the final floor vote.

Although the information in this document has been reviewed to achieve accuracy, original sources should be researched when dealing with specific legal matters. The Water Resources Department makes no express or implied warranties regarding these materials.

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SB 820 Requires Department of Environmental Quality to work with interested parties to examine opportunities and barriers associated with wastewater reuse in urban areas.

Water Right Transfers

SB 820 Revises statutes regarding irrigation district temporary transfers, surface to ground water transfers, and other specified temporary transfers in the Deschutes Basin.

Well Construction

HB 2210 Amends statutes to increase the bonding level of a licensed well contractor and for landowners constructing their own well.

Chapter 348
2003 Oregon Water Laws

2003
SB 82

SB 82 provides express permission for irrigation and domestic use water users to occupy state-owned submersible land for the construction, maintenance, and operation of structures and facilities necessary for the use of water.

Background

Under current law, a water right applicant must declare whether they have an authorization or easement to occupy lands owned by others that are crossed by ditches, canals, or other works associated with the proposed water use. If the applicant does not have written authorization or easement to occupy lands owned by others, it must be provided to the Department prior to permit issuance. ORS 537.140 and 537.211

Current law also provides that the failure to obtain written authorization or easement shall be a ground for refusal to issue a permit. In addition, if a permit was issued based on a false statement by an applicant regarding ownership or written authorization or easement, the permit is subject to cancellation. ORS 537.139

Many water right permit applicants and permit holders are unaware that their diversion works may cross land owned by the State of Oregon or subject to a state ownership claim. This is particularly true on the state's coastal lakes where residents often satisfy their water needs by diverting water directly from a lake. Under this scenario, lakefront water right holders may have mistakenly declared in their water right application that they own all the land to be crossed by their diversion works. Because this statement would be false if the state-owned the land, and they do not have the required authorization or easement, under current law, someone else may argue the permit is subject to cancellation.

Signed by Governor

June 13, 2003

Sponsored by

**Senator Messerle and
Representative Verger**

Committees

**Senate Water and Land Use
Committee**

House Water Committee

Vote

Senate	29 ayes	0 nays
House	55 ayes	0 nays

Effective

January 1, 2004

What the bill does

1. Modifies ORS 274.040 to explicitly grant permission to water right holders using water for irrigation or domestic use to occupy state-owned submersible land for the construction, maintenance and operation of structures and facilities necessary for the use of water. For this class of water right holders, SB 82 moots any concerns related to having the required easement and/or whether a previously issued permit is subject to cancellation due to inadvertent false application statements.
2. Eliminates the requirement to provide evidence of written authorization or easement to cross state-owned submersible lands for new water right permit applications for irrigation or domestic use.

SB 820 contains provisions regarding temporary transfers within irrigation districts; surface to ground water transfers and other specified temporary transfers in the Deschutes Basin; and wastewater reuse.

Background

Transfers

Water available for new appropriations is limited in many areas of the state due to prior appropriations. Therefore, changes to existing water rights known as “transfers” are becoming an increasingly important water management tool. Such changes or transfers are allowed only if they do not result in injury to existing water rights and do not enlarge the originating water right.

Under current water right transfer law, among other things:

- a qualifying irrigation districts may, for one irrigation season, temporarily change the “place of use” of water rights within the legal boundaries of the district or temporarily change the “type of use” of stored water;
- a water right holder can temporarily change the place of use and, if necessary to convey water to the new place of use, temporarily change the point of diversion, for up to five years; and
- a water right holder may, under certain circumstances, transfer a surface water point of diversion to a ground water point of diversion.

Wastewater Reuse

Historically, the management of wastewater has been focused on treatment and disposal. However, focusing strictly on this approach may result in missed opportunities

Signed by Governor

August 22, 2003

Sponsored by

Senator Nelson

Committees

**Senate Water and Land Use
Committee**

House Water Committee

House Judiciary Committee

Conference Committee

Vote

Senate 26 ayes 1 nays
House 52 ayes 1 nays

Effective

August 22, 2003

to benefit from the reuse of treated wastewater. Meeting the state's growing demands for new water supplies could be aided if treated wastewater was reused for "urban" uses such as irrigating city parks, landscaped areas, and golf courses.

