



To: House Committee on Water
Chair Helm
Vice-Chair Owens
Vice-Chair Reardon
Rep. Breese-Iverson
Rep. Leif
Rep. Reynolds
Rep. Wilde
Rep. Witt

From: Caylin Barter, Oregon Water Program Manager

Date: March 18, 2021

RE: Support for HB 3103-1 -- A Technical Fix to Clarify OWRD's Statutory Authority

Chair Helm and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 3103-1, which clarifies that the Oregon Water Resources Department (OWRD) has the statutory authority to authorize changes to the type of use (also known as character of use) of a water storage right.

Wild Salmon Center works with partners to conserve healthy wild salmon fisheries across the North Pacific. Adequate streamflow is key to that conservation effort by allowing salmon to access varied habitats and by keeping streams clear and cold. Many salmon runs in Oregon are endangered, and low flows and high stream temperatures are limiting their recovery. These problems are worsening due to climate change and increased human demand for water. Releases of stored water can help to augment streamflow. That is why **we support HB 3103-1**, which would close a disruptive chapter at OWRD by clarifying in statute that the type of use for which water is stored can be changed.

Under Oregon law, all water belongs to the public, and water users must follow a statutory process to acquire the right to use these waters. Storage rights are somewhat unique in that a water user needs both a water right to *store* the water, known as a primary storage right, and a water right to *use* the stored water, known as a secondary storage right. Like all water rights, primary storage rights must state the type of use for which the water is being stored; secondary storage rights are limited to the types of use authorized under the primary storage right.

Water needs change over time, and the type of use that was originally authorized in a primary storage right may need to change, too. Water right holders can apply to OWRD to change aspects of a water right, including the type of use, without losing the water right's original priority date. Over the course of many decades, OWRD has approved hundreds of applications to change to the types of uses identified in primary storage rights. However, OWRD recently determined it lacks statutory authority to process such changes, leaving holders of storage rights without the ability to adapt the use of stored water to supply changing water needs, including the needs of fish. HB 3103-1 clarifies this authority exists.

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Far less frequently, a holder of a primary storage right may wish to make changes to other aspects of the water right certificate, including the location where water is stored or the location of a point of diversion from a stream. Such structural changes are much more complex - and may pose greater risks to fish and other environmental values - than simply changing the type of use for which water is stored. And whereas type-of-use changes have been routinely authorized by OWRD, other changes to primary storage rights have not. HB 3103-1 would not affect this status quo, and it honors the fact that conversations around authorizing broader changes to storage rights have been ongoing for several years. Wild Salmon Center supports continued conversations and is committed to finding the right balance between the need to adapt storage infrastructure and the need to ensure environmental values are not degraded in the process.

Wild Salmon Center supports HB 3103-1. Stored water plays an important role in maintaining adequate streamflows for Oregon's salmon and in meeting the water demands of a changing world. The -1 amendments to HB 3103 provide OWRD clear legal authority to allow holders of primary storage rights to change the type of use authorized by the right, and we urge your support for this technical fix.



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