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May 9, 2023

House Committee on Agriculture, Land Use, Natural Resources, and Water
Oregon State Legislature
900 Court St. NE,
Salem, OR 97301

RE: Testimony in Support of SB 718A

Dear Chair Helm, Vice-Chair Owens, Vice-Chair Hartman, and Members of the Committee:

The Oregon Water Resources Congress (OWRC) is testifying in support of SB 718A, which would provide water right holders with additional tools and protection from forfeiture during times of drought.

OWRC is a nonprofit trade association representing irrigation districts, water control districts, drainage districts, water improvement districts, and other local government entities delivering agricultural water supplies throughout Oregon. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities. OWRC members deliver water to approximately 600,000 acres of farmland in Oregon, which is over one-third of all the irrigated land in Oregon.

Oregon is facing more frequent and severe drought conditions, leading to reduced or no water availability for farmers, communities, and the environment. Recent and recurring drought conditions have devastated irrigation districts, other agricultural water suppliers, and the farmers and ranchers they serve. These conditions have caused economic hardship, loss of food security, increased catastrophic wildfires, and many other detrimental impacts throughout the state. When you're worrying about how to pay your bills or whether your community will survive yet another drought year, you shouldn't have to worry about losing your water right during a declared drought.

SB 718A would help reduce the impacts of drought by providing greater flexibility to water right holders and alleviate the concern from water users that they risk forfeiture if they do not fully exercise their water right during a drought. This tool would only be available in areas with declared droughts and will help stretch available water supplies to meet existing water right demands as efficiently as possible, benefitting agriculture, communities, and the environment.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources

Under Oregon's doctrine of prior appropriation, when water is not available, junior water right users are regulated off in favor of more senior water right users, in accordance with the water right's priority date. Water rights not used for five successive years can be subject to forfeiture. Applying for a new water right is expensive, difficult and often impossible to get in most areas of the state. When successful, the new water right carries the priority date on which it was issued, making it extremely junior and first to be shut off. This makes the protection of existing water rights paramount.

While Oregon water law protects water right holders from forfeiture when water is not available, there is not clear protection from forfeiture if a water user voluntarily chooses not to use all or part of their water right. When drought conditions occur, water right holders should not have the additional fear that they are going to lose their right to use water in the future if they choose to not irrigate part or all of a parcel of land during a declared drought. During times of drought there are scenarios where a user technically has access to water, but at a reduced quantity insufficient to grow planned crops. If the reduced portion of water is not used, they are at risk of potentially losing their water right. Having clear protection against forfeiture will help address this concern and reduce barriers to voluntary and temporary water conservation measures during times of drought. SB 718A does not change existing forfeiture provisions requiring water right holders to be ready, willing, and able to use their full water right, if water were to be available.

There are other tools water right holders can use, including transferring water rights, such as temporarily moving to another place of use or leasing instream. However, these and other types of water transactions are not quickly processed, require fees, and often take more than an irrigation season before the Oregon Water Resources Department can process the application and issue a decision. Drought conditions can also occur quickly, which does not provide water users with enough time to plan a transfer.

In conclusion, SB 718A would protect existing water rights from forfeiture without changing other processes or protections under Oregon water law, including transfers or other related transactions. This small adjustment will help water users around the state maximize and efficiently use available water supplies during times of drought without fear of forfeiture.

Thank you for your consideration of our testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Snell', written in a cursive style.

April Snell
OWRC Executive Director