In 1991 and in 1997 the Legislative Assembly enacted statutes that provide an opportunity for the reuse of "reclaimed" municipal or industrial use water without a water right provided certain criteria are met. When reused water is applied on lands covered with an existing right, that existing right is not subject to non-use forfeiture.

What the bill does

Transfer Provisions:

1. Modifies provisions under ORS 540.531 to allow a transfer of surface water to ground water in the Deschutes Basin Ground Water Study Area. Such transfers may be approved if (a) the ground water is hydraulically connected to the authorized surface water source; (b) the transfer does not result in enlargement of the originating right or injury to existing water right holders; and (c) the proposed ground water point of appropriation affects the surface water source authorized under the originating water right.
2. Requires the Water Resources Commission to adopt rules to implement the Deschutes Basin surface water to ground water transfer provisions by March 31, 2004.
3. Allows, under certain specific circumstances, the temporary transfer of the place of use and type of use, of all or a portion of a water right, for a period not to exceed 25 years. Criteria for such a transfer include that the water right will be used in the Deschutes

Basin, the originating right is for irrigation, and the proposed use is municipal use. Any portion of the water right not temporarily transferred may be used on lands described in the original water right if it does not result in injury or enlargement.

4. Requires the Water Resources Commission to adopt rules to implement the Deschutes Basin temporary transfer provisions by March 31, 2004.
5. Requires the Department to submit an annual report to the Legislative Assembly or appropriate interim committee that includes a summary of the features of the processes used to implement the Deschutes Basin temporary transfer provisions. The report is due January 31 of each year, with the first report required on January 31, 2005. The report submitted on January 31, 2009 shall include recommendations for further legislation related to the Deschutes Basin temporary transfer provisions.
6. Adds provisions to ORS 540.570 so that qualifying irrigation districts may temporarily change, for one irrigation season: (a) a point of diversion or point of appropriation if done along with a change in place of use; (b) a point of diversion to allow for the appropriation of ground water; and (c) a primary water right to a supplemental water right.
7. Establishes a pilot project in which Talent Irrigation District, Owyhee Irrigation District, and Tualatin Valley Irrigation District, under specific circumstances, can make annual “place of use changes” to water rights within the legal boundaries of the district without making application for a temporary transfer.
8. Requires the Department to report the Seventy-fourth Legislative Assembly on the operation of the pilot project by no later than January 31, 2007.

-
9. Sunsets the pilot project provisions June 30, 2008.

Wastewater Reuse Provisions:

1. Encourages the reuse of wastewater in urban areas as a means to conserve potable water.
2. Requires the Department of Environmental Quality to work with interested parties and state agencies to examine the opportunities and barriers associated with wastewater reuse in urban areas and submit a report to the appropriate interim committee by December 31, 2004.
3. Sunsets the wastewater reuse provisions January 2, 2005.

Chapter 144
2003 Oregon Water Laws

2003
HB 2210

HB 2210 amends ORS 537.753 to increase the bonding level of a licensed well contractor from \$4,000 to \$10,000 and for landowners constructing their own well from \$2,000 to \$5,000.

Background

As part of the Ground Water Act of 1955, the Department is authorized to regulate and license water well constructors. Since 1961, drilling contractors have been required to post a bond. The bond is to cover repair or abandonment of mis-constructed wells. Prior to HB 2551, the required bond was \$4,000. The bond is designed to cover wells constructed over the last three years.

With the current cost of well construction, in many cases, a \$4,000 contractor bond would not cover the cost of repair or abandonment of even one well. Therefore, a well owner could bear the financial burden of repairing or replacing the well. When more than one well is involved, the bond is generally used by the first person to make a claim on it.

