

## **SB 1153 -10 STAFF MEASURE SUMMARY**

### **Senate Committee On Rules**

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**Meeting Dates:** 6/3, 6/3, 6/5, 6/9

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#### **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.

Fiscal impact: May have fiscal impact, but no statement yet issued.

Revenue impact: May have revenue impact, but no statement yet issued.

#### 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:**

- Water right application process improvements for the Water Resources Department (OWRD)
- Stakeholder involvement in amendment drafting

- How different types of water transfers may impact stream reaches for sensitive, threatened or endangered (STE) fish species
- Grounds for exempting municipalities from new standards
- Tribal involvement and consultation
- Neighboring states' water right application processes

**EFFECT OF AMENDMENT:**

-10 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 in-stream habitat for native migratory fish in the Salmonidae family**. It exempts applications for aquatic habitat restoration projects, municipal uses, or transfers that are necessary to address an imminent public health or safety risk, and **clarifies that that the Water Resources Commission (WRC) cannot adopt rules to override the municipal exemption**. It establishes a uniform process for OWRD to handle contested cases and modifies their rulemaking authority for general authorization approvals for transfers. If requested by a federally recognized Tribe, it directs OWRD to engage in consultation on water right transfer applications in specific areas of the state. The measure authorizes OWRD to impose conditions on some water right changes.

Detailed Summary:

Prohibits OWRD from approving the following types of water right transfers if it determines the change would result in a loss of in-stream habitat for native migratory Salmonidae fish in stream reaches not protected by an existing instream water right:

Detailed Summary:

**Sections 1 – 6: Water Right Transfer Applications**

Applies a new standard on water right 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,
- to move a POA already within a quarter mile of a stream closer to a stream and no in-stream water right exists.

Requires OWRD to determine whether a proposed water transfer would harm in-stream habitat for native migratory Salmonidae fish, using the same timeline as the injury analysis. If OWRD does not make a determination within that timeframe, the standard may not be considered in the review. Requires OWRD to issue a formal order with written findings for any determination.

**Exempts from new standard:**

- Transfers supporting aquatic habitat restoration or protection, if application materials (and ODFW consultation) show a net benefit to native migratory Salmonidae fish
- Municipal water rights or rights held by a municipality
- Transfers needed to address an imminent public health or safety risk

Requires that WRC's order must contain written findings that prove a proposed transfer would contribute to a reduction in flow that would result in a loss of in-stream habitat for native migratory Salmonidae fish.

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 results in loss of in-stream habitat for native migratory Salmonidae fish.

**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 change applications that may affect tribal sovereign rights, including treaty-protected water rights. Requires OWRD to seek to ensure that the consultation process gives due regard to the sovereign nature of concerns raised by the tribe, while not unreasonably delaying the processing of any water right transfer. Limits 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**

Authorizes OWRD to impose any of the following conditions on the specific portion of a water right that is included in a transfer application:

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 loss of in-stream habitat for native migratory Salmonidae fish.
  - 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.

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 impairment of in-stream habitat for native migratory fish in the Salmonidae family. Prohibits OWRD from imposing conditions for avoiding or minimizing harm that results in loss of in-stream habitat for native migratory fish in the Salmonidae family in a stream reach 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 process.

#### **Section 14: Basin Rules**

Requires that authorization for transfers to be subject to basin rules. **Finds that WRC cannot adopt rules to override the municipal exemption.**

### **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 applications for in-stream leases and conserved water allocation from evaluation under provisions in measure establishing transfer application standard related to flow reduction and instream habitat loss for native migratory fish.
- 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. Requires the report to 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.