



## **WaterWatch of Oregon**

### **Protecting Natural Flows In Oregon Rivers**

#### **HB 3501**

#### **Testimony of WaterWatch of Oregon**

by Kimberley Priestley

#### **House Committee on Agriculture, Natural Resources, Land Use and Water**

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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and Oregon's rivers and aquifers to sustain fish, wildlife, recreation and other public uses of Oregon's waters. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

#### **WaterWatch urges opposition to HB 3501**

What HB 3501 does: HB 3501 bars the state from considering public interest factors when reviewing water right transfer applications, meaning that the state could not consider the effects of a water right change on fish and wildlife, water quality, or other public values if no water right exists to protect those values. This bill also raises certain third-party protest fees tenfold, from \$950 to \$10,000.

Water Right Transfers in Oregon: Under Oregon law, a holder of a water right can change the type of use, place of use or point of diversion as long as that change does not cause "injury" to another existing water right. Injury is defined as a proposed transfer resulting in another, existing water right not receiving previously available water to which it is legally entitled. OAR 690-380-0100.

Where an instream water right exists, the instream right is protected against injury in the same manner as a consumptive water right. However, on the hundreds of Oregon stream reaches that do not have an instream water right in place to protect streamflows, or where an application has been made for an instream water right and a protest has been filed, the WRD cannot consider the effect of a proposed transfer on existing streamflows, water quality, fish and wildlife habitat, scenic or recreational values. This is so even if the transfer would completely dewater a fish bearing stream.

Western trends in transfer law: In recognition of the threat transfers pose to public values not protected by water rights, other states across the West have adopted transfers standards that go beyond the historical "no injury, no enlargement" standard to account for third party impacts, including impacts to the environment.<sup>1</sup> These include Utah, Idaho, Montana, Washington, California, Nevada, Texas and New Mexico. Environmental and/or public interest screens have not stopped transfers from going forward, they simply ensure no harm comes from water right changes.

**HB 3501, on the other hand, would solidify in statute that the state is barred from considering the public interest when reviewing water right transfer applications.**

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<sup>1</sup>The Western Governors Association reported that most western states require some form of public interest review, which includes an environmental review. See Water Transfers in the West: Projects, Trends and Leading Practices in Voluntary Water Trading, The Western Governors Association and the Western States Council, 2012.

What does barring a public interest review mean? This means that the state agency charged with managing our state's waters would be prohibited from considering whether effects of transfers would impair the public interest, including effects on fish and wildlife, water quality, cultures, public health, and economies.

Chilling public participation: In addition to barring the state from considering public interest values in transfers, this bill would also chill the public's participation in agency decisions regarding the use of the public water by instituting a \$10,000 protest fee for select third party challenges.

What this means is that those who are working to protect streamflows for fish and wildlife, families who enjoy healthy rivers for recreation and play, river related businesses, river communities and others who are not "water right holders" will be priced out of the state's decisions regarding use of the public's water. This goes against the principles of equity and fairness that Oregon has been working hard to address.

Oregon should adopt an environmental screen on transfers, not bar the consideration of public interest values: As noted, while other states across the West have adopted standards of review to protect the public interest and/or the environment in water right transfers, Oregon has lagged far behind. Fortunately, in 2025 there are two bills in front of the Oregon Senate —SB 427 and SB 1153 — that would close this loophole and direct the state to look at the effect of proposed transfers on streamflow, fish and wildlife and/or water quality. We would urge attention to these bills.

**Conclusion:** The state should be doing more to protect public values, not pass a bill that would bar consideration of the effects of water right transfers on fish and wildlife, water quality and other public interest values.

**We urge you to oppose this bill.**

Thank you for your consideration of our testimony.

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