



**January 24, 2019**  
**Senate Committee on Energy and Environment**  
**Senator Michael Dembrow, Chair**

**Testimony on Senate Bill 51**  
**Submitted by Director Tom Byler and Senior Policy Coordinator Racquel Rancier**

Thank you for the opportunity to provide testimony in support of Senate Bill 51, authorizing the Water Resources Department to allow changes to the type of stored water in primary storage rights.

**Background Information**

A water right is necessary to *use* or *store* water in Oregon. Rights to *use* water specify the place where the water is used, the type of use of the water, and the point that the water is diverted from a water source, such as a stream, reservoir, or well. If there is a desire to change one of these three components of a water *use* right, one must apply for a “transfer.”

Similarly, rights to *store* water specify the location of the reservoir, the location of the dam (if applicable), the point where water is diverted (if applicable), and the purpose/type of use for which the water is stored. Rights to *store* water are known as “primary” rights, and act as a source of water supply for “secondary” rights that *use* the stored water for purposes such as irrigation or municipal uses.

While transfers have been common for rights to *use* water, transfers for rights to *store* water have been less common, and the Department has debated internally over the years whether there is clear authority for storage rights to be changed through the transfer process. Water law has a long history in common law, dating back to the 1800s, with the Water Code being adopted in 1909. While there have been some updates to meet societal demands for changes in how water is managed, much of the text is still very similar to the original 1909 code. As a result, determining legislative intent and interpreting the statutes can be a challenge.

Prior to 2018, the Department occasionally received and processed applications for changes in the point of diversion, location of reservoirs, and, more often, changes in the type of use identified in the right to store water (e.g. from irrigation to multi-purpose). Recent proposals to change the location of stored water and an expectation of increased interest in transfers of storage rights resulted in the Department taking a closer look at its authority. In 2018, a Department of Justice review concluded that current law, with some exceptions, did not authorize the transfer of storage rights. As a result, while the Department has attempted to conform the law to new needs, in this instance the existing authorities do not clearly provide the Department with authorization to change storage rights.

The Department recognizes the need for clear authority to make changes to storage rights, and has participated in a legislative work group in recent months to explore potential solutions.

## **What the Bill Does**

Senate Bill 51 proposes to provide the Department with clear authority to allow for changes in the purpose for which the water is stored under a primary storage right, addressing what has been the most frequently used transfer for storage rights. The bill includes application criteria and provisions that are specific to storage rights, while honoring the existing process for transfers by pointing to current transfers statutes where possible for the processing of the rights. Without the ability to change the type of use of stored water, water right holders will not be able to manage water as necessary to meet emerging needs, opportunities, or challenges.

The Department has allowed for changes to rights to store water in the past, with changes in the purpose/type of the stored water being more common. As a result, this bill focuses only on changes in the type of stored water, as there seems to be broader recognition that this type of transfer is needed.

While there is a need for a process to change the point of diversion and location of storage, at the time of the introduction of the Department's bill, those changes required more conversation and were being discussed as part of a workgroup. The Department will continue to work with stakeholders to discuss location and point of diversion changes for stored water; however, in the meantime, the Department believes that it is important to address the more common changes.

### **Need for Amendments:**

The Department has identified a need for technical amendments to the bill, primarily in subsections 4 and 5 of section 1, which relate to use of the term "permit," "water uses subject to transfer," and other technical changes in regards to the secondary rights provisions. In addition, the Department would like to add a requirement for adoption of rules to ensure injury to secondary water rights is properly addressed.