

# WATER LEAGUE

*Water League engages the public  
in water stewardship.*

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February 24, 2025

To: Senate Committee On Natural Resources

Senator Jeff Golden, Chair

Senator Todd Nash, Vice-Chair

Senators Fred Girod, Floyd Prozanski, and Kathleen Taylor

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**Executive Director**  
Christopher Hall

RE: Water League supports SB 427, which prohibits water right transfers from diminishing streamflows.

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

Currently, Oregon's water right transfer system functions as well as a two-legged stool: existing restrictions prevent transfers from enlarging water rights and injuring other water right holders, but they do not yet prohibit a third important factor: the diminishment of streamflows. Over the past century, the water right transfer system has focused on benefits and harms related to water users but not to the ecosystem. The conventional wisdom that says the only consideration that matters is humans' needs is regressive and blind to 21st-century climate and ecological realities. Frankly, it is also blind to posterity since so much of what passes for water use is what humans want in the present.

Oregon over-appropriated surface waters across the state by the mid-20th century. Since then, the Oregon Water Resources Department (OWRD) has substantially restricted water right applications for surface water. Despite those restrictions, too many perennial streams run dry in the summer and fall because water users over-pump them. But, these streams also run dry because Oregon permitted too many groundwater water rights to accommodate new water users and others who sought a surface water right but could not acquire one.

Throughout much of Oregon, groundwater is hydraulically connected to surface water, and come summer, most streamflow results from groundwater discharge

to surface water channels. However, because Oregon over-appropriated groundwater, base flows in streams have declined. In too many cases, streams run dry because groundwater levels drop below stream beds due to over-pumping.

SB 427 is necessary to bring order to the coming chaos and flurry of water right transfers now that the Water Resource Commission (WRC) has acknowledged that groundwater has been over-appropriated in every basin throughout the state. The WRC approved administrative rules restricting new water rights for groundwater in areas where groundwater levels are declining excessively or where there is insufficient data to determine if water is available for appropriation.

For the most part, what's left are water right transfer transactions, which means water rights could move around groundwater reservoirs, creating impacts as if they were new water right permits. That is a problem. Oregon does not yet hold water right transfers to the same *water availability* standards (OAR 690-300(57)) as it does new water right applications. To a degree, however, the existing transfer injury standard simulates a water availability metric since a transfer cannot harm another water right when a point of diversion or appropriation is moved. But, this injury standard only benefits human users, *the sole diverters of water*. There is no benefit to the ecosystem, which diverts no water but experiences significant harm when humans refuse to acknowledge injury to streams.

The “diminishment of streamflow” prohibition proposed in SB 427 is reminiscent of the regulations against “measurably reduced streamflows” in Scenic Waterways. The rationale for maintaining surface water flows during the summer and fall in all perennial streams across Oregon is self-evident because streams become gravel roads when water users over-pump.

We recommend that Oregon mostly leave the water right points of appropriation and diversion in place where they are and allow the real estate market to handle the transactions of who holds water rights. If shifting water use within basins around the state were to get out of hand, we suspect that water rights would chase water wherever it could find it. Since surface water and groundwater are over-appropriated nearly everywhere, the over-supply of water rights would pose an existential threat to Oregon's water sources. Without a doubt, the present would effectively regulate off the future and desiccate flora and fauna along the way.

We acknowledge the rebuttals by water users who fear they will be left holding worthless water rights if they cannot transfer them. Their concerns are not so dire: surely, they can

transfer substantial amounts of their water rights below the threshold of injury, enlargement, and diminishment. Perhaps municipalities can purchase more irrigation water than they need and then conserve the rest to make a water right transfer succeed under the SB 427 proposal.

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