



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

SB 718

Testimony of WaterWatch of Oregon

by Kimberley Priestley

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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes SB 718

Background: A basic tenant of western water law is the principle of "use it or lose it". The general idea is that if a water right holder does not use their water right for five successive years, they are at risk of forfeiting that right. That said, Oregon has some of the most permissive forfeiture statutes in the West, with a multitude of exemptions and/or rebuttals. Most relevant to SB 718 are existing statutory protections of water rights against forfeiture related to lack of water. If water is not available to serve a water right, say in a drought, the water right holder can use this fact to rebut a presumption of forfeiture under ORS 540.610(2)(j). This person must be ready, willing and able to use their water right, but if there is no water for them to use then their water rights are not at risk. So, in other words, people's water rights are already protected if they cannot use them because of drought.

What SB 718 would do: SB 718 would add a broad exemption to forfeiture that provides that if the Governor declares that a severe and continuing drought exists, or is likely to exist in any given year, that that drought year does not count towards the forfeiture clock.

WaterWatch concerns:

- SB 718 is not necessary; the forfeiture statutes already allow for protection of water rights against forfeiture if water is not available to fulfill a water right
- This exemption is overly broad; it is not limited to those water right holders that are actually impacted by drought, but rather is a blanket protection all water rights in a county regardless of whether they have access to water.
- Given the increasing incidents of drought; this provision could result in long term protection of paper rights regardless of use and/or whether a water right holder is ready, willing and able to use water. This becomes especially concerning in water transfer considerations, where OWRD generally reduces the amount allowed to be transferred based on use over the past five years.

Conclusion: The preservation of unused water rights by virtue of “drought” even if the non-use of water is wholly unrelated to drought could continue forward some of the long standing inequities of Oregon’s water right system.

If the concern is truly about protecting water right holders who can’t use their rights because water is not available to them because of drought, this bill is not needed as that protection already exists in statute today.

Contact: Kimberley Priestley, WaterWatch of Oregon, kjp@waterwatch.org. Jack Dempsey, jack@dempseypublicaffairs.com, 503-358-2864