



## **Senate Environment and Natural Resources Committee**

**January 24, 2019**

**Testimony on SB 51**

Chair Dembrow and Members of the Committee,

For the past several years, the Oregon Water Resources Department (“OWRD”) has approved and transferred storage water rights, and understood that it has the authority to do so. In 2018, in response to a pending application for a storage transfer, OWRD announced, based on a strained reading of its transfer statutes, that it no longer believes that it has the authority to process transfers of storage water rights. Despite legal analysis to the contrary, OWRD has stood by its new interpretation. OWRD is now requesting that the legislature address the issue piecemeal, putting forward the bill before you today that only addresses one small piece of the overall transfer of stored water issue.

Oregon’s water transfer statutes enable water users to make changes to certain aspects of their water rights, provided those changes will not cause injury to other water rights, including instream rights. Water transfers usually involve one or more types of transfer: 1) place of use transfer, where the place of use is moved from one parcel to another. In the case of storage, this often looks like moving a storage pond or water reservoir; today, that usually occurs to upgrade storage efficiency or in conjunction with a broader water conservation and efficiency program; 2) point of diversion transfer, where the place of withdrawal of the water is changed from one place on a waterbody to another. This often occurs in conjunction with a place of use transfer; again, often as a result of a conservation and efficiency project; and 3) a character of use transfer, where the use or purpose of the right is changed from one use to another, such as irrigation to instream. Again, this often occurs as part of a broader project that involves both a place of use transfer and point of diversion transfer. The third transfer is the only type addressed by SB 51.

Water transfers are essential to water conservation and efficiency measures. Once OWRD had identified its alleged issue, the simple solution would have been to clearly add storage as a “water use subject to transfer” under its statutes. Instead, it decided to adopt a piecemeal and complex approach to resolving storage transfers that is wholly inconsistent with this state’s desire to increase management flexibility to ensure we are achieving our conservation and efficiency objectives. The result of this approach will be to sideline innovative projects and leave them with no clear path for resolution. For example, we have members around the state that are looking at modifying – and in

many cases moving - systems for a number of legitimate reasons related to seismic resilience, improved fisheries outcomes, and improved conservation and efficiency. If a comprehensive resolution is not achieved, these projects will be unable to continue. One farmer in eastern Oregon was in talks with the Oregon Department of Fish and Wildlife and his local Soil and Water Conservation District to move an on-stream dam to an off-stream storage facility to improve fish passage and habitat. That project would not be able to occur with this limited "solution" proposed by the Department. Similar projects around the state would be sidelined, with no clear path to resolution. This runs counter to the governor's 100-year vision for water, which is focused on these types of infrastructure improvements, and does nothing to improve our climate resilience or allow for flexibility.

Water storage provides water that is essential for fisheries, many of Oregon's 220+ commodities, cities, and recreational uses. As water shortages become more common, all users are working together to figure out innovative solutions to ensuring all our water needs are met. Without a broader resolution of transfers of stored water, these efforts will be sidelined, and resolutions will be difficult to achieve and implement. Given that agriculture is Oregon's second largest economic driver and water is our lifeblood, this outcome is not one our industry can bear.

We urge the Committee not to move forward a piecemeal resolution to the Department's decision to re-interpret its statutes. A piecemeal approach could have severe unintended consequences for the state and sideline needed projects for years. Instead, any solution should be comprehensive and support the state's broader goals around water management.

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