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March 25, 2025

Senate Committee on Natural Resources and Wildfire

Chair Golden, Vice-Chair Nash, Senator Girod, Senator Prozanski, Senator Taylor:

We are writing to voice our strong opposition to SB 1153. We are a diverse group of agricultural and natural resources water users who advocate for common sense water policies that move Oregon's economy, communities, and environment toward a secure water future. As we head into a future where new water rights are no longer available, the water right transfer process will provide crucial flexibility for water right holders to manage existing water rights more efficiently. SB 1153 will establish two new transfer evaluation standards that will significantly slow the transfer review process and stymie water management flexibility and water use efficiency for farms, ranches, irrigation districts and other agricultural water suppliers across the state.

Our members recognize that a majority of Oregon's surface water sources are fully appropriated or over-appropriated, meaning new surface water rights are nearly impossible to secure. Additionally, the Oregon Water Resources Department's ("OWRD") new groundwater allocation rules, which went into effect on September 17, 2024, will significantly limit, or, in many cases, completely eliminate a prospective user's ability to obtain a new groundwater right. Against this backdrop, Oregon is entering a new era of water management that must include administrative processes that facilitate responsible, flexible water management and use. Chief among such water management processes is the transfer process, which is critical for agricultural water users.

Our members rely on the water right transfer process to efficiently manage water use in their respective operations and to secure additional water supplies when new water rights are not available. In Oregon, a transfer is the only mechanism to change an existing water right. OWRD may not approve a transfer if the transfer would (i) enlarge or expand an existing water right in any way, or (ii) cause injury to *any* other existing water right on the water system. As applied, the injury standard ensures that existing water rights, including instream water rights, are protected. Note that the Oregon Department of Fish and Wildlife ("ODFW") and the Oregon Department of Environmental Quality ("DEQ") both have the statutory authority to apply for instream water rights on any stream in Oregon at any time to protect aquatic species habitat and water quality, respectively. SB 1153 would require OWRD to evaluate two criteria in addition to injury and enlargement, which will entail an extensive and time-consuming analysis that will further slow the transfer process.

SB 1153 would require OWRD to determine if a transfer will (1) result in the loss of instream habitat for sensitive, threatened, or endangered aquatic species in stream reaches that are not protected by an existing water right, and (2) whether the water right transfer will contribute to water quality impairment in water quality listed streams. The practical reality is that a significant number of streams in Oregon are designated as habitat for a sensitive, threatened, or endangered species or are listed as temperature impaired under Section 303(d) of the Clean Water Act due to low water flow.

Under these circumstances, almost any new transfer application could trigger some concern about habitat or water quality impacts, and in turn raise nuanced questions about the magnitude of the transfer's impact to aquatic habitat or water quality. Over the past few decades, we have seen how OWRD's attempt to evaluate aquatic habitat and water quality considerations in the new water right permitting context has led to significant process delays. If implemented, SB 1153 will almost certainly lead to similar delays in the transfer process.

SB 1153 will likely lead to internal transfer application processing delays and open the door for transfer challengers to cause additional delays in the contested case or litigation context. OWRD is charged with water quantity allocation, and it does not have the authority or expertise to evaluate the impacts of water right transactions on aquatic species or water quality. As referenced above, the rules in OAR Chapter 690, Division 33 set out a process for OWRD to seek comments from ODFW and DEQ for all new water right applications. The implementation of the Division 33 rules drastically increased the processing time for new water right applications, causing some application review periods to span not just months, but years. Like the Division 33 rules, the SB 1153 criteria will open the door for DEQ and ODFW to exercise veto power over transfer applications. Further, SB 1153's new standards also create a firm foothold for environmental interests to challenge OWRD's evaluation of a transfer application's impact to Oregon's streams and effectively tie up the transfer process with litigation.

It is simply untenable for Oregon's most crucial water management process to be subject to standards that will require years-long, multi-agency review processes and introduce ample opportunities for third-party challengers to cause further delays. OWRD's transfer review process already has significant delays stretching into years, and implementation of SB 1153 would likely make the transfer process nearly impossible to use in the future.

At this juncture, Oregon's legislature should seek ways to *enhance* water right flexibility to ensure water users can improve operational efficiencies while protecting existing water rights, including instream water rights. The new standard under SB 1153 does the opposite; it is not conducive to the wise and efficient use of Oregon's water resources, and, if implemented, it will have far-reaching effects on Oregon's economy and the livability of communities across Oregon. For these reasons, we urge you to vote against SB 1153.

Moving forward, we believe that before the Oregon Legislature contemplates adding any new standards to the transfer process, we must resolve the underlying issues that have caused OWRD's processes—including the transfer process—to become inefficient and unworkable. Until these core issues are resolved, no amount of additional language can convert the transfer process into the effective and protective tool that it is intended to be. Additionally, we would like to emphasize that both SB 1153 and SB 427 trigger complex policy discussions that do not lend themselves to easy answers. Given this complexity, we encourage a more thoughtful approach to developing any new transfer criteria that includes the myriad voices represented in the bicameral and bipartisan Oregon Legislative Water Caucus. In aid of this goal and in recognition of the considerable ramifications these discussions have for future water use in Oregon, we recommend convening a task force that brings stakeholders together to identify ways to resolve issues and improve this important process.

We look forward to participating in future conversations about how to improve the efficiency of Oregon's transfer process for the benefit of Oregon's economy, communities, and environment.

Sincerely,

Associated Oregon Loggers  
Oregon Association of Nurseries  
Oregon Cattlemen's Association  
Oregon Dairy Farmers Association  
Oregon Farm Bureau  
Oregon Ground Water Association

Oregon Seed Council  
Oregon Water Resources Congress  
Oregon Wheat Growers League  
Oregon Winegrowers Association  
Oregon Women for Agriculture  
Oregonians for Food and Shelter