



**Testimony before the House Water Committee
House Bill 4069
Relating to Water**
Submitted by Jeff Stone, Executive Director
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Chair Helm, Vice-Chairs Leif and Reardon, 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 comment on House Bill 4069, including the -1, -2, and -3 amendments, which would authorize the Oregon Water Resources Department (OWRD) to require any entity already subject to a water use measurement condition to report water use to OWRD. The proposed amendments begin to address challenges with implementing such a requirement, and the OAN appreciates the Committee’s invitation to propose additional changes in order to achieve the stated goals of the bill.

The OAN has a long history of engagement on this topic and is encouraged that the Committee is interested in continuing these productive discussions. In 2017, the OAN participated in a bipartisan work group led by Representative Helm. We believe significant progress was made on many issues surrounding measurement, reporting, and management of data on water use. The legal and practical aspects of water measurement are inherently complex, so it is important for a diverse stakeholder group to exchange views to create a workable piece of legislation. With all due respect, we do not believe that a short legislative session is the appropriate context for full and thoughtful consideration of these complex issues. That said, we view House Bill 4069 as an opportunity to further refine the core issues and to help set the stage for action on this challenging issue during the full-length 2021 legislative session.

The Economic Footprint of the Nursery and Greenhouse Industry

The nursery and greenhouse industry is the state’s largest agricultural sector. Oregon’s producers rank third in the nation, with over \$996 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. We send ecologically friendly green products out of the state, and bring traded sector dollars back to Oregon. In addition, in 2018, nursery and floriculture employed approximately 9,150 people, with a total payroll of \$332 million, and an average wage of \$36,286.

Members of the Oregon Association of Nurseries are 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. For that reason, we have a keen interest in HB 4069.

Several big issues need to be resolved before the next full legislative session

HB 4069 would authorize OWRD to require reporting of water use data where water use already being measured. However, the bill and amendments as proposed fall short of addressing the key issues discussed in work group meetings over the last few years. Those issue include (1) focusing the reporting requirement on significant points of diversion (“Sig PODs”), (2) providing cost-share funding for installation of necessary equipment, and (3) protecting water users from the use of reported data to support water right forfeiture proceedings.

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 be convened to continue the critical stakeholder engagement needed to develop a successful water measurement and reporting system. Successful legislation will have the trust of both the conservation and water user communities, recognize that new reporting obligations take time and money for users to implement, and provide OWRD 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 OWRD provide clear and regular updates to the legislature regarding its progress on these issues.

Measurement and reporting obligations should be tailored to address priority stream reaches

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 OWRD can use to manage water resources in high priority basins. To this end, the nursery and greenhouse industry believes it would be an inefficient and wasteful use of time and resources for the private sector to collect data that serves little practical chance of helping OWRD to evaluate and manage our state's water resources.

Before the Legislature requires the state and private sector to invest in a significant expansion of existing water measurement and reporting programs, it is critical that OWRD 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 OWRD's ability to make resource management decisions. It would make good fiscal and policy sense to ask OWRD to identify those areas 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, OWRD has designated Sig PODs that have the greatest impact on streamflow in locations where fish have the greatest streamflow needs, and where OWRD can work collaboratively with users to implement measurement and reporting of water use.

Due to a variety of factors, particularly resource constraints at OWRD, this potentially impactful tool has not been deployed fully and the Sig POD list is critically out of date. The Legislature should be cautious about moving forward with a new far-reaching and onerous measurement and reporting program before OWRD does the necessary groundwork to identify places where such a program will justify the public and private investment it would require.

Agriculture needs to buy in to the solution

It is also very important to the agricultural community and others to determine where and how water use measurement data will be used, and to have protection against penalties in the event a measurement device fails, and water use data cannot be accurately reported despite the user's efforts to comply. We all have a stake in assessing and maintaining the long-term reliability of our state's water resources. Therefore, it is important to produce water use measurement and reporting legislation that has the trust and support of all major sectors of the water community. The interim 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 as administered by OWRD. 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 have the ability to use less water than is reflected on the face of their water right. The OAN views these efficiency gains as a good thing.

The bill must protect water rights holders against increased forfeiture risk

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.

Whereas the original text of HB 4069 was completely silent on forfeiture, the OAN appreciates the direction of the proposed -3 amendments, which would prevent reported water use data from being used as the *sole* basis to establish a presumption of forfeiture. However, to achieve widespread cooperation, agricultural users need assurances that the data they submit to the state cannot later be used against them in forfeiture proceedings. This was the OAN's clear position in prior work sessions, and neither our position nor our reasons for it have changed. 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, and their calibration and use often requires specialized training. 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 capable of recording total water use for the express purpose of reporting such data, rather than just enabling spot measurements for the purpose of water management, as currently authorized by OWRD's rules on measuring devices at OAR 690-085-0015.

The OAN is encouraged by the proposed -2 amendments, which instruct the Commission to give consideration during rulemaking to the provisions of waivers in cases where requiring the reporting of

water use measurements would cause hardship. However, a final bill will need to do more than merely requiring consideration of hardship; it will need to acknowledge that hardship will result, and allocate technical and financial resources to help to address it. In addition, to avoid further hardship, a final bill should expressly state that private entities will be required to report water use data on the same annual reporting frequency as currently applies to governmental entities under ORS 537.099.

Good work and effort should continue

The OAN wishes to thank Representative Helm and others for their attention to this challenging issue over the years. 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 OWRD and the water user community will waste precious public and private resources without a significant return on investment.

Thank you for your time and attention.