In addition to well contractors, since 1971, landowners that receive a permit to construct a well on their property are also required to carry a bond. This bond assures that adjoining property owners and other third parties have recourse if the landowner mis-constructs the well. Prior to HB 2551, landowners constructing their own well were required to carry a \$2,000 bond. The Department issues about 10 to 12 landowner well construction permits per year.

An increase in the bond required for both well contractors and landowners constructing their own well better reflects the cost of well repair and abandonment, provides greater resource protection, and better protection for affected parties should a well be mis-constructed.

Signed by Governor

May 28, 2003

Requested by

Water Resources Department
(Pre-session filed)

Committees

House Water Committee

**Senate Business and Labor
Committee**

Vote

Senate	28 ayes	0 nays
House	54 ayes	0 nays

Effective

January 1, 2004

What the bill does

1. Amends ORS 537.753 to increase the bonding level of a licensed well contractor from \$4,000 to \$10,000 and for landowners constructing their own well from \$2,000 to \$5,000.

HB 2268 increases the Department's statutorily established processing fees and establishes fees for processing a number of transactions that previously did not require a fee.

Background

Today, limited water supplies, competing demands, and the protection of existing water rights make review and processing of water right applications and transfers more complex than ever. HB 2268 ensures that the Department has adequate resources to handle today's workload and these additional challenges. Increased transaction fees will support the Department's current service capability for water right application processing and will add resources (3 Limited Duration Positions) to address the water right transfer backlog and workload associated with instream leases and review of water management and conservation plans.

HB 2268 also provides resources for maintaining the statewide well inspection program - a program critical to ensuring the high quality of Oregon's aquifers and protecting the public health, welfare, and safety.

What the bill does

1. Amends ORS 536.050 to increase the statutory processing fees for most water right related transactions including water right transfers, water right permits, applications for small ponds, water right permit extensions, and protests.
2. Requires processing fees for instream leases, allocations of conserved water, and review of Water Management and Conservation Plans.
3. Allows the waiver of a portion of processing fees for the allocation of conserved water under

Signed by Governor

July 21, 2003

Requested by

Water Resources Department
(Pre-session filed)

Committees

House Water Committee
Joint Ways and Means
Subcommittee on Natural Resources
Ways and Means Committee

Vote

Senate	24 ayes	6 nays
House	44 ayes	10 nays

Effective

July 21, 2003

Start card fee effective upon passage.

All other fees effective
October 1, 2003.

circumstances in which the allocation would result in public benefits.

4. Increases the well construction start card fee established in 1989 from \$75 to \$125 and requires a start card fee for well deepening.
5. Provides clear legislative guidance on how start card fees can be expended by the Department.
6. Creates a dedicated “Water Right Operating Fund” to carry out the provisions of ORS Chapters 536, 537, 540, and 541.
7. Requires a Department sponsored “fee work group” to research and evaluate the relevance, equity, and sufficiency of fees under ORS 536.050 and 537.762 and to consider opportunities for regulatory streamlining and cost containment. The Department shall report the findings of the work group to the Seventy-third Legislative Assembly and to any interim committee that requests a copy of the report.
8. Deletes the “ground water management area” provisions in ORS 537.545.

Chapter 93
2003 Oregon Water Laws

2003
HB 2456

HB 2456 modifies the allocation of conserved water statutes (ORS 537.460 to 537.485) to add flexibility and clarity.

Background

The allocation of conserved water is a voluntary program intended to provide an incentive for water right holders to implement conservation measures. Under the program, conservation projects benefit both the water right holders and instream values.

