



SB 1153 – Too Rushed, Too Many Unintended Consequences

SB 1153 proposes to alter more than 100 years of Oregon water law to the detriment of water users throughout the state, including agricultural water users, by unnecessarily complicating the water right transfer process. The implications are too consequential for a rushed process seeking to address theoretical problems. While the latest (-10) amendments improve the bill in some areas, they create additional questions, and other serious problems remain. For example, the bill:

1. **Overlooks practical needs for timely and efficient water management tools** in favor of addressing hypothetical impacts.
2. **Introduces vague, untested standards** that will pave the way for unintended consequences, including increased litigation and reduced economic competitiveness.
3. **Creates additional administrative burdens** on a state agency already struggling with capacity and resource constraints.
4. **Disincentivizes use of existing water management tools**, including instream transactions through the Allocation of Conserved Water program, and will impede collaborative multi-benefit projects.
5. **Marginalizes public input** that overwhelmingly opposes the bill

Acknowledging Progress & Improvements

While we still have significant concerns, we do appreciate and recognize that SB 1153 has evolved through stakeholder discussions and some improvements have been made. Notably, the tribal consultation provisions reflect a productive dialogue addressing a specific issue related to tribal review of water right transfers. This portion of the bill is a positive step and could serve as a model for more targeted, collaborative policymaking in the future. We also acknowledge the scope of transfers affected has been narrowed from the original language that we saw at the end of February. However, the vague new standards in the bill will still decrease water management flexibility, magnify existing administrative backlogs, increase legal action over agency decisions, and other unintended negative consequences. The latest amendments also create additional questions (and concerns about confusing language) and still have not addressed other long-

standing issues. There is no portion of SB 1153 that benefits our members and many areas that are likely to be exceedingly damaging to our industries as well as many other water stakeholders, (such as businesses), who have not been at the table. *Making a terrible bill less bad doesn't make it good policy.*

No Identified Problem—Not Even One Example

Stakeholders have asked for examples of a specific problem that the bill seeks to address, but none have been provided. Despite claims of environmental harm or nebulous concerns with existing processes, bill proponents have yet to identify even a single example of why this bill is needed. The Oregon Department of Fish and Wildlife (ODFW) already has the statutory authority to obtain instream water rights on any stream in Oregon to protect aquatic species habitat while Oregon Department of Environmental Quality (DEQ) has the same authority for concerns related to water quality. When asked to provide specific examples, bill proponents have failed to provide any and have only articulated philosophical or hypothetical arguments on why the bill is needed or why existing processes are not sufficient. *Policy as broad as SB 1153 needs to be thoughtfully developed, and based on facts, not feelings.*

Vague Language = Increased Litigation

The bill requires the Oregon Water Resources Department (OWRD) to determine if a transfer will “contribute to a reduction in flow” that will result in the “loss of instream habitat” for native migratory fish. This vague and subjective standard is undefined and extremely broad in scope, resulting in dramatically increased litigation risks for water users throughout the state. It also inequitably targets agricultural water users by attempting to exempt one set of water right holders (municipal), which as worded will lead to further administrative confusion and subsequent litigation, particularly where there are water rights held by one entity but delivered by another. Further, it puts the burden of proving a negative, that a proposed transfer will not contribute to a reduction in streamflow, on an individual water right holder, creating additional financial burdens on agricultural water users and local government entities.

Administrative Capacity at OWRD

OWRD is already facing significant operational challenges, including backlogs, fee increases, and staffing constraints. Layering additional responsibilities onto an already strained system raises questions about implementation, accountability, and additional backlogs. We need to work to improve existing processes at the agency before considering new and currently undefined standards.

Lack Transparency and Poor Process

Despite what bill proponents claim, the water user community was not engaged in the development of this bill prior to session, nor have there been any discussions about the concepts proposed in SB 1153 in at least the past decade. While there have been transfer-related bills or related workgroup discussions in the past, these discussions have involved specific examples or types of transactions, such as clarifying changes to stored water rights, or improving processes for instream transactions. While our associations had several “interactions” with bill proponents prior to session, the bill language was never shared nor were we asked for any input. The first time we saw the language was when it was introduced as a Senate Natural Resources and Wildlife (SNRW) Committee bill on *February 25* as LC 4004. Shortly thereafter, SB 1153 received a token hearing in SNRW on *March 25* before being referred to the Senate Rules Committee on *April 8*. Since then, weekly closed-door negotiation sessions have taken place with representation from the Governor’s Office, bi-cameral legislators, and stakeholder groups representing tribal, environmental, municipal, and agricultural interests, including our three associations.

Our representatives came to the table in good faith, sharing not only our concerns but our constructive feedback, most of which was ignored or minimized. Drafts were constantly changing and provided at the last minute, making it difficult to fully review and respond. In the flurry of amendments introduced following the last workgroup meeting, where consensus was not reached nor even attempted, each have been 35+ pages, cross-referencing multiple statutes, adding new sections previously not seen or discussed, and requiring careful review by our respective legal counsel. *To date, a total of 1,934 public comments have been submitted, 80 percent of which are in opposition to the bill.* To put it generously, this process has tested the outer limits of transparency and good governance.

A BETTER PATH FORWARD...

Water policy is complex, but there are opportunities for improving Oregon’s water law system. Although consensus was not reached on the broader aspects of the bill, stakeholders did find common ground on language related to tribal consultation. This progress occurred by thoughtful and collaborative discussion of a specific real-world problem identified by the tribal representatives participating in the SB 1153 negotiations. It represents a meaningful and constructive outcome; one we could support if advanced independently, and once all nine federally recognized tribes have weighed in on the consultation language. ***It should also be noted that the language in the most recent amendment does not accurately reflect the consensus language on tribal consultation, further highlighting the need for more time to refine this concept.***

Conclusion

Water is a public resource, and decisions about its use must be based on transparency, inclusion, and a clear understanding of the consequences. As currently drafted, SB 1153 is overly complex, moving too quickly, raises too many concerns about negative impacts, and lacks sufficient justification to proceed. We respectfully urge the Legislature to pause and pursue a more thoughtful, inclusive dialogue before making permanent changes to Oregon’s foundational water laws. **PLEASE VOTE NO ON SB 1153.**

About Water Right Transfers

Transfers are the legal mechanism for making changes to existing water rights for: *Place of Use* (location); *Point of Diversion/Appropriation* (where the water is withdrawn); and *Type of Use* (irrigation, domestic, industrial, etc.). They are the only means for existing water right holders, including farmers, nurseries, and irrigation districts, to adapt to changing conditions and manage available water efficiently. Transfers can be temporary or permanent and allow for: Responding and adapting to shifting markets and climate variability, modernizing infrastructure, implementing conservation measures, improving efficiency, and meeting new needs with existing water rights, using the same amount of water. Transfers do not increase the size of the original right and cannot harm other water right holders, including instream water rights. With new rights nearly impossible to obtain, effective and efficient transfers are essential for Oregon’s agricultural economy and the communities it supports.