

## Water Right Transaction Fees

The Water Right Services Division supports the allocation of water for instream and out-of-stream purposes. This division supports both the economy and a healthy environment by processing water right transactions for the state. The Department’s current fee schedule supports staff involved in processing new water right permits, instream water rights, instream transfers and leases, water right transfers, requests for extension of time to develop existing water rights and transfers, claims of beneficial use for certificate issuance, water management and conservation plans, allocations of conserved water, limited licenses, and protests. Staff not supported by the fee schedule include those involved determinations of pre-law water uses through adjudications and hydroelectric licensing.

In 2009, the legislature restructured many of the Department’s fees with the aim of supporting program staff with about 50% state general fund and 50% fee. Since then, the Department has brought forward modifications to the water right transactions fee schedules every four years, based on projected cost increases. The fee schedule was last increased in 2021; but also included a reduction of 6.33 permanent FTE (Table 1; Appendix A contains full fee schedule) and a need for federal one-time funding to support the program.

The Department projects a \$3,600,000 - \$4,800,000 shortfall for 2025-2029. If action is not taken to address this shortfall, there will not be adequate resources to support 8-10 FTE.

**Table 1. Water right transaction fee summary.**

| Fee Name                    | General Services                                    | Supported Staff         | Last Two Increases | Statutory Authority                             |
|-----------------------------|---|-------------------------|--------------------|---|
| Water Right Processing Fees | Water right application review and customer service | 8.91 FTE / 11 positions | 2017, 2021         | ORS 536.050; 537.150; 537.610; 537.620; 539.081 |
| Transfer Processing Fees    | Transfer application review and customer service    | 6.02 FTE / 7 positions  | 2017, 2021         |   |

## Water Rights Processing Fees

Generally, in order to use water in Oregon an individual must obtain a water right permit from the Department. The complexity of application review is increasing as less water is available for appropriation, while demands for competing needs continues to grow. Water right applications for groundwater use involves a more complex technical review from hydrogeologists in the Groundwater Section compared to other application types. To perfect the right, the permit holder must submit a final water-use report with a map of the use as developed. This is called a claim of beneficial use. The Division receives claim of beneficial use and prepares the certificate based on the proof of water developed. If a permit holder is not able to complete work within the allotted time, they may request an extension of time. The Division reviews these extension requests and determines, within the requirements of the law, whether or not to allow the extension. As of 2023 Legislatively Adopted Budget (LAB), Water Right Processing fees fund 8.91 Full-Time Equivalents (FTE) that carryout the work outlined above (Table 2).

## Transfer Processing Fees

The transfer of an existing water right to a new use, point of diversion, or place of use is often the best alternative for obtaining water for new purposes. Oregon water law provides a process to change the use, place of use, or point of diversion while still retaining other characteristics, such as the water source and priority date, provided that the changes do not injure other existing water rights nor enlarge the water right being

transferred. The Transfer and Conservation Section (TACS) is responsible for receiving and processing water right transfer, permit amendment, and groundwater registration modification applications. Water right transfer applications include not only standard transfers, but also district transfers, temporary transfers, emergency drought transfers, and instream transfers. TACS is also responsible for reviewing and processing allocations of conserved water and water management and conservation plans. As of 2023 LAB, Transfer Processing fees fund 6.02 Full-Time Equivalents (FTE) that carryout the work outlined above (Table 2).

The Department projects a \$3,600,000 - \$4,800,000 shortfall for staff supported by Water Right Transaction Fees for 2025-2029 (Table 3).

**Table 2. Water Right Transaction fee supported positions.**

| Services Division                  | Permanent Full-Time/Part-Time | Employee Work Title                                | FTE Fee Funded |
|------------------------------------|-------------------------------|--|----------------|
| <b>Water Right Processing Fees</b> |                               |  |                |
| Administrative                     | PF                            | Water Resource Data Technician 1                   | 1              |
| Technical                          | PF                            | Groundwater Data Chief                             | 0.5            |
| Water Rights                       | PF                            | WRSD Support                                       | 1              |
| Water Rights                       | PF                            | Water Rights Section Manager                       | 0.28           |
| Water Rights                       | PF                            | Certificate Specialist                             | 1              |
| Water Rights                       | PF                            | Water Right Section Support                        | 1              |
| Water Rights                       | PF                            | Water Right Program Analyst                        | 0.63           |
| Water Rights                       | PF                            | Public Service Representative 4                    | 1              |
| Water Rights                       | PF                            | Public Service Representative 4                    | 1              |
| Water Rights                       | PP                            | Water Right App Caseworker                         | 0.5            |
| Water Rights                       | PF                            | Water Right App Caseworker                         | 1              |
| <b>Transfer Processing Fees</b>    |                               |  |                |
| Administrative                     | PF                            | Water Resource Data Technician 1                   | 1              |
| Water Rights                       | PF                            | Transfer and Conservation Section Manager          | 0.02           |
| Water Rights                       | PF                            | Water Right Transfer Specialist                    | 1              |
| Water Rights                       | PF                            | Water Right Transfer Specialist                    | 1              |
| Water Rights                       | PF                            | Water Right Transfer Specialist                    | 1              |
| Water Rights                       | PF                            | Modernization Coordinator and Conservation Analyst | 1              |
| Water Rights                       | PF                            | Flow Restoration Program Technician                | 1              |

