



Representative Helm, Chair

Representative Owens, Vice Chair

Representative Hartman, Vice Chair

Members of the House Committee on Agriculture, Land Use, Natural Resources & Water

The League of Oregon Cities is grateful for the opportunity to submit testimony in support of House Bill 3211. The City of Newport is in a unique and difficult situation and this bill will provide a needed path for certainty regarding the City's water rights and the expenditure of public funds – they are making every effort to protect public health safety and welfare and we support this effort.

The broader implication of this bill is that it highlights the difficult position our members are in – the inability to change the point of diversion or place of use of existing storage water rights.

In 2018, the Oregon Water Resources Department received advice from the Attorney General indicating they lacked statutory authority necessary to process transfer applications seeking to change any aspect of a storage water right, despite the department having processed these types of transfers for decades prior to that determination. This left our members, such as Newport without an important water management tool. Fortunately, the legislature resolved simple changes to “type of use” for stored water rights in [2021 thru HB 3103](#) bill, and we are very appreciative of that effort.

In January 2023, the Marion County Circuit Court affirmed Oregon Water Resources Department authority to modify existing storage water rights in Bridge Creek Ranch, LLC vs. Oregon Water Resources Department (which LOC signed on as amicus) stating.

*“storage of water for different purposes qualifies as a ‘water use’. As such, a right to store water under a water certificate is a right to a ‘water use established by...a water certificate under ORS 540.505(4)(b). **The court also finds that OWRD has the authority to allow transfers of point of diversion and point of use for certificated storage water rights under ORS 540.530.**”* (Emphasis added)

Although OWRD was directed to process BCR's water transfer application uncertainty remains. OWRD has publicly announced their intention to appeal this decision to the Oregon Court of Appeals, which will likely result in a 3–4-year process and on-going impacts our members.

House Bill 3211 will provide LOC member City of Newport with a short-term solution to this legal conundrum and with the sunset provision will not interfere with the broader long-term resolution of this issue needed for LOC members and others.

Other members may need to seek regulatory certainty in the future.

We appreciate the committee's consideration and respectfully ask for your support of House Bill 3211.

Sincerely,

Michael Martin

League of Oregon Cities