

June 5, 2025

Senate Committee on Rules

RE: Testimony in Opposition to SB 1153

Chair Jama, Vice-Chair Bonham, Senator Golden, Senator Manning Jr., and Senator Thatcher:

The Oregon Water Resources Congress (OWRC) remains strongly opposed to SB 1153 (including the newest proposed amendments), which would create 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, and agricultural water suppliers across the state. It will also limit opportunities for collaborative and innovative projects with additional instream benefits. The proposed amendments provide some modest improvements; however, the bill is still overly complicated (as evidenced by the multiple 37-page amendments) and creates new undefined and unwarranted standards for evaluating proposed water right transfers. SB 1153 is simply not ready to be passed into law.

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.

In Oregon, a transfer is the only mechanism to change an existing water right (including where and for what purpose the water is used for). Currently, the Oregon Water Resources Department (OWRD), may not approve a transfer application 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 within 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 new and undefined 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; however, these statements omit key facts about what SB 1153 would apply to or how it would be implemented. SB 1153 is far from a “targeted” or “strategic” approach because as drafted SB 1153 covers a broad swath of water transaction types and statutory cross-references. The bill, including the most recent proposed amendments (-5 and -6), still refers to a broad set of transactions and introduces new undefined standards that will most certainly be legally challenged. Proposed amendments also exempt certain municipal water rights, without defining how WRD will determine if the exemption applies when there are multiple types of water rights or entities involved in a proposed transfer. SB 1153 will lead to additional internal transfer application processing delays as WRD struggles to define this new standard and what transfers it does or does not apply to, all without any additional revenue or clear direction to ensure they are successful.

Supporters of the bill have also failed to provide any examples of why the bill is needed, why the existing review process and agency conditioning authorities are insufficient, or even *one specific transfer* that has led to harm or streamflow impacts that SB 1153 purports to address. SB 1153 does not close a loophole; rather, it creates a new loophole for litigious groups to sidestep the current public process for establishing instream water rights and takes aim at transfers to further bog down an already complex water rights system. Further, SB 1153's new standards also create a firm foothold for unrelated third-party interests to challenge OWRD's evaluations of transfer applications and argue about effects on Oregon's streams, thereby enabling these groups to tie up the transfer process with years of contentious litigation, just like we see with new water right applications, municipal extensions, and so many other water right-related efforts. OWRD's transfer review process already has significant delays stretching into years, and implementation of SB 1153 would likely make the transfer process even less responsive to critical water management needs.

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 but is not limited to: 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), the Clean Water Act (water quality designations and additional removal-fill permitting), and the Wild and Scenic Rivers Act. These laws, including any related requirements for instream flows and operational changes, are in addition to state requirements.

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 instream needs—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 new instream standards, sidestepping existing public processes and evaluations to determine where instream water rights are actually needed, injury to existing water rights, and other key evaluations.

We would further underscore 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 to instream use, resulting in some of the most senior water rights protected for instream benefits. SB 1153 is an insult to the collaborative work that districts and other stakeholders have invested in for decades. 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). **We should be focusing our efforts on collaborating to find solutions to specific watershed challenges, not creating blanket policies that will stymie more efficient water management and disincentivizes collaborative projects.**

Furthermore, from a process standpoint, the bill was developed without any input from the water users (agricultural, municipal, business, etc.) who would be most directly impacted by the proposed new standards and the bill language was not shared by bill proponents until after it became public in late February. While there have been discussions with bill proponents since the bill's initial public hearing, many of our concerns and suggestions have been ignored or minimized. And we and other stakeholders at the table have had little or no time to review and provide feedback on proposed amendments—which all reference multiple different statutes and rules with potential impacts beyond the bill's purported scope.

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

Moreover, while bill supporters would likely argue they have compromised on amendment language, they are still getting some version of what they asked for. Negotiation is supposed to be based on give and take, and OWRC and other water users are still not seeing any benefits or improvements from the proposed bill. Proposed amendments may narrow or improve the bill but making a terrible bill less bad doesn't make it a good policy.

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.

The Integrated Water Resources Strategy (IWRS), 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 meet 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 the 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 do the opposite; SB 1153 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. **There are bi-partisan approaches to addressing our current and future water needs—for all Oregonians—but SB 1153 is not one of them.**

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 such as what is being 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>