



OREGON
ASSOCIATION OF
NURSERIES

**Testimony before the Senate Environment and Natural Resources Committee
Senate Bill 425**

Presented by Jeff Stone, Executive Director
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March 4, 2013

Chair Dingfelder, Vice Chair Olsen, members of the committee, my name is Jeff Stone and I serve as the Executive Director of the Oregon Association of Nurseries. I am here today to sound the alarm bell regarding the disastrous piece of legislation before your committee. Bluntly stated, Senate Bill 425 is ill conceived, divisive, and is akin to a declaration of war on the consumptive water user community.

Background on the Oregon nursery and greenhouse industry

Nursery association members represent wholesale growers, retailers, greenhouse operators, and Christmas tree growers. The nursery and greenhouse industry remains the state's largest agricultural sector as we emerge from the Great Recession. As the nation's second largest nursery state with over \$744 million in sales in 2011, our growers ship their products throughout the country, generating valuable traded sector revenue from outside the state that fuels Oregon's economy. Nearly 75% of nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River.

Water is the lifeblood of our industry. Without reliable water supplies, our growers' plants would wither and die during Oregon's dry summer months. Our members are keenly aware of that fact and have spent generations as stewards of the state's natural resources.

We believe that economic vitality can go hand in hand with sustainability and long-term environmental health. The OAN and its members have pioneered projects such as the Container Nursery Water Quality Management Program, the Climate Friendly Nurseries Project, and the OAN is a national industry leader on sustainability. The State of Oregon deserves a vigorous debate on the future of water. Agriculture, municipalities and the conservation communities should examine how we manage storage, conservation and water quality. If this bill were to advance in the process, all other reasoned and helpful water bills would be snuffed out.

Senate Bill 425 will fundamentally change Oregon water law

Senate Bill 425 does not advance the interests of all Oregon's citizens. It is a bill designed to advance the narrow interests of an extreme environmental community that would just as soon see our state revert back to our pre-settlement natural state.

The reality is that Oregon is part of western civilization. The reality is that Oregon's laws are based on over 150 years of western water law. The reality is that the proponents of SB 425 would just as soon have you ignore that reality and place us on a path that would harm the economic and social fabric of the state. This bill will undermine over 100 years of investment and legal certainty based on our water code of 1909.

The OAN strongly opposes this bill because it attempts to introduce a public interest analysis into the transfer process—and not just a standard public interest analysis, but one that is far more radical than anything now used by Oregon Water Resources Department (OWRD). This is an outcome that could essentially end the nursery industry's ability to conduct water transfers in Oregon.

The importance of transfers

Oregon's water resources are nearly fully appropriated. That means we've handed out pretty much all the available rights to use our surface and groundwater. That means to supply the demands of the future we'll need to use tools such as water right transfers to make the best possible use of existing water rights.

In Oregon, our transfer process allows a water right holder to change the point of diversion, the place of use, or the type of use for the water right. When a water right transfer application is received, OWRD does a careful analysis to determine whether the proposed change will injure other water users or result in the enlargement of the original water right. This so-called "injury analysis" is one of the hallmarks of western water law.

The injury analysis looks at the potential impact of the transfer on junior and senior water rights as well as instream and consumptive rights. This is a technical analysis based on each individual water right, water availability, historic use patterns, and regulatory history in a basin. SB 425 would disregard all that.

Protection of instream water rights

Oregon was the first state in the nation to pass an instream water rights act in 1987. That law designates instream flow as a beneficial use and allows the state to protect such flows through the issuance of an instream water right. Those rights are then administered together with all other water rights on a stream system. So, stated simply, we have a method by which to protect instream flows we deem important enough to protect.

Those instream water rights are, in turn, considered and protected from injury as part of the analysis undertaken by OWRD in evaluating a transfer application.

The bill is written would alter water law precepts of over 150 years

This bill is trying to shortcut this careful and considered process by asking you to pass a blanket prohibition on any transfer that would “result in a loss of in-stream habitat for native fish or native wildlife in a stream reach that is NOT protected by an existing in-stream water right.”

Just to be clear, this bill wants to enhance protection—a prohibition on transfers—for something that hasn’t been deemed important enough for interest groups to protect with an instream water right.

I urge you to look carefully at the language of the bill. You are being asked to consider a bill that would put to an end any transfer that results in the loss of instream habitat for 1) native fish; or 2) native wildlife. Is it practical for OWRD to even remotely evaluate this ridiculously broad standard that presumably reaches down to snails, mollusks and other non-fish wildlife that live in Oregon’s streams? At least it says “native” wildlife so we aren’t protecting the invasive Quagga Mussels.

On a far more serious note, the “no loss of habitat” standard is a hyper-protective standard that exceeds not only the injury standard, but that goes far beyond the current scope of any public interest analysis conducted by OWRD when issuing water right permits. In practice, it would even exceed the standards of the Endangered Species Act—*for species that may not even be listed* as threatened or endangered.

SB 425 takes a step back on reasonable water legislation

The Oregon Legislature has shown time and again that it can pass sensible legislation that protects our important natural resources while also recognizing the importance of long-standing water laws. There are ways to accomplish valid policy objectives that don’t include poorly conceived bills like SB 425, which regardless of its intent, will drive a wedge and poison the well on good water legislation in 2013. The OAN is committed to working with you to help develop water laws that are beneficial for all our citizens. We are equally committed to putting a stop to one-sided legislation that will so significantly injure the consumptive water community.

The OAN strongly urges you to oppose SB 425.