



OREGON
ASSOCIATION OF
NURSERIES

Testimony before the Senate Environment and Natural Resources Committee
Senate Bill 946, relating to transfers of rights to stored water
Submitted by Jeff Stone, Executive Director, Oregon Association of Nurseries
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Chair Dembrow, 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. The OAN supports the -1 Amendments to SB 946, which confirms vital authority in the Oregon Water Resources Department (OWRD) to process stored water transfers.

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.

SB 946 unequivocally grants OWRD the authority to accept and process transfer applications that would allow for much needed flexibility regarding water rights to store and use water.

Water rights contain essential elements such as the point of diversion, the place of use, and the purpose or type of use. Once a water right is issued, the only way to change any of those elements is to apply to OWRD for a water right transfer. As our ability to acquire new water rights dries up, transfers have become an increasingly important way to reallocate water to benefit farms, fish, and families. SB 946 confirms that the existing transfer process extends to stored water rights.

For many years OWRD has processed water right transfers relating to stored water. However, during the 2018 legislative session, OWRD received advice from its legal counsel that concluded

OWRD lacked the legislative authority to process transfer applications involving water rights for ponds and reservoirs. The OAN strongly disagrees with that advice. Nonetheless, in an effort to avoid costly litigation over this issue, we agreed to participate an interim work group comprised of a wide variety of stakeholders. In the time since the work group stopped meeting, the OAN has continued to work with a smaller group of stakeholders representing irrigators, public water providers, and conservation interests.

The -1 Amendments emerged from those efforts, combined with subsequent conferral with OWRD. These are complicated issues and this is a complicated bill. It is important to note that the -1 Amendments do not represent a consensus product. Despite our small stakeholder group's best efforts, certain water user and conservation stakeholders could not get to a position of support for these amendments. That said, it is equally important to note that the -1 Amendments reflect a significant amount of compromise made by water users in an attempt to develop language that addressed issues raised by the conservation community.

The OAN believes SB 946 is an important piece of legislation. The -1 Amendments are a step in right direction, but the language requires more work. Due to tight legislative timelines, the -1 Amendments contain a number of flaws that still need to be corrected. This is work that we will be happy to engage over in the House.

As for the substance of the -1 Amendments, the language authorizes OWRD to process certain small-scale transfers using the existing process and standards that OWRD uses for all other transfers. Larger, more complicated transfers are not addressed by the current language but will need be tackled following the 2019 Session.

A policy issue of critical concern pertains to the standard of review that will apply to a stored water right transfer application. Certain stakeholder groups are seeking to impose new, more stringent qualifications to stored water transfers. However, this would set a dangerous precedent that could cripple OