

March 26, 2025

Senate Committee on Natural Resources and Wildfire

RE: Testimony in Opposition to SB 1153

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

The Oregon Water Resources Congress (OWRC) is strongly opposed to SB 1153, which would create two new evaluation standards for processing transfers of existing water rights that would be layered on top of existing standards. In an increasingly water scarce world, the water right transfer process provides crucial flexibility for water right holders to manage existing water rights more efficiently. SB 1153 will further bog down an already slow process and hinder water management flexibility and water use efficiency for farms, ranches, agricultural water suppliers across the state. It will also limit opportunities for collaborative and innovative projects with additional instream benefits.

OWRC is a nonprofit trade association representing irrigation districts, water control districts, drainage districts, water improvement districts, and other local government entities delivering agricultural water supplies throughout Oregon. Our members are quasi-municipal local government entities charged with operating and maintaining complex water management systems, including water supply reservoirs, canals, pipelines, hydropower facilities, fish screens, and fish passage. OWRC members manage and deliver water to their assessed patrons, primarily farmers and ranchers, and serve approximately 600,000 acres of farmland in Oregon, which is over one-third of all the irrigated land in the state. Transfers are the most valuable water management tool districts and other water users have to move water where it can be most efficiently and beneficially used, both out of stream and instream.

SB 1153 would require Oregon Water Resources Department (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. 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. 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.

Supporters of the bill claim this is a narrow approach. Supporters also claim that this would not be duplicative of existing evaluations and protections and closes a loophole. *These statements omit key facts about what SB 1153 would apply too and is therefore inaccurate.* SB 1153 is far from a “targeted” or “strategic” approach because as drafted SB 1153 covers a broad swath of types of transactions and geographic regions. 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. SB 1153 ignores these designations and the related agencies who have jurisdiction and expertise related to water quality and fish habitat.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources

As drafted SB 1153 would also cover rivers and streams where instream water rights have been filed but not settled. Oregon has a process for the state to protect in-stream SB 1153 does not attempt to improve that existing legislatively approved process and instead circumvents it. Currently instream water rights can be established by: “1) Conversion of minimum perennial streamflows to instream water rights (ORS 537.346); 2) Temporary lease, time-limited transfer, or permanent transfer of water rights established for other uses (ORS 537.348); 3) Request by state agencies...[DEQ], Oregon Parks and Recreation Department, and [ODFW] – are authorized to request instream water rights in the amount needed to support recommended public uses (ORS 537.336).”¹ SB 1153 would essentially create a new instream water rights for all streams in Oregon, sidestepping existing public processes and evaluations to determine whether such rights are actually needed and whether there would be injury impacts.

It is also important to note that our members and other water users have used transfers (temporary and permanent) to put water instream when and where it is needed. As part of efforts to modernize irrigation delivery systems, our members are voluntarily transferring conserved water for instream benefits, resulting in some of the most senior waters to be protected instream. SB 1153 is an insult to the collaborative work that districts and other stakeholders have invested in for decades. We should be focusing our efforts on collaborating to find solutions to specific watershed challenges, not creating blanket policy that will stymie more efficient water management and disincentive collaborative projects.

Referring to other states and saying Oregon is behind is also a fabrication of reality as no other state in the West has the exact same set of state agencies, laws, and rules governing water management as Oregon. This includes Oregon’s land use planning system; fish screen and fish passage program; removal-fill protection and permitting; water quality requirements and permit conditions; and many other state authorities that either directly or indirectly impact water management in Oregon. SB 1153 also ignores federal laws and regulations that apply to water management, such as the Endangered Species Act (species and critical habitat designations) and the Clean Water Act (water quality designations and additional removal-fill permitting), and National Scenic Waterways. These designations and any related requirements for instream flows or operational changes are in addition to state requirements.

SB 1153 does not close a loophole, it creates a loophole for litigious groups to remove public processes for determining instream water rights and to further bog down an already complex water rights system. As noted in our coalition testimony (from OWRC and 11 other groups), SB 1153 will 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. Further, SB 1153’s new standards also create a firm foothold for unrelated third party 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. 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. It also will disincentivize use of other voluntary processes for water right holders to put water instream, temporarily (though instream leases, split-season leases) and permanently (instream transfers, Allocation of Conserved Water).

The bill language was not shared by bill proponents until after it became public and was developed without any input from water stakeholders who would be directly impacted, including OWRC members. SB 1153 brings up complex policy questions that warrant further discussion and deliberative problem solving—not broad policy developed behind closed doors. Contrary to other statements made by bill supporters, the issues specifically proposed in SB 1153 have not been recently discussed. Secondly, unlike a number of other bills proposed or tracked by the bi-partisan, bi-cameral Joint Water Caucus, there have not been any recent workgroup meetings, agency meetings, or any formal gathering where language was shared and discussed prior to legislative session.

¹ See ODFW Instream Water Rights FAQ’s: <https://www.dfw.state.or.us/habitat/water/faq.asp>

The Integrated Water Resources Strategy, Oregon's "statewide inter-agency framework for better understanding and meeting Oregon's instream and out-of-stream water needs"² does include references to additional instream protections. However, it also references and recommends the development of innovative water supply and water reuse projects, investment in water infrastructure, collaborative place-based planning, and a plethora of other potential solutions to meeting our current and future water needs for all Oregonians. What is in the public interest is much broader and complex than what is proposed in SB 1153 and warrants careful consideration. It is also worth noting the IWRS is in process of being updated, which is a more appropriate venue for discussing changes to Oregon's water laws.

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 standards 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.

We urge you to not move SB 1153 forward as drafted and instead establish a legislative workgroup with balanced representation from the water stakeholder community. Complex water policy like what is proposed in SB 1153 should not be developed in the dark and shoved through without thoughtful discussion and vetting of the major policy changes and potential impacts to Oregon's communities, economy, and environment.

Thank you for your consideration of our testimony.

Sincerely,
April Snell
Executive Director

² See OWRD Integrated Water Resources Strategy:
<https://www.oregon.gov/owrd/programs/planning/iwrs/pages/default.aspx>