



OREGON
ASSOCIATION OF
NURSERIES

Testimony before House Committee
Agriculture, Land Use, Natural Resources, and Water
House Bill 3021 - Relating Water Rights and Protection of Rights under Forfeiture
By Jeff Stone, Executive Director, Oregon Association of Nurseries
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Chair Helm, Vice-Chairs Hartman and Owens, members of the committee, my name is Jeff Stone and I serve as the Executive Director of the Oregon Association of Nurseries. It is my hope that my comments are construed as constructive related to the important issue of the protection of water rights under the forfeiture statute.

Background on the Nursery and Greenhouse Industry

The nursery and greenhouse industry is the state's largest agricultural sector, with over \$1.4 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.

What House Bill 3021 does

First, I would like to thank the committee for hearing House Bill 3021 and also extend my thanks to Vice-Chair Owens and Senator Findley for sponsoring this bill. As the bill states, HB 3021 clarifies that a perfected and developed water right is not subject to forfeiture if the owner of the water right ceases to use all or part of the water appropriated for period of five successive years because (1) the owner engaged in water conservation practices or (2) the distribution of water that the owner of the water right received from a water district was less than the certificated maximum for period of at least five successive years

This bill is important because it recognizes the significance of reconciling the implementation of irrigation conservation measures with the core principle of Oregon

water law providing that a water right holder must “use it or lose it” in order to keep a perfected and developed water right in good standing. HB 3021 provides that a water right is not subject to forfeiture if the holder ceased to use all or part of the water right because the holder was engaged in conservation practices. As defined in HB 3021, “Conservation practices” include “practices of changing irrigation equipment or methods to conserve water.”

This bill would create an outright exception to the rebuttable presumption of forfeiture, which applies when a water right is not put to beneficial use for a period of five years. The current language of ORS 540.610(3) already provides that a water right is not subject to forfeiture when the owner of the water right uses less water than authorized under the water right to accomplish the beneficial use, so long as the water right holder’s system is ready, willing, and able to make use of the full right. This “ready, willing, and able” provision is a critical provision that allows water right holders to undertake conservation projects as long as their system can make use of the full authorized water right. I understand that the specific conservation language being proposed in HB 3021 is to clarify that water right holders that implement conservation projects are not penalized for such actions by the existing forfeiture language. However, I encourage the committee to continue to discuss this provision with stakeholders and to consider changing the language of HB 3021 to clarify precisely how this new language works with—or differs from—the existing “ready, willing, and able” provision. It will be important that the legislative record demonstrates support for policies that ensure water right holders who implement conservation projects are not penalized by the existing forfeiture statutes. It is also important that the legislative record removes any ambiguity regarding the goal of these provisions for the Water Resources Department.

This bill also provides that a perfected and developed water right will not be subject to forfeiture if “the distribution of water that the owner of the water right received from a water district was less than the certificated maximum for a period of at least five successive years.” In order to achieve the goal of this provision, the language should be revised to clarify the type of special district at issue, since a “water district” is not a statutorily designated special district. If the bill is targeting special districts that supply irrigation water, those special districts should be called out by name in the bill. Additionally, if the bill includes irrigation districts, the language should also be revised to reflect the trust relationship between an irrigation district and its patrons with regard to irrigation district water rights. An irrigation district holds a water right in trust for patrons, and patrons may use water under the irrigation district’s water right as a beneficiary of this trust relationship. A patron is not the owner of an irrigation district water right.

Please support House Bill 3021

One of the primary frustrations and conundrums of this part of water law is the disincentive to systematically commit to technology and water systems that are efficient. In the nursery industry, we are environmental stewards and working lands leaders in our production methods. The use and reuse of water in holding ponds is environmentally

sustainable and stretches the water resource so that it is available to other users and fish. The goals behind this bill make common sense, and HB 3021 is a conscientious step forward in the conversation about effective and sustainable water policy. Please consider addressing the concerns we have outlined above and supporting a process to amend House Bill 3021.