

Testimony of Janet Neuman¹

Senate Bill 1153

Senate Committee on Natural Resources and Wildfire

March 25, 2025

Chair Golden, Vice Chair Nash, Members of the Committee, for the record, my name is Jan Neuman. I've been involved in water law and policy for my entire career, beginning about 45 years ago. I am currently a member of the Oregon Water Resources Commission, but I am here today in my personal capacity, not as a representative of the Commission. I am retired from the practice of law and from teaching, so I am not speaking for any clients or anyone else today either.

I have some very brief remarks about Senate Bill 1153, and of course I'm happy to answer any questions.

This proposal offers an improvement and modernization to the review of water right transfers under Oregon law, for three reasons.

First, as I'm sure you understand, a "transfer" of a water right is the term used for any change to the terms of a water right: a change in the type of use, say from irrigation to industrial use; a change in the place of use; or a change in the point of diversion. All of those elements are fixed components of a water permit or certificate, and any change requires review and approval by the Water Resources Department, regardless of whether the water right is actually being transferred between users, and that has been the case since the initial adoption of the Water Code in 1909. Why? Because water use is a very inter-related and inter-dependent system—how and where each right is used affects all other users. So transfer reviews are important in our system of water use.

Second, transfers are incredibly important in terms of modern water use and management, because in most parts of the state during significant parts of the year, it is not possible to obtain new water rights as the available water is fully or even over-appropriated. That means that transfers are the only way that water can be moved to new uses, so this is an important "source" of water and a growing area of activity.

Third, SB 1153 offers a simple change that would partially conform review of transfers with the review of new water use applications and with Oregon law more broadly. New applications are reviewed to determine if the proposed water use is consistent with the public interest, as defined by statute and administrative rules. These public interest

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standards include, among several other components, impacts to water quality and fish and wildlife habitat.

But transfers are reviewed only for enlargement and injury. In other words, a transfer will only be denied or limited if it will improperly increase your water use beyond the authorized amount or if it will cause injury to other water rights holders—meaning that they would not receive the water that they are legally entitled to.

This proposal would make a simple, limited change—adding review for loss of instream habitat for aquatic species (but only for sensitive, threatened, and endangered species not already protected by an existing instream water right)—and for impairment to water quality (but only in water quality limited streams). So it's really designed simply to ensure that transfer don't make things worse for species and water quality.

Protection of streamflows for these public purposes is a solid cornerstone of Oregon law—from the public interest review of new applications that's been required for more than a hundred years, to the early-1900s withdrawal from appropriation of certain streams in the Columbia Gorge to protect the waterfalls, to the 1955 minimum streamflow protections, the 1987 instream water rights law, and the Oregon Plan for Salmon and Watersheds.

Though Oregon has often been on the leading edge on many of these issues, we haven't necessarily kept up on including important public values in the transfer process. Some other states have full public interest reviews of proposed transfers. SB 1153 does not go that far, but proposes a simple, targeted, additional review for negative impacts to streamflows that support critical habitat and water quality.

Water transfers will be crucial to future water use in the state. This proposal would conform the critical area of transfers to foundational public values embodied in our Water Code.

Thank you for the opportunity to testify today, and I'm happy to answer any questions.