

Good afternoon Chair Golden, Vice-Chair Nash and members of the Committee.

My name is Steve Shropshire. I'm appearing today on behalf of the Oregon Association of Nurseries, which represents the state's largest sector of agriculture, with over \$1 billion in annual sales.

I have been an Oregon water lawyer for more than 25 years. I have filed and litigated countless water right transfers during that time.

The OAN's members rely on the water right transfer process to efficiently manage water use and to secure additional water supplies when new water rights are not available.

### **The OAN opposes Senate Bill 427.**

This bill represents one of the biggest threats to Oregon water law and policy that I've encountered over the course of my career. For that reason, I will be very direct with the committee today. This is a solution looking for a problem. It is a blunt instrument in a context where precision is required. It will tie up Oregon's water for generations to come. And it seeks to circumvent the prior appropriation doctrine, which is the foundation of Oregon's water law system.

Why do I have these concerns?

Over the last decade, changes to Oregon water law have resulted in a far more restrictive and challenging regulatory environment for Oregon agriculture and cities. The latest example is the Water Resources Commission's September 2024, groundwater allocation rules that effectively end new groundwater appropriations statewide.

At the core of those rules is an assumption that all groundwater and surface water is hydraulically connected. This is important because the vast majority of Oregon's surface streams are fully appropriated. So by implication, our groundwater sources are also deemed to be fully appropriated. This means that any changes to the transfer laws will impact both surface and groundwater rights.

Against this backdrop, Oregon is entering a new era where transfers will be the primary water management tool. We must have administrative processes that facilitate responsible, flexible water management and use.

Senate Bill 427 takes us in the opposite direction. It will establish a sweeping new transfer standard that will bog down the transfer process and stymie water management flexibility. It is far from a "narrow" fix as suggested by the bill proponents.

This bill will make a bad situation worse. Transfers currently take years to process. And, if protested by an opponent, many years more. This delay is used as a weapon by transfer opponents who know that delay alone can spell the end to many water projects.

And this occurs under the current water right transfer test for injury and enlargement—including protection of instream water rights. Adding a new test for "diminishment of streamflow" would effectively put an end to transfers.

We only need look as far as the water right permitting process to understand the implications of this bill. In that context, DEQ and ODFW have been exercising a functional veto over new water rights in any context where the agencies believe a new water right will impair streamflow.

This bill would likewise preclude any transfer that would result in the "diminishment of streamflow." The analysis is not tied to impacts on water quality or aquatic species—simply flow. It sets the stage for years of time consuming and expensive litigation for both transfer applicants and the State.

Additionally, this bill elevates instream interests above all other beneficial water uses in the transfer context by effectively exempting instream uses from the permitting process and giving them a super-priority. This will upend over a century of vested water rights and will lead to constitutional challenges based on impacts to those rights.

We need to *enhance* water management flexibility. Senate Bill 427 does the opposite. If implemented, it will impact Oregon's economy and the livability of communities across the state.

Thank you for the opportunity to testify today. I am happy to answer any questions.