

June 4, 2025

Senate Committee on Rules

RE: Testimony in opposition to Senate Bill 1153

To Chair Jama, Vice-Chair Bonham, Senator Golden, Senator Manning, and Senator Thatcher,

Farmers Irrigation District (FID) serves nearly 6,000 acres of high value farmland and operates two Low Impact Hydropower Institute certified hydropower plants in the lower Hood River Valley. The District holds 20 water right permits and certificates in trust for our almost 2,000 agricultural and residential patrons, with our oldest water right dating from 1874 and the majority of our system built-out in the early 1900s. In recent decades, FID has invested tens of millions into 1) rebuilding infrastructure after natural disasters, 2) improving the efficiency of infrastructure that delivers water to our growers, and 3) planning for a more dynamic and water-limited future. The ability to make changes to existing infrastructure, and to adjust locations of water diversion and water use, is critical for 1) basic functionality of the system, 2) increased safety, adaptability, and efficiency in response to climate change and community changes, and 3) for keeping our operations, our farmers, our agricultural region, and our natural systems resilient.

FID's concerns with Senate Bill 1153 include:

**Concern #1: The changes proposed are broad and complicated.**

The creation of new review standards for transfers on existing water rights and, most importantly, the opening of transfer applications to additional protests is a major and very broad change to Oregon's water right system. Even if many transfers are ultimately approved under the proposed standards, it opens them up to increased risk, uncertainty, cost, delay, and litigation (for both OWRD and the water right holder).

Nor is the broad and undefined proposed language of "not result in a loss of in-stream habitat" or "not contribute to water quality impairment" simple to implement. The quantity and quality of data, and the level of data analysis, that would be required to determine if minor changes in large water systems will be additive to existing impacts is not within the capacity of either OWRD or applicants, and is ripe for protest/litigation about the quality/analysis/interpretation. The vast majority of waterways in the State of Oregon are considered water quality impaired (impaired waters are purple in the map on the right), subjecting the vast majority of water right transfers to the new standards proposed in Senate Bill 1153. Defining and/or proving that a transfer "does not contribute to water quality impairment" is

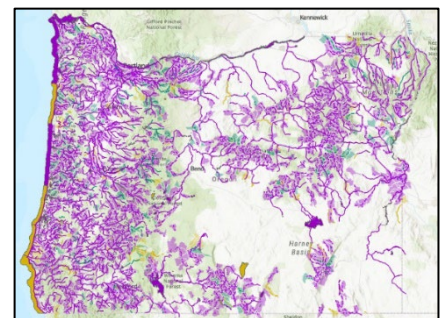


Figure 1: Screenshot of the 2024 Integrated Report on Surface Water Quality and 303(d) List of Impaired Waters

particularly difficult given the limited water quality data available on most waterways. Water quality analyses, as well as the determination of source pathways, (whether for TMDLs or other processes) takes years, significant state capacity and resources, and are still subject to numerous lawsuits. Introducing similar processes to transfers on existing water rights that are serving existing customers is unmanageable.

The District also wants to flag and question the narrowing of the exemption for waterways that have an existing instream right in the -5 amendment (now reading “where there is no existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created under ORS 537.346 (1)”). This narrower definition ignores instream water rights developed through the Allocation of Conserved Water program, as well as other mechanisms that generally put more valuable water (e.g. with older priority dates) instream. This both expands the number of waterways subject to the new standards, and seems to disincentivize a valuable program for improving instream water quantity and aquatic habitat.

**Concern #2: The public interest is not solely environmental concerns.**

Farmers Irrigation District agrees that the public interest includes protection of sensitive, threatened, or endangered species and protection of water quality. Farmers Irrigation District also believes the public interest includes their neighboring communities and their regional farms having water, as well as the State of Oregon supporting existing housing and new housing development, agricultural land viability, commercial and industrial sustainability, and a functioning economy. Instead of working to find a balance between the myriad of public interests, the proposed changes in transfer processes seems to place environmental interests above all others. Communities, irrigation districts, and other water users have and will continue to face unexpected situations where a Point of Diversion/Appropriation needs to be adjusted as a result of a flood, debris flow, or other disaster, and timely recovery/replacement is in the public interest. FID has had to rebuild diversion infrastructure after the 1996 flood and after a 2006 debris flow, and if those diversions needed to be moved as a result of those geological events destroying the existing diversion locations (e.g. the land where the diversion is currently constructed had literally been washed away), the District will have very little flexibility about where the diversion could be moved while still intersecting with FID’s existing conveyance infrastructure.

