



**Senate Committee on Wildfire and Natural Resources
Testimony in Opposition to SB 427**

Chair Golden, Members of the Committee,

Thank you for the opportunity to provide testimony in opposition to SB 427. By way of background, the Oregon Home Builders Association represents over 3,000 members engaged in the residential construction industry and advocates for homeownership opportunities for all. The Oregon Property Owners Association has represented Oregon property owners before the Legislature, local governments, state agencies and Oregon courts for nearly 40 years, with more than 12,000 contributors across the state, including all 36 Oregon counties.

As this committee well knows, Oregon is in the midst of an unprecedented housing shortage. Oregon has the 2nd most constrained housing market in the country, with only Connecticut ranking worse in providing enough housing per household in the country. Additionally, the entire Willamette Valley falls well below the national vacancy rate, highlighting the limited supply of homes available for rent in our most populated region. The only way to overcome this crisis is by growing our communities and building more housing to meet the demands of Oregonians.

It is common knowledge that most of Oregon's surface water sources are fully appropriated or over-appropriated. Additionally, Oregon Water Resources Department's ("OWRD") new groundwater allocation rules significantly limit, and in many cases, eliminate a prospective user's ability to obtain a new groundwater right. As such, new surface water rights are nearly impossible to secure, making new development and improvements to existing development highly dependent upon the water transfer process.

It is with this background in mind that we voice our strong opposition to Senate Bill 427, which seeks to add a new prohibition on water right transfers that result in "diminishment of streamflow." Additionally, it is important for the committee to note that the "water transfer" process is extremely broad and many private property owners are likely to have to use this process at some point. Therefore, changes to the "water transfer" process should be done with immense care and significant stakeholder engagement, which has not occurred here.

Under Oregon law, all water used in this state for any purpose is appurtenant to the land upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the statutes and regulations of government water transfers. Meaning, a "water transfer" is the only legal mechanism available to change an existing water right.

Accordingly, a transfer application and administrative review is required anytime a water right holder wants to move their water allocation to a different location, change the purpose of the water use, transfer their water right to another party, or when land is sold and a change in land use occurs that significantly alters the need for water on a property.

While a “water transfer” is required when significant changes to water rights occur, such as when a city or irrigation district seeks to change its point of diversion, a “water transfer” is also required when insignificant changes in water use happens on a private property. For example, if a property owner changes their irrigation practice from flood to sprinklers, they may need to file a water transfer to change the water right map to match the layout of the new system. If a property owner constructs an irrigation pond where a water right is mapped, they may need to file a water transfer to relocate the water from under the footprint of the pond.

Senate Bill 427 introduces a nebulous new standard to all proposed water transfers that prohibits the OWRD from approving a water transfer if it results in “diminishment of streamflow.” This raises several major concerns.

First, the term “diminishment of streamflow” is broad and undefined, and SB 427 requires OWRD to deny a transfer that results in “diminishment of streamflow”. A plain reading of the bill indicates that any loss in stream flow, would be considered a “diminishment”. In reality, any change in a point of diversion, depending on the nature of the stream or waterway, could result in a “diminishment” of streamflow. However, that same transfer could also result in an improvement of streamflow in a different segment. As a result, SB 427 would force the denial of any transfer that results in any “diminishment”, irrespective of the net benefit to streamflow or fish from the transfer.

Second, “diminishment of streamflow” is so broad and undefined it exceeds the current “injury” standard. Oregon law already includes limitations and protections for streamflow. Under ORS 540.510, OWRD may not approve a transfer if the transfer would enlarge or expand an existing water right in any way, or cause “injury” to any other existing water right on the water system. This includes water rights held in trust by OWRD to maintain water within stream channels or lake beds for public use, such as fish and wildlife, water quality, and recreation. As applied, the injury standard ensures that existing water rights, including instream water rights, are protected. However, SB 427 goes far beyond our existing “injury” standard, to deny a transfer that results in any diminishment of streamflow, even if that impact is *de minimis* and doesn’t result in an actual injury to another water right.

Last, SB 427 introduces a new avenue for stakeholders to protest transfer applications and requires additional layers of review to an already burdensome process. OWRD’s transfer review process already has significant delays, and many transfers are further held up by protest and appeal. Implementation of Senate Bill 427 will undoubtedly exacerbate these issues by allowing third parties to protest transfer applications under the premise that they might result in any

“diminishment” of stream flow or that OWRD has not thoroughly analyzed the issue, even if the proposed transfer will have zero or an imperceptible impact to streamflow.

Given how complicated, delayed, and contentious Oregon’s existing process for obtaining and transferring water rights has become, the Legislature should be seeking ways to improve water right flexibility, not make things more difficult. This is especially true in light of our housing crisis and the sharp decline in the number of family farms operating in this state.

Senate Bill 427 is a major step in the wrong direction, and if adopted, it will have a chilling effect on communities, builders, and businesses across Oregon.

Thank you for the opportunity to provide these comments today. Please do not hesitate to reach out with any questions or concerns.

Contact: sbayer@oregonpropertyowners.org; dhunnicutt@oregonpropertyowners.org;
jodi@oregonhba.com