

SB 1153 -3, -5 STAFF MEASURE SUMMARY

Senate Committee On Rules

Prepared By: Alexa Piscanio

Meeting Dates: 6/3, 6/3, 6/4

WHAT THE MEASURE DOES:

The measure requires that a water right transfer not result in a loss of in-stream habitat for sensitive, threatened, or endangered aquatic species in certain stream reaches or contribute to water quality impairment in certain streams. The measure also allows federally recognized Tribes to elect to review water right transfer applications in specific counties and provide information on the applications to the Water Resources Department.

Detailed Summary:

Requires that the following types of water right applications or transfers not result in a loss of in-stream habitat for sensitive, threatened, or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams:

- Section 1: a change in the point of diversion (POD), point of appropriation, or application to allow the appropriation of groundwater or use of water on land to which right is not appurtenant (place of use).
- Section 2: a water right application or change in place of use of a water right that proposes the use of water outside of basin of origin.
- Section 3: transfer of a supplemental water right or permit; or a proposed change when a government action results in or creates a reasonable expectation of change in surface water level that impairs or threatens access to a POD.
- Section 4: a change in type of use of stored water.
- Section 5: temporary transfer of primary and supplemental water rights.
- Section 6: makes conforming amendments to statutory provisions that address orders of the Water Resources Commission related to transfers.
- Section 7: a change to the point of diversion to allow use of groundwater instead of surface water under existing water right.

Directs the Water Resources Department (OWRD) to offer federally recognized Tribes an opportunity to review water right transfer applications within specific counties and provide information to OWRD if a proposed transfer would cause injury to Tribal or other existing water rights; enlarge a water right; impact a tribal cultural resource; result in a loss of in-stream habitat for sensitive, threatened, or endangered aquatic species in stream reaches not protected by an existing water right; or contribute to water quality impairment in water quality limited streams to Tribal water rights.

Authorizes OWRD to condition water right transfers with water use and water level measurement and reporting and the installation of fish screening or bypass devices. Specifies that the conditions apply to an entire water right regardless of the change that is proposed.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 The amendment replaces the measure. It establishes a new standard for the Water Resources Department (OWRD) to approve certain water right transfer applications related to a reduction in streamflow that results in the loss of fish habitat or causes water quality degradation. It removes the application of these standards for transfers that propose the use of water outside of the basin of origin. The amendment also revises conditions for

Tribal consultations on transfer applications and authorizes the imposition of conditions on water right transfers.

Detailed Summary:

Section 1: Transfer of Point of Diversion (POD), Point of Appropriation (POA), and Place of Use (POU)

Applies new approval standards for transfer applications that propose:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) within a quarter mile of a stream or is moved closer to the stream as specified and no in-stream water right exists.

Prohibits the approval of above transfers if it contributes to a reduction in flow that:

- results in the loss of instream habitat for sensitive, threatened, or endangered fish species, or
- contributes to water quality impairment.

Requires OWRD to determine if the proposed transfer would result in harm within the same timeframe used to conduct an injury analysis. If no determination is made within that time, the application is presumed not to cause a reduction in flow.

Exempts transfer applications that:

- Support municipal uses necessary to address imminent public health or safety risks; or
- Address mitigation requirements related to reduced fish populations or water quality impacts through specified permits or plans.

Section 2: Change in Use or Place of Use

Applies new standard related to reduction in flow that harm fish habitat or impair water quality to transfer applications proposing a change in use or place of use that propose:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) within a quarter mile of a stream or is moved closer to the stream as specified and no in-stream water right exists.

Assigns burden of proof, by a preponderance of the evidence, to show that a proposed change will result in loss or impairment to a person who disagrees with OWRD finding.

Sections 3 and 4: Temporary Transfer of Place of Use and Related Changes

Applies new standard related to reduction in flow that harm fish habitat or impair water quality to applications for temporary water right transfers (up to 5 years) for place of use, POD, or POA. Establishes that temporary renewals of prior transfers are limited to no more than 5 years.

Authorizes OWRD to revoke previously approved temporary transfers if it finds that the change has caused loss of fish habitat or water quality degradation.

