



**Testimony before the House Energy and Environment Committee
Relating to appropriated water use
House Bill 2854**
By Jeff Stone, Executive Director, Oregon Association of Nurseries
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Chair Helm, Vice-Chairs Reschke and Schouten, members of the committee, my name is Jeff Stone and I serve as the Executive Director of the Oregon Association of Nurseries (OAN). Thank you for the opportunity to provide some thoughts and considerations with regard to the development of a workable water use measurement and reporting program at the Oregon Water Resources Department (WRD) over the next two years.

The OAN participated in a bipartisan work group led by Representative Ken Helm in 2017 and believes that significant progress was made on many issues surrounding measurement, reporting, and management of data on water use. It is important for a diverse stakeholder group to exchange views to create a workable piece of legislation. The committee will also hear from some water advocates on House Bill 2851. We appreciate elevating the issue and believe that Section 1, which recognizes the value of water use data and the importance of offsetting the associated costs, is good policy and will work to incorporate that section into our bill. House Bill 2854 is an opportunity to engage in a discussion that will lead to final action on this challenging issue in the 2021 Legislative session.

The Economic Footprint of the Nursery and Greenhouse Industry

The nursery and greenhouse industry is the state’s largest agricultural sector, and the industry ranks third in the nation, with over \$948 million in sales annually to customers in Oregon, the rest of the United States, and abroad. In fact, nearly 75% of the nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River. The nursery industry employs over 22,000 full time workers with an annual payroll over \$327 million. We send ecologically friendly green products out of the state, and bring traded sector dollars back to Oregon.

Nursery association members represent wholesale plant growers, Christmas tree growers, retailers, and greenhouse operators. Our members are located throughout the state, with our largest nursery growing operations found in Clackamas, Marion, Washington, Yamhill and Multnomah Counties. Water is the lifeblood of the nursery and greenhouse industry. It must be available for use in sufficient quantity and quality to allow for future growth of the industry

Several big issues need to be resolved over the next two years

There are several critical issues that must be addressed prior to passing a measurement and reporting bill:

- 1) the capacity of the Oregon Water Resources Department (WRD), through technology and adequate staffing, to receive, store, and analyze data in a manner that enables WRD to manage water more effectively throughout the state;
- 2) recognition that municipalities and irrigation districts currently measure and report water use, and the development of a reasoned, cost effective, and standardized reporting process to bring in data on additional high priority areas known as significant points of diversion (“Sig PODs”).
- 3) development of a land-owner friendly measurement and reporting program that includes technical assistance, cost share for buying, installing, maintaining, and replacing measurement devices, and protection from penalties in the event of the failure of a measuring device;
- 4) data reporting at a level of temporal and geographic detail that enhances WRD’s capacity to manage the resource while protecting agricultural producers from being targeted for water right cancellation/forfeiture if they are using less water than is reflected on the face of their water right (if, for example they are using less water as a result of adopting water efficiency measures or annual cropping decisions).

OAN supports data-driven management decisions and wise use of our water resources. Due to the complexity of the issues above, it is the OAN's recommendation that a legislative work group pick up where Representative Helm’s 2017 effort left off. The current language in HB 2854 creates a legislative task force. We appreciate legislative counsel’s efforts to capture our intent, however the OAN believes that a legislative work group that can span 2019 and 2020 is more appropriate.

It is important that we continue the critical stakeholder groundwork needed to develop a water measurement and reporting system that will have the trust of both the conservation and water user communities, recognizing that new reporting obligations take time and money for users to implement, and providing WRD with the resources and systems it needs to make good use of the data it receives. As with any significant investment into water, it is critical that WRD provide clear and regular updates to the legislature regarding its progress on these issues.

The Legislature should carefully manage the state’s financial resources by prioritizing only those areas of the state where an investment in measurement and reporting will provide valuable data that WRD can use to manage high priority stream systems.

The nursery and greenhouse industry believe it is a waste of time and resources for WRD and the private sector to collect data that serves little practical chance of helping WRD to evaluate and manage our state’s water resources. Before the Legislature requires the state and private sector to invest in water measurement and reporting, it is critical that WRD first take steps to establish a priority list of areas around the state that would provide the best return on investment. These are areas of the state where water use data would help enhance WRD’s ability to make resource management decisions. It would make good fiscal and policy sense to ask WRD to identify those area as part of a work group process in order to help guide the group’s development of a targeted piece of legislation that will help advance rational water policy in Oregon. Under existing strategic plans, WRD has designated Sig PODs that have the greatest impact on streamflow in locations where fish have the greatest streamflow needs, and where WRD can work collaboratively with users to implement measurement of water use. Due to a variety of factors, particularly resource constraints at the WRD, this potentially impactful tool has not been deployed fully and the Sig POD list is out of date. The Legislature should be cautious

about moving forward with a new far-reaching and onerous measurement and reporting program before WRD does the necessary groundwork to identify places where such a program will justify the public and private investment it would require.

It is also very important to the agricultural community and others to determine where and how water use measurement data will be used. We all have a stake in assessing and maintaining the long-term reliability of our state's water resources. Therefore, it is critically important to produce water use measurement and reporting legislation that has the trust and support of all major sectors of the water community. The workgroup would be valuable in developing the trust and concepts needed to address these key concerns.

Challenges to reporting by agriculture

Agricultural water users are governed by Oregon's water right system administered by WRD. One core element of that system is the doctrine of prior appropriation (first in time, first in right), which calls for water users to forfeit water rights they do not beneficially use. Under Oregon law, a partial forfeiture is possible if a water user uses less water than is allowed by their water right. Advances in irrigation technology and expansion of more water efficient production methods – such as container yards with water recirculation systems for the nursery industry have led to greater efficiency in water use— meaning that many water users use less water than is reflected on the face of their water right. The OAN views these efficiency gains as a good thing. However, Oregon's forfeiture laws have the potential to punish efficient operators by taking away a portion of their water rights. Therefore, many agricultural sector water users have serious concerns that water use reporting data will be used to target agricultural water rights for forfeiture and cancellation. The OAN believes that protection from forfeiture is a critical issue that must be addressed before a final bill can go forward. This significant issue requires additional consideration by a workgroup in order to develop legislation with adequate protections against forfeiture and incentives to ensure that water use data collection ultimately leads to more efficient water use and sound water management.

Cost share for measuring devices will be a critical element of a successful bill

Agriculture can be a positive partner in helping manage water. However, the Legislature needs to ensure that appropriate incentives are in place to ensure success. The installation and maintenance of measurement devices can be very expensive. Therefore, it will be critical for any final legislation to include a cost share program to assist landowners with the purchase and installation of measuring devices

Good work should continue

The OAN wishes to thank Representative Helm and others for their attention to this challenging issue. We would welcome the opportunity to participate in a workgroup during the interim to craft a water use measurement and reporting bill that contains the protections and incentives needed to gain broad support. A well-crafted bill that helps the state obtain useful data on water use will improve water management. By contrast, a bill that simply imposes universal measurement and reporting requirements on WRD and the water user community will waste precious public and private resources without a significant return on investment.