



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

SB 427 Testimony of WaterWatch of Oregon by Kimberley Priestley

Senate Committee on Natural Resources and Wildfire
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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and Oregon's rivers and aquifers to sustain fish, wildlife, recreation and other public uses of Oregon's waters. 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 urges support of SB 427

Problem statement: An unintended regulatory loophole in Oregon's water transfer laws allows old water rights to serve new uses, move to new diversion points, or change the place of use without any environmental review. This loophole effectively nullifies Oregon's ability to protect instream values on hundreds of streams across the state. This is because transfer applicants only need to show that the proposed change will not harm other water rights or lead to an increase in use. On the many streams that do not have established water rights to protect fish, wildlife and recreation, the Oregon Water Resources Department cannot consider the effect of these proposed transfers on instream values, even if a transfer would completely dewater a fish bearing stream.

SB 427 provides a narrow legislative fix: SB 427 will protect Oregon's streams and the public benefits they provide by establishing a new "no diminishment of flow" standard in Oregon's transfer review statutes. This bill is purposefully narrow in order to:

- Keep the review within one agency to minimize application review time and fiscal impact; and
- Align with the OWRD's already existing "injury" analysis so as to avoid a whole new process

SB 427 simply seeks to preserve the existing status quo for fish and wildlife. Not a high bar, but a necessary one as Oregon moves towards more responsible water management.

SB 427 addresses a long-standing need to modernize Oregon's transfer statutes to bring our state's transfer process in line with other Western states:

Oregon's transfer statutes are some of the most archaic on the books. The need to update Oregon's transfer statutes to account for their impact on fish and wildlife and other instream values has been understood for decades. The concept of some type of environmental screen has been heavily discussed in workgroups, legislative discussions (1993, 1998, 2013, 2017/2018), OWRD rulemakings and the development of the Integrated Water Resources Strategy.

The recognition of the need for transfer review standards beyond the traditional no injury/no enlargement screen has not been limited to Oregon but rather has been west wide. In 1992 the Committee on Western Water Management of the National Research Council outlined the need for

states to account for third party effects in transfers, including the effect on the environment, and streamflow in particular¹. The report leaned heavily on the value, both economic and intrinsic, of water remaining instream to support fish and wildlife, ecological integrity, water quality, recreation, tourism, local communities and local and state river related economies.

It is also important to note that other states across the West have adopted transfers standards that go beyond the historical “no injury, no enlargement” standard to account for third party impacts, including impacts to the environment.² These include Utah, Idaho, Montana, Washington, California, Nevada, Texas and New Mexico. Environmental and/or public interest screens have not stopped transfers from going forward, they simply ensure no harm comes from water right changes.

It is time that Oregon followed suit.

Responsible and wise water management: In recent years, Oregon has called for greater water equity and water security. Central to international, national and state definitions of water equity and water security is the protection of ecosystems. Moreover, Oregon statutes, rules, policies and strategies all stress the need to restore and protect instream flows as part of Oregon’s water future. And the Integrated Water Resources Strategy, Oregon’s blueprint for meeting instream and out-of-stream needs into the future, calls for the development of additional instream protections.

Responsible and wise water management is not limited to the narrow sphere of water right holders but rather takes into account the effects of water decisions on the environment, communities and cultures.

Despite the progress the state has made in moving towards the modernization of its water management toolbox, Oregon’s transfer statutes remain woefully outdated. At the same time, because most of Oregon’s streams are over-appropriated most months of the year and groundwater is in decline in many areas of the state, new extractive water users are increasingly looking to transfers of old water rights to supply water to new uses. This is making the need for SB 427 all that more pressing.

Conclusion: Wise water management, changed societal values and the understanding of the value of water instream for Oregon’s people, fish and wildlife and economies supports the narrow fix to our outdated transfer laws that SB 427 provides. SB 427 is a commonsense tool that will bring Oregon into the 21st century, and more into alignment with other Western states.

We urge you to support this bill.

Thank you for your consideration of our testimony.

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¹ Water Transfers in the West: Efficiency, Equity and the Environment, Committee on Western Water Management, National Research Council, National Academy of Sciences, 1992.

²The Western Governor’s Association reported that most western states require some form of public interest review, which includes an environmental review. See Water Transfers in the West: Projects, Trends and Leading Practices in Voluntary Water Trading, The Western Governor’s Association and the Western States Council, 2012.