



Oregon

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Testimony for Senate Bill 713

Senate Committee on Natural Resources

Senator Jeff Golden, Chair

Submitted by: Bryn Hudson, Legislative Coordinator

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Thank you for the opportunity to provide information related to Senate Bill 713. SB 713 would amend ORS 537.141(1), which lists water uses that do not require a water right permit or certificate. It removes “the collection of precipitation water from an artificial impervious surface and the use of such water” and adds an exemption for the collection, storage or use of water “diffused over the surface of the ground; derived from falling rain, melting snow or other precipitation; and that has not joined with other waters in a well-defined channel.” This testimony is provided for informational purposes and the Department is not taking a position at this time.

Background Information

Generally, in order to use water in Oregon, one must obtain a water right from the Water Resources Department. With some exceptions, Oregon law provides that all waters within the state from all sources belongs to the public.

Precipitation is the source of virtually all freshwater in the hydrologic cycle ([USGS, 2016](#)). Streamflows are generally composed of precipitation (snowfall and rain) and groundwater discharges. Similarly, groundwater is recharged by surface water and precipitation (rain and snow). Diffuse surface water contributes to that recharge. For example, as seen with “snow droughts” in recent years, snowpack is a key “storage” reservoir that when it melts, it eventually makes its way into streams and is an important source of water for many existing water right holders.

Even where precipitation does not make its way to surface or groundwater, this water still serves a critical function and contributes to the overall water cycle. Some will evaporate or be utilized by plants (evapotranspired), or it may help to replenish low soil moisture. With the severity of recent droughts, we have found the importance of this “terrestrial water storage” and how low soil moisture can exacerbate drought conditions; in fact, it has become another critical indicator in assessing drought ([Soil Moisture|Drought.gov](#)). For example, last spring, the National Integrated Drought Information System reported, “As of the beginning of April, snowmelt has begun in much of the region. However, given the water deficits in soils, streamflows in areas of Oregon and Idaho where drought is most severe are not reflecting increased flow. Instead, meltwater likely is being absorbed by soils or evaporating.” As such, it is important to recognize that even if diffuse waters do not make it to a defined channel, they are still important an important factor in how much water eventually makes it into streams and groundwater sources.

Department Understanding of SB 713

SB 713 replaces and expands the existing exemption, allowing for water that has not yet entered into surface or groundwater to be captured without a water right. Capture of diffuse water making its way to aquifers or streams may reduce recharge to groundwater aquifers, streams, lakes, and springs, and to existing water right holders.

The bill replaces the existing exemption that allows for the collection and use of precipitation that has fallen on an artificial impervious surface. Many people currently use this exemption to harvest and store precipitation from surfaces like roofs. Because the new bill removes this language and replaces it with a requirement that water be diffused over the surface of the ground; this type of collection would no longer be permissible without a water right.

Determining what is “diffuse surface waters” can be difficult and has been the subject of litigation in various states. Based on the Department’s experience with attempting to enforce unauthorized water use at cannabis operations in recent years, it may be difficult to determine whether stored water was collected from diffuse waters versus an unauthorized source.

Additionally, it is not clear what is meant by “other waters in a well-defined channel” including what provisions would need to be met in order to consider a channel “well-defined.” In recent years, the Department has received complaints of trenches dug across fields with the intent of capturing natural runoff (diffuse seepage) on sloped property. In these instances, senior water users had been impacted by the reduced runoff as the precipitation normally would have run off into adjacent streams.