

WATER LEAGUE

*The mission of Water League is to engage
the public in the stewardship of water.*

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February 1, 2023

To: Senate Committee On Natural Resources
Senator Golden, Chair
Senator Girod, Vice-Chair

RE: Water League opposes SB 713 to appropriate diffuse water without a water right.

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Chair Golden, Vice-Chair Girod, and Committee Members,

Natural Servitude and Oregon Drainage Law state that the natural pathways for diffuse water flows must not be interrupted to the extent they negatively impact neighboring properties unreasonably. Some change in water velocity is OK, but not much more than that. Diffuse water must flow mostly undiverted. To the extent that the Natural Servitude prohibits substantial damaging flows from dominant to servient estates, it may also prevent substantially reduced flows as well. SB 713 upends Natural Servitude and Oregon Drainage Law and does not contemplate any required engineering design or hydrological research.

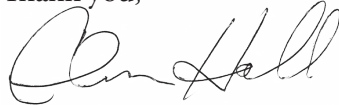
Despite their vagueness, diffuse water flows pose significant impacts that may be welcome on farms and undeveloped lands and unwelcome in the built environment where shunting it off to others is a common strategy for managing stormwater.

Capturing diffuse water that flows on top of the ground before it enters the hydrologic system's defined channels may seem like a harmless water appropriation by farms; in some cases, diffuse water is referred to as a *de minimis* appropriation. However, for diffuse water flows to be relevant to agriculture, which uses 80% of all developed water in the state, diffuse flows must be substantial enough to be worthwhile collecting. Diffuse water collection on farms that use between one and three acre-feet of water per acre would require substantial storage ponds for such water use to be justified even as a modest supplement to existing legal water appropriations.

What SB 713 does not address is the impact to the hydrologic cycle that would necessarily occur by the creation of berms, swales, ponds, and undefined channels required to capture and appropriate diffuse water on farms. Such grading could require

a primary water right for storage, and a secondary water right for application use. These water rights would require scientific hydrological research that is typically required for any water right. At this point, if the state wished to issue water right permits for diffuse water collection, the spirit of SB 713 would be crushed as the bill seeks to allow diffuse water appropriation without going through the process to obtain a water right certificate.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall". The signature is fluid and cursive, with the first name "Chris" and the last name "Hall" clearly distinguishable.

Christopher Hall
Executive Director

For more information, see:

Joseph W. Dellapenna, *The Legal Regulation of Diffused Surface Water*, 2 Vill. Env'tl. L.J. 285 (1991). Available at: <https://digitalcommons.law.villanova.edu/elj/vol2/iss2/2>