Section 5: WRC Orders for Transfer Application Approvals

Applies new standard related to reduction in flow that harms fish habitat or degrades water quality to transfer applications that propose:

- a new point of diversion (POD) is upstream of the existing POD and there is no existing in-stream water right; or
- a new point of appropriation(POA) is within a quarter mile of a stream or is moved closer to the stream as specified and does not have an existing in-stream water right.

Section 6: Transfer POD to allow appropriation of groundwater instead of surface water and returns to last authorized POD.

Applies new approval standards related to reduction in flow that harm fish habitat or impair water quality of transfer applications to change POD to allow groundwater instead of surface water that meet the following criteria:

- Proposed new point of diversion (POD) is upstream of the existing POD and there is no existing in-stream water right; or
- New point of appropriation(POA) is within a quarter-mile of a stream or is moved closer to the stream as specified and does not have an existing in-stream water right,.

Section 8: Tribal Consultation on Transfer Applications:

Defines “consultation” as formal communication between OWRD and a tribe to obtain the free, prior, and informed consent of a Tribe for any water right transfer of their concern. Requires OWRD to consult with federally recognized tribes, if requested, on water right transfer applications that may affect tribal sovereign rights, including treaty-protected water rights. Maintains that the consultation must respect tribal sovereignty but should not cause unreasonable delays in processing transfer applications. Gives any tribe that engages in consultation on a specific transfer legal standing to protest the department's proposed final order on that application.

Section 10: OWRD authority to condition transfers

Authorizes OWRD to impose any of the following conditions on water right transfers:

1. Water use or level measurement and reporting.
2. Installation of fish screening or bypass devices.
3. Measures to:
 - a. avoid or minimize injury to the sovereign rights, privileges and interests of a tribe, including but not limited to treaty protected rights, in the waters of this state.
 - b. to avoid or minimize the loss of in-stream habitat for sensitive, threatened or endangered species in a stream reach that is not protected by existing in-stream water rights.
 - c. prevent injury or enlargement of a water right or to ensure that a water right transfer is from the same source.
4. If a transfer is from a well, measures to ensure that well construction standards are met.

-5 The amendment replaces the measure. It establishes new standards for the Water Resources Department (OWRD) to approve certain water right transfer applications related to a reduction in streamflow that results in the loss of fish habitat or causes water quality degradation. It exempts certain applications from new standards and removes the application of these standards for transfers that propose the use of water outside of the basin of origin. It establishes a uniform process for OWRD to handle contested cases and modifies OWRD’s rulemaking authority for general authorization approvals. The amendment also revises conditions for Tribal consultations on transfer applications and authorizes the imposition of conditions on certain water right transfers.

Detailed Summary:

Section 1: Transfer of Point of Diversion (POD), Point of Appropriation (POA), and Place of Use (POU)

Applies new approval standards for transfer applications that propose:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) **from outside a quarter-mile to within a quarter mile** of a stream when no in-stream water right exists,
- a new POA **already within a quarter mile of a stream is moved closer to a stream** and no in-stream water right exists.

Requires OWRD to publish their determination in an order with written findings.

Section 2: Change in Use or Place of Use

Applies new standard related to reduction in flow that harm fish habitat or impair water quality to transfer applications proposing a change in use or place of use that propose:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) **from outside a quarter-mile to within a quarter mile** of a stream when no in-stream water right exists,
- a new POA **already within a quarter mile** of a stream is moved closer to the stream and no in-stream water right exists.

Sections 3 and 4: Temporary Transfer of Place of Use and Related Changes

Modifies protest requirements for any person who disagrees with OWRD's findings that a proposed change would or would not result in harm, adding that a hearing is not required if all issues in the contested case are resolved in a settlement, the protest is withdrawn, or the protestant defaults.

Section 5: Water Resources Commission (WRC) Orders for Transfer Application Approvals

Applies new standard related to reduction in flow that harms fish habitat or degrades water quality to transfer applications that propose:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) **from outside a quarter-mile to within a quarter mile** of a stream when no in-stream water right exists,
- a new POA **already within a quarter mile** of a stream is moved closer to the stream and no in-stream water right exists.