In 1999, the 70th Legislative Assembly passed Senate Bill 93, creating an eleven member Joint Task Force on Water Supply and Conservation. The members of the Task Force were appointed by the Governor, the Speaker of the House and the President of the Senate, and represented agricultural, municipal and industrial, environmental and fishing, and other interested stakeholders. The Task Force was authorized for four years and directed to submit an initial report to the 71st Legislature (2001) and to submit final recommendations to the 72nd Legislature (2003). The overarching statutory mandate for the Task Force was to, in consultation with the Water Resources Department, “develop recommendations relating to the process of siting and funding future water supply projects.” The Task Force focused its attention on evaluating issues, opportunities and constraints associated with two overarching policy objectives: (1) developing new supply options (water supply); and (2) making the most efficient use of existing supplies (conservation).

As part of the Task Force’s final recommendations, Representative Jenson introduced HB 2456. This bill modified the allocation of conserved water statutes (ORS 537.460 to 537.485) to make several temporary provisions of the current law permanent and to make other minor changes.

Signed by Governor

May 24, 2003

Sponsored by

Representative Jenson

Committees

House Water Committee

**Senate Water and Land Use
Committee**

Vote

Senate	28 ayes	0 nays
House	57 ayes	0 nays

Effective

May 24, 2003

What the bill does

1. Allows the applicant to choose the priority date of the conserved water rights - same as or one minute junior to the originating right. This provides the applicant the flexibility to decide whether the original water right and the conserved water right have the same priority for regulation and distribution purposes or whether the original right would take priority over use of the conserved water.
2. Clarifies that the Department can consider conservation projects implemented up to 5 years prior to the application for an allocation of conserved water.
3. Clarifies existing allocation of conserved water statutes by substituting “water use subject to transfer” for “certificate” and “decree” in the description of the types of rights that can be involved in an application for allocation of conserved water.
4. Substitutes “conservation application” for “conservation proposal” to clarify that the Department is reviewing applications to allocate and use conserved water, not approving or denying specific conservation projects which are under the control of the applicant.

Chapter 745
2003 Oregon Water Laws

2003
HB 2551

HB 2551 provides authority for the Department and water users to enter into voluntary alternative service delivery agreements to expedite processing of various applications and transactions.

Background

Since 1990 Oregon has averaged more than 50,000 new residents per year, and a 34% increase in population is projected over the next 25 years. Today there are approximately 84,000 water rights to use surface water or ground water, and to store water; representing a 30% increase in the last decade. All of these increases in population, water demand, and agency workload have occurred against a backdrop of declining Department staffing of some 15% in the same period and significant budgetary constraints. These trends in workload, staffing and budget have forced the Department to work smarter, to build new partnerships, continually seek stakeholder input, and to critically evaluate our decision-making criteria and procedures.

Notwithstanding the Department's efforts, workloads continue to increase and backlogs are developing. HB 2551 provides an additional tool to address customer needs and to support economic and environmental activities throughout Oregon by allowing the Department and water users to enter into an alternative service delivery agreement to expedite processing. Department activities and resources aimed at reducing existing workloads will not be diverted by "receipts authority" agreements because as part of the agreement the Department will collect fees to cover the full cost of expedited processing. To the extent necessary, the Department will use the fees in an agreement to hire temporary staff and outsource process services and functions to the private sector.

Signed by Governor

September 2, 2003

Sponsored by

Representative Morgan

Committees

House Water Committee

**Joint Ways and Means
Subcommittee on Natural Resources**

Ways and Means Committee

Vote

Senate	22 ayes	7 nay
House	49 ayes	8 nays

Effective

January 1, 2004

What the bill does

1. Allows the Department to enter into an agreement, with any person, to set fees to be paid to the Department in order to expedite or enhance services voluntarily requested under an agreement.
2. Allows the Department, under such an agreement, to hire additional staff, contract for services, or provide additional services to that person not otherwise available due to budgetary restraints.
3. Allows the Department, as part of an agreement, to waive the statutory fees established under ORS 536.050.
4. Precludes the Department from "compelling" a person to enter into a receipts authority agreement.
5. Precludes the Department from requiring a person to pay more for a service than the cost to the Department in providing the service.
6. Requires the Department by July 1, 2004, to review its responsibilities and to identify services provided by the Department that are appropriate for "receipts authority" agreements.
7. Provides the Department authority to expend fees collected under agreements to review responsibilities appropriate for contracting and for fulfilling individual alternative service delivery agreements including the processing of water right permit applications, permit extensions, permit amendments, final proof surveys, water right exchanges, transfers, and the review of

water management and conservation plans.

8. Sunsets January 2, 2006.

HB 2945 clarifies the jurisdiction of the Department and the Department of Geology and Mineral Industries (DOGAMI) as it relates to the removal of water from a surface mine.

Background

In some instances, the dewatering of a surface mine can have an adverse impact on the ground water resource and on existing water users. This concern can fall within the jurisdiction of both DOGAMI and the Water Resources Department. DOGAMI regulates surface mining and has the authority to address associated impacts to ground water. The Water Resources Department may not directly regulate surface mining but has expansive authority to control and prevent the contamination and depletion of ground water. Given this overlapping jurisdiction, the agencies have worked cooperatively; however, the regulated community, both agencies, the ground water resource, and existing water users will benefit from the explicit jurisdictions and tools provided by HB 2945.

What the bill does

1. Explicitly provides DOGAMI the authority to require and enforce conditions on new or existing surface mining permits or reclamation plans to prevent or mitigate off-site impacts to ground water resources from surface mine dewatering.
2. Requires DOGAMI to consult with the permittee and the Water Resources Department in assessing off-site impacts and in developing prevention or mitigation measures prior to conditioning a permit or reclamation plan.
3. Provides under ORS 537.141 that removal of water from a surface mine subject to a mining permit or

Signed by Governor

June 24, 2003

Sponsored by

**House Environment and Land Use
Committee**

Committees

**House Environment and Land Use
Committee**

**Senate Agriculture and Natural
Resources Committee**

Vote

Senate	27 ayes	0 nay
House	53 ayes	2 nays

Effective

January 1, 2004

reclamation plan approved by DOGAMI would not require a water right, unless the water is used for a subsequent beneficial use.

HB 3201 provides the Walla Walla River Irrigation District an opportunity to petition the Water Resources Commission for approval of a map indicating the location and use of water rights within the district.

Background

In the late 1980's and early 1990's there was a recognition that, for a variety of reasons, the state's water right records and the water right records of many irrigation districts did not match. In order to resolve this problem, the Legislature passed HB 3111 in 1989 and SB 129 in 1993. These bills established a process to petition the Water Resources Commission for approval and acceptance of a district map indicating the location and use of water rights within the district. The current law under ORS Chapter 541 provides the process and standards to ensure that district water right mapping petitions do not injure existing water right holders and do not enlarge the district's water rights of record. To date, almost 30 qualifying districts have had their water right re-mapping petitions approved.

District water right re-mapping petitions have gone a long way to clarify water right records for the districts, the Department, the water using community and numerous stakeholders. In addition, a clear and up-to-date water right record streamlines the use of Department tools to transfer water rights for economic development and environmental restoration activities. However, under current law, all re-mapping petitions were to be submitted by July 1, 1994.

What the bill does

1. Modifies the existing district re-mapping provisions under ORS 541.327 to allow the Walla Walla River Irrigation District, or its successor district, to participate in the re-mapping petition process.

Signed by Governor

August 21, 2003

Sponsored by

Representative Jenson

Committees

House Water Committee

**Joint Ways and Means
Subcommittee on Natural Resources**

Ways and Means Committee

Vote

Senate	22 ayes	0 nays
House	57 ayes	0 nays

Effective

January 1, 2004

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2. Requires that the district notify the Department of their intent to submit a re-mapping petition by June 30, 2004 and file the petition by June 30, 2010.
 3. Requires the map submitted with the petition be submitted in an electronic format.
 4. Requires the district to pay the Department's actual cost of research and processing the petition.