

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 supports SB 718, allowing farmers to pause using their water rights during Governor-declared drought emergencies without the threat of the state cancelling their water rights.

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

Much of Oregon's groundwater and streams are over-appropriated due to a failure in management going back decades. This negligence is made worse by antiquated water management policies and state laws that perpetuate the negative impacts of over-appropriation: the failures of the past continue to wreak havoc on watersheds, basins, and communities.

One small but important way to stop making the problem worse is for the state to allow the largest water users, farmers, to leave water in streams and aquifers when they don't have a need or desire to use it. (*Allowed*, here, means not threatening cancellation of their water rights.) If the Governor declares a drought emergency in certain counties, farmers should not be forced to pump against their will by a state agency enforcing 19th century policies threatening "*Use it or lose it!*"

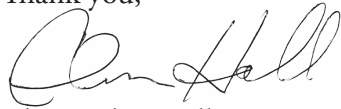
If farmers do not wish to use their water rights at some *Places of Use* on their farms during a Governor-declared drought state of emergency, that is the free-market economy and the ecology talking. Why else would hard-working farmers not work their fields? It is morally, politically, economically, and environmentally wrong to threaten a farmer with loss of all or part of their water right because they wished to fallow a field during hard times driven by a drought emergency.

Establishing in-stream rights is an option for farmers with surface water rights, but there is no option for farmers who use groundwater; they can't lease their water back to the aquifer by not using it. The chances of aquifers recharging during prolonged

periods of drought are much lower than during periods of normal precipitation. Since groundwater and streams are often hydrologically connected, taking pressure off aquifer declines is good policy.

Those concerned that farmers would let water rights go unused over time have the duty to explain why using those water rights is a necessity during a drought, increasing water scarcity, and aridification. Maybe 100 years ago when there was a tiny population and few concerns about chronic water scarcity, the “*Use it or lose it*” doctrine made sense so that speculators didn’t lock up the potential for others to make use of the water. Today, however, such a scenario is incomprehensible because the rampant over-appropriation of Oregon water now results in “*Use it and lose it.*”

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall", written in a cursive style.

Christopher Hall
Executive Director

For more information, see:

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