



**OREGON**  
ASSOCIATION OF  
NURSERIES

**Testimony before House Interim Committee on  
Agriculture, Land Use, Natural Resources, and Water  
Informational Hearing -- OWRD Groundwater Allocation Rulemaking**  
Submitted by Steve Shropshire, Policy Counsel, Oregon Association of Nurseries  
November 7, 2023

Chair Helm, Vice-Chairs Hartman and Owens, members of the committee, my name is Steve Shropshire and I serve as policy counsel to the Oregon Association of Nurseries. I am here before you today in that capacity. However I also appear before you as an Oregon water lawyer with over 25 years of experience working on the issues you are discussing today. On behalf of the OAN, I'd like to begin by expressing our appreciation for your interest in Oregon water policy and for the invitation to testify before you today. In an environment where legislation is often conceived of and measured in two-year cycles, we truly appreciate your recognition of the need to think in terms of decades when it comes to water policy.

**Committee Oversight Is Important**

The OAN also appreciates the Committee's interest in exercising oversight over this important issue. Oversight serves several purposes – ensuring that policies are enacted with the legislative intent of the body, ensuring that rulemaking processes conform to that intent, and ensuring that issues arising due to changing circumstances are reported back to the legislature. The groundwater allocation issue, like any major water policy, cannot be pursued in a policy vacuum. The OAN believes good policy results from the consideration of a proposed change to the law within the broader economic, social, and legal context—a role the legislature is uniquely positioned to play.

**The Rulemaking Is Being Conducted in a Policy Vacuum**

First, it is important to acknowledge the difficult work that OWRD's staff have undertaken. This is a challenging issue and they have embraced the challenge. That said, the OAN has significant concerns regarding the ongoing groundwater allocation rulemaking. The OAN recognizes the importance of sound water resource management based on good data and good science. We also recognize the importance of framing significant policy changes in light of prior legislative directives on such issues.

We are concerned that the ongoing rulemaking is occurring without adequate consideration of those legislative directives. We are also concerned about how the proposed rules will impact other statutory programs such as water right transfers, which will become immediately more important for water management in Oregon. In short, we believe a change to water law of this magnitude needs to be directed by and conducted

in a coordinated fashion by the legislature, as opposed to an unelected seven member citizen commission and agency staff.

### **The Rulemaking Is Being Driven by a Selective Reading of the Groundwater Policy Statutes**

Why does this issue matter to the OAN? Because water is the lifeblood of our industry. Because sound, sensible, and sustainable water resource management is critical to the future of our state and our industry. And because we believe the proposed groundwater allocation rules will result in a defacto moratorium on new groundwater permits across the state.

The policy section of the 1955 Groundwater Act, codified as ORS 537.525, lays out multiple statutory groundwater policy mandates that the legislature has adopted. Not surprisingly, it's been amended a few times and those mandates do not necessarily exist in harmony with one another. In fact, some of them appear to be in conflict. Unfortunately, the rulemaking has elevated certain of those mandates above others, failing to consider the totality of the legislature's important policy directives. This decision has substantially influenced the direction of the rulemaking as evidenced by the content of the proposed rules.

### **Data Gaps and Costs**

Groundwater management in Oregon is complicated by the significant gaps in available groundwater data. This is a problem the 2021 legislature recognized when it passed HB 2018 directing and providing funding to OWRD to contract with USGS to develop and publish groundwater budgets for all major hydrologic basins in the state. That is the type of information the legislature, the Commission, and the Department need to have in hand to guide water policy decisions. However, the proposed rules would put a stop to all new groundwater permitting upon enactment before such data is available. This is monumental change in approach should be vetted by the legislature with appropriate consideration of the short- and long-term impacts it will have to agricultural and municipal water users.

### **Conclusion**

At the September 2023 Water Resources Commission meeting, OWRD's Acting Director Doug Woodcock appropriately characterized the groundwater allocation rulemaking as "potentially the most significant policy change undertaken by the Department and the Commission in decades." The question we hope you will ask yourselves following today's hearing is whether the Department and Commission should be driving such a major change in Oregon water law. The OAN believes that legal and policy changes of this magnitude should be made by Oregon's elected officials with a full view of all the potential ramifications.

In conclusion, I want to re-emphasize that the OAN advocates for a thoughtful, reasoned, scientific, and data-driven approach to resolving Oregon's groundwater challenges. We do not believe that the groundwater allocation rulemaking process has provided the space and the opportunity to consider the significant potential implications of the proposed rules. We ask this Committee to help create the space for those important discussions. Today is a good start.

Thank you for your time and attention. I will be happy to answer any questions you may have.

**Background on the Nursery and Greenhouse Industry**

*The nursery and greenhouse industry is the state’s largest agricultural sector, with over \$1.3 billion in sales across the nation and the globe. Nationally, Oregon ranks third in nursery production. Nearly 80% of the nursery stock grown in our state leaves our borders – with over 50% reaching markets east of the Mississippi River. The nursery industry employs more than 10,000 full time workers with an annual payroll over \$402 million. We send ecologically friendly, carbon sequestering, green products out of the state, and we 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.*