Requires that WRC's order must contain written findings that prove a proposed transfer would contribute to a reduction in flow that harms fish habitat or degrades water quality.

Section 6: Transfer POD to allow appropriation of groundwater instead of surface water and returns to last authorized POD.

Applies new approval standards related to reduction in flow that harm fish habitat or impair water quality of transfer applications to change POD to allow groundwater instead of surface water that meet the following criteria:

- a new point of diversion (POD) upstream of the existing POD when no in-stream water right exists; or
- a new point of appropriation(POA) **from outside a quarter-mile to within a quarter mile** of a stream when no in-stream water right exists,
- a new POA **already within a quarter mile** of a stream is moved closer to the stream and no in-stream water right exists.

Requires OWRD to publish their determinations in an order containing written findings that prove a proposed transfer would contribute to a reduction in flow that harms fish habitat or degrades water quality.

Section 8: Tribal Consultation on Transfer Applications:

Modifies OWRD's process for consulting with federally recognized tribes on water right change applications by limiting the consultation period to 90 days unless the applicant agrees to a longer timeline. It authorizes a tribe to protest OWRD's preliminary determination or order on any such application. If a tribe was consulted, OWRD must serve the preliminary order or determination to the tribe at the same time it is served to the applicant. Finds that a tribe's right to protest does not alter or limit any other protest rights the tribe may have.

Section 10: OWRD authority to condition transfers

Finds that OWRD may only apply transfer conditions to the specific portion of a water right that is included in a transfer application. At the applicant's request, OWRD may include mitigation measures as a condition of approval, but only to the extent they are proportional to the anticipated reduction in flow or water quality impact. Prohibits OWRD from imposing conditions for avoiding or minimizing harm to in-stream habitat for sensitive, threatened, or endangered species in stream reaches that are not protected by existing in-stream water rights, when the water rights in question are for municipal use.

Section 11-12: Uniform Process for a Contested Case

Establishes a uniform process for handling contested cases related to water rights by requiring OWRD, in consultation with the Office of Administrative Hearings, to establish default hearing schedules that ensure that contested case proceedings are completed within 180 days from referral to hearing completion, unless an extension is granted. Authorizes extensions if OWRD requests a different schedule after consulting with the parties, if the chief administrative law judge finds the default timeline unworkable, or if the assigned judge determines that an extension is needed to serve the public interest, ensure due process, or uphold justice.

Section 13: Rulemaking Authority for General Authorization Approvals of Transfer Applications

Authorizes WRC to adopt rules that create categories of water right transfer or change applications eligible for limited review or programmatic approval, which can be based on applications with similar characteristics and predictable outcomes. Authorizes WRC to set standard terms and conditions for each category to ensure that approval standards are met under the streamlined process.

Section 14: Basin Rules

Requires that authorization for transfers to be subject to basin rules.

Section 15: Funding reimbursement

Authorizes OWRD and the Department of Fish and Wildlife to enter into agreements where OWRD may compensate the Fish and Wildlife Department for services provided under these provisions.

Section 16-20: In-Stream Transfers and Leases, Savings Clause and Reporting Requirements

Exempts in-stream leases from OWRD review. Adds savings clause that states that specific sections of this measure do not affect any water right settlement agreement involving the State of Oregon, one or more federally recognized Indian tribe, or the federal government. Requires OWRD to report to the Joint Committee on Ways and Means on water right transfer applications received since January 1, 2026, December 15, 2026, and again by December 15, 2028. The report must include the total number of applications, how many were evaluated, the number of those transfers approved or denied, and the number of transfers for which protests were filed after approval or denial.

BACKGROUND:

Water rights are appurtenant or attached to the specific property where the water use is authorized and transfer with property sales unless excluded in the deed or the buyer is notified of a separate transfer. To change the place of use, type of use, or point of diversion of a water right, a transfer application must be approved by the Water Resources Department (OWRD). The applicant must be the landowner, have their consent, or prove sufficient interest in the water right. A water right transfer may not enlarge a water right or injure other water rights.