



HB 2485

**Testimony of WaterWatch of Oregon
By Kimberley Priestley
Submitted to the House Energy and Environment Committee
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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch has concerns with HB 2485 as currently drafted

While WaterWatch is supportive of fish passage, we do have concerns with HB 2485 as currently drafted. These concerns center largely on proposed changes to longstanding transfer application sideboards, changes to current standards/processes that currently apply to consent to injury to instream water rights and failure to guarantee fish passage benefits. We also do not fully understand the need for this bill.

Specifically, we have the following concerns with HB 2485:

1. HB 2485 fails to include key sideboards that currently reside in the transfer statutes and/or rules that currently apply to changes in point of diversion, including:
 - This bill would not require that the applicant provide evidence that water has been used over the past five years in compliance with terms and conditions of permit or that the water right is not subject to forfeiture (currently in ORS 540.520(g)). Proof of water use is critical to ensuring that the proposed change will not result in an increase in historical use and/or revival of a water right that is subject to forfeiture. Proof of use is not especially onerous, and can include submittal of things such as an affidavit from NRCS representatives/neighbors/owners, NRCS/district documents, farm agency records, and/or dated aerial photographs. See OAR 690-380-3000(12).
 - This bill also fails to include a requirement that the applicant provide a description of the current water delivery system that demonstrates that the applicant is ready, willing and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use. See OAR 690-380-3000(10). This information is important to ensuring that water use at the new point of diversion will not exceed use at current point of diversion.
2. HB 2485 changes both the process and the legal determination for "Consent to Injury" of instream water rights that currently resides in ORS 540.530(1)(c)-(e). The existing consent to injury law was the result of a compromise bill that should be kept whole for fish passage projects. We would suggest the language be amended so that if the WRD determined that a fish passage project under this process would injure an instream water right, then that applications would be subject to the full process/determinations of ORS 540.530(1)(c)-(e).

3. It is unclear what the need is. For fish friendly projects, ORS 540.520(3) already allows WRD to either waive (or help achieve) the requirement that the applicant provide a description of lands upon which water was used and where it will be used (including the development of a map). Similarly, ORS 540.530(2)(b) allows the WRD to waive or assist the applicant in satisfying any of the proof of completion requirements of the newly issued certificate (as a result of the transfer), including, but not limited to, development of a final proof survey map and claim of beneficial use. Thus, there is a mechanism in place to help alleviate cost issues associated with mapping requirements of transfers.

Moreover, for projects that provide a net benefit to fish habitat (i.e. changing the point of diversion to benefit passage) the Consent to Injury to Instream Water Rights law (ORS 540.530(1)(c)-(e)) allows injury that would otherwise be prohibited by regular transfer laws. These existing laws already provide substantial leeway to fish friendly projects; benefits that no other transfers enjoy.

4. Unlike the regular transfer statutes, this bill does not allow for consent to injury by consumptive water right holders (see ORS 540.530(1)(b)), which might be important if a number of users on a stream are working together to cure passage problems.
5. The bill fails to ensure the anticipated/claimed fish passage benefits would come to fruition; namely, there is no bill language that would require a curing of the fish passage problem at the original point of diversion (i.e. no requirement that it be a condition of approval/use), nor is there a requirement in the bill that requires a WRD finding that the new point of diversion will benefit fish passage
6. The bill should include a public comment period. Current transfer rules allow for comments prior to protest period. See OAR 690-380-4000.

In conclusion, while we support advancing fish passage projects, unless the noted issues are cured we are concerned the potential negative effects, especially to flow, would not necessarily be outweighed by fish passage gains.

Thank you for consideration of our comments.

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