

August 23, 2021

**VIA EMAIL: nirvana.cook@oregon.gov**

Nirvana Cook  
Oregon Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301

Re: Division 77 Rulemaking Timeline (WRC Agenda Item H, August 25, 2021 Meeting)

Dear Ms. Cook:

This firm represents the City of Hillsboro. Contrary to the Director's recommendation on Agenda Item H, we are writing to urge that the Commission move forward immediately with rulemaking to implement Section 1(b) of HB 3103, enacted earlier this year.

HB 3103 was a legislative response to a finding by the Department of Justice that transfers of storage water rights was not authorized under existing law. Although this determination was contrary to Department practice for decades, there was controversy as to whether new clarifying authority should encompass transfers of character of use, as well as point of diversion or location for storage water rights.

This controversy prevented passage of a corrective bill for the two preceding legislative sessions, but a compromise was reached for the 2021 session. Section 1(b) of the enrolled HB 3103 makes a straightforward clarification as to transfers of character of use:

A holder of a water right certificate that authorizes the storage of water may change the *type of use* identified in the water right certificate, as described in subsection (1)(a) of this section, without losing priority of the right. (emphasis added).

Authorization of transfers of points of diversion or location of storage water rights was deferred pending more input from stakeholders. Section 3 of HB 3103 provides for a facilitated process to develop policy and possible further legislation to address these other issues.

HB 3103 clearly authorizes transfers of character of use for storage water rights, but not other sorts of transfers. The legislative intent was unmistakably to allow transfers of type of use

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to move forward now. Thus, there is no reason to defer rulemaking to implement Section 1(b) pending the facilitated process to flesh out policy related to transfers of point of diversion or location of storage water rights.

Once the facilitated process results in a policy recommendation on point of diversion and location transfers, and if that recommendation is enacted into statute, rules can then be developed to implement the new law. The earliest such a new law could be enacted would be during the 2022 special session and could be bumped to later sessions. Deferral of rulemaking to implement that which the legislature did enact, would unnecessarily delay transfers of character of use.

For these reasons, we ask that the Commission direct the Department to proceed with rulemaking to implement transfers of character of use for storage water rights.

Thank you for the opportunity to comment.

Sincerely,

Davis Wright Tremain LLP

A handwritten signature in blue ink, appearing to read "Richard M. Glick". The signature is stylized and cursive.

Richard M. Glick

cc: Tom Byler (via email)  
Dwight French (via email)