**Table 3. Projected revenue and budgetary gaps for water right transaction fees. Target ending fund balance is 6 months of program expenses.**

| 2025-2029 Projected Shortfall (No EFB – EFB Included) | Projected Position Shortfall | Last Fee Increase | Increase to fill shortfalls with fees only |
|---|------------------------------|-------------------|--|
| \$3,600,000 - \$4,800,000                             | 8 – 10 FTE                   | 17.39% (2022)     | 64%- 86%                                   |

# Workloads

## Workloads and Backlogs

Backlogs across the Water Right Services Division have developed over time as a result of factors including but not limited to staffing constraints; vacancies, staffing uncertainty (e.g., limited duration positions versus permanent positions); incomplete applications awaiting responses from applicants; increasingly complex evaluations as a result of increasing water scarcity and legal challenges; and high public interest in the outcome of water right, transfer, and extension applications requiring more frequent and detailed communications with stakeholders.

Insufficient funding to maintain adequate staffing resources results in the loss of staff that the Department has invested a considerable amount of time training. Time spent training new staff diverts time from processing applications. As backlogs grow, the number of application status inquiries increase. The time spent responding to customers’ status inquiries also takes time away from application processing. This cycle of staff loss, training demands, growing backlogs, and increased status inquiries underscores the pressing need for enhanced funding to ensure streamlined and efficient application processing.

In June 2022, the Division began recruiting for 10 limited duration backlog reduction caseworkers which were filled by November 2022. These positions were funded by one-time federal funding (ARPA). The staff dedicated to backlog reduction have successfully increased the volume of processed applications and claims of beneficial use within the Division. A portion of this funding was carried over to the 2023-2025 biennium, in the form of 8 limited duration water right staff for 12 months. As a result of the additional capacity, some case backlogs, such as water rights, extensions and claims of beneficial use, have been reduced, and this trend is expected to continue throughout the 2023-2025 biennium. After the Department fully expends this funding (anticipated April 1, 2024), these limited duration positions will expire, and each remaining staff member will have a greater number of applications to process (Table 4).

The Protest program received additional general funds in the 2021-2023 biennium and resolved a greater number of protests than recent, previous biennia. The funding was not renewed for the 2023-2025 biennium and now only one position, rather than three, is fully funded.

**Table 4. Summary of Water Rights Division workloads and backlogs associated with water right applications (WR), transfers, claims of beneficial use (COBU), permit extensions, and protests. Denotes applications received (Apps), Final Orders issued (FOs) and Remaining Backlog (BL).**

| Biennium   | 2019-2021 |      |       | 2021-2023 |      |     | 2023 to 2/29/24 |      |     |
|------------|-----------|------|-------|-----------|------|-----|-----------------|------|-----|
|            | Apps      | FOs* | BL    | Apps      | FOs* | BL  | Apps            | FOs* | BL  |
| WR         | 740       | 629  | 657   | 445       | 508  | 591 | 105             | 127  | 572 |
| Transfers  | 449       | 590  | 310   | 430       | 367  | 370 | 135             | 86   | 419 |
| COBU       | 394       | 728  | 1,220 | 445       | 1100 | 968 | 180             | 367  | 907 |
| Extensions | 179       | 127  | 153   | 171       | 163  | 128 | 70              | 67   | 126 |
| Protests   | 46        | 51   | 154   | 134       | 77   | 232 | 8               | 16   | 223 |

For Protests, this number represents protests resolved rather than final orders. Protests may be resolved through issuance of a final order, issuance of a final order incorporating settlement agreement, withdrawal of the protest, or withdrawal of the protested proposed final order (PFO) or preliminary determination (PD) and returning the application to WRSD for a new PFO or PD.

## Increased Complexity of Work

Due to evolving water needs and availability, the processing of water right transactions has become increasingly complex over the years. The following tasks do not apply to every application, however when they do arise, they

can be time-intensive and contribute to the discrepancy between fees paid and actual Department expenditures. Tasks contributing to increased expenditures include: addressing frequent application status inquiries, application revisions requiring re-review (including groundwater re-reviews), extensive discussions about mitigation, repeated formal requests for applicants to provide missing information, and communications in response to applicants disagreeing with Department findings.

In addition, staff can spend significant amounts of time in support of technical support for legislative and rulemaking efforts; local planning initiatives; preparing evidence and testimony for contested case hearings and court cases; assisting with required annual legislative reports; preparing required annual programmatic evaluations and reports; public speaking and providing trainings; responding to legislative and media inquiries; and responding to general customer service inquiries and providing pre-application meetings.

## Future Projections and Fee Shortfalls

As water becomes increasingly scarce, the Department anticipates changes to historic patterns of both types and revenue associated with different water right transactions. This may lead to variable revenues and create a need to supplement sections with reduced fees with other funding sources, such as General Fund.

The Department projects a \$3,600,000 - \$4,800,000 shortfall for 2025-2029. If the Department does not address this shortfall there will not be adequate resources to support 8-10 FTE.