**Concern #3: That water rights could be “conditioned” to meet the proposed review criteria/requirements.**

Farmers Irrigation District is one of the few organizations that has gone through OWRD’s Seasonally Varying Flow (SVF) process, which conditions a water right to protect/maintain ecological function (via instream flows). While the specific mechanism is different, the process and conditions on our SVF-impacted water right permit are illustrative of the risks and challenges to the idea that a transfer could result in new conditions on existing rights.

The SVF-impacted permit includes conditions on measurement and reporting, the timing and quantity of diversions, the utilization of a separate water right certificate, instream flow releases, water quality, and fish screening. The permit conditions require six new permanent monitoring sites, including three instream gaging stations. Each site has cost the District between \$20,000-50,000 to establish. And while the District is one of the more technologically capable irrigation districts in Oregon, the technical requirements of operating and maintaining these monitoring sites has been incredibly challenging for our staff. The water quality conditions allow for use to be restricted if “the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards”, meaning the permit/certificate could be invalidated at any time based on water quality. The fish screening conditions require the upgrading of

two of the District's existing fish screens, requiring the approval of the US Forest Service (a years-long process largely outside of the District's control) and a cost of at least \$500,000. While all of these conditions on a new permit are challenging enough, the costs to communities and water users of these conditions being implemented on existing water rights are catastrophic. Senate Bills 1153 and the potential conditions that would be imposed as a result of these new standards risk turning off the tap for communities, farms, and other users with no warning and no timeline for relief.

The addition of even more condition authority in the -5 amendments, especially the "measures to avoid or minimize injury to the sovereign rights, privileges and interests of a tribe in the waters of this state, including but not limited to treaty-protected rights" expands FID's concerns even further. In particular, the "interests of the tribe" is overly broad, without any clear or objective standard to be met, and opens a water right up to any number/variety of potential new (and potentially unworkable) conditions.

**Concern #4: Existing water rights could be unworkable, invalidated, or otherwise lost.**

As discussed above, minor changes to existing water rights certificates could result in expensive, hard-to-implement conditions on the entire certificate under the proposed bills. In a worst case scenario, this could result in an entire existing certificate no longer being usable until monitoring, fish screening, or other conditions have been met. FID and our almost 2,000 patrons cannot risk losing access to our existing water rights, as our farms, industries, community, and economy rely on predictable and stable water supplies to operate. If the proposed changes go into effect, the District may be unable to conduct minor changes in order to not place all of our growers' water access at risk.

These new standards attempt to "re-adjudicate" existing water rights, ignoring the millions of dollars of infrastructure invested into developing and maintaining these water uses, and ignoring the communities and economies that have been built around the security provided by Oregon Water Law. Oregon's human and natural landscape is changing with increased natural disasters, population growth, climate change, and more. Water users need to be able to respond to these changes, and plan for the future, with reliable, predictable, and safe processes; not risk loss of their years of investment, livelihood, and/or community.

Farmers Irrigation District is open to real and collaborative conversations about how to modernize and improve Oregon's water management processes, but the proposed bill is an existential threat to the ability of Oregon's communities or economy to rely on water rights as a meaningful system for current operations or future investment. If the Legislature is interested in truly improving water management processes, FID begs them to please include actual water users and water right managers in the conversation from the beginning, and please provide enough time and capacity for the lengthy discussions needed to change such a critical, and already complicated, system.

We urge you to vote against Senate Bill 1153, and hope future efforts to amend Oregon's water right processes will occur in a more planned, thoughtful, and collaborative manner.

Thank you,

Farmers Irrigation District