



**March 8, 2017**  
**House Committee on Energy and Environment**  
**Representative Ken Helm, Chair**

**Testimony on House Bill 2485**  
**Presented by Racquel Rancier, Senior Policy Coordinator**

Thank you for the opportunity to provide information on the Department's transfer process. This information is intended to provide context to the committee in understanding House Bill 2485. The Department currently has no position on the bill. In its current form, the Department does not believe that House Bill 2485 achieves the proponent's goals and that further work is needed to provide clear statutory direction. The Department has been providing feedback to the bill's proponents and understands that further conversations are needed. Since the bill will require amendments, this testimony is focused on providing information about the Department's current practices.

Under Oregon law, all water belongs to the public. With some exceptions, cities, irrigators, businesses, and other water users must obtain a water right from the Water Resources Department to use water from any source - whether it is underground, or from lakes or streams. If a water right holder wants to change how that water is used, the holder must apply for a water right transfer. A transfer can be for a change in the place of use, point of diversion, or type of use. Once a transfer has been approved through a final order, the applicant must make the approved changes and begin using water in accordance with the transfer order. After water is applied, the applicant must submit specific information to the Department to demonstrate that the change has been made. If water has been used according to the provisions of the final order, a new water right certificate is issued.

A key component of Oregon water law is that a water right must be used according to the terms and conditions of the permit, and that nonuse of the right for five consecutive years may result in forfeiture of the water right. Similarly, in order for a water right to be transferred, it must have been used in the past five years.

With some rights over a hundred years old, the transfer process is often the opportunity to make sure that the Department's paper records and what is happening on the ground are the same. Under the existing law, to apply for a transfer, the applicant is required to submit information such as a map that shows the place of use, the locations of the authorized point of diversion, and the proposed new point of diversion. The applicant is also required to provide evidence that the water right has been used within the past five years in accordance with the terms and conditions of the right.

Separate from the application materials, the watermaster also reviews the change for injury or enlargement, and whether the watermaster is aware of nonuse of the right. Injury means that the change results in an existing water right not receiving previously available water to which it is legally entitled. Enlargement generally means an expansion of a water right; examples include using more water per acre than currently allowed under a right, increasing acreage irrigated, or diverting more water at the new point of diversion than was available at the original point of diversion. In regards to nonuse, for example, if a portion of the place of use of an irrigation right has been paved over for a period greater than 5 years, that portion of the right cannot be transferred.

Staff review the information provided by the applicant, public comments, and the watermaster. If the transfer is approved, the Department issues a final order and sets a timeframe for the applicant to make the change. Once the change is made, a certified water right examiner then creates a map and develops a report for the claim of beneficial use. This claim of beneficial use typically includes a description of items such as the following: the type of use, place of use, extent of use, location of the point of diversion, the source of water, rate, maximum capacity of the system, measuring device, fish screening, and the date of inspection. The claim also includes a description of the diversion works and traces the water system to the points of diversion. After the claim is reviewed, the Department issues a final certificate. The amount of water is generally limited by the authorized amount, capacity of the delivery system, or the amount of actual beneficial use –whatever is less. Since the claim includes an assessment of the use, the certificate can be used as evidence to rebut forfeiture for a five-year period, essentially resetting the clock on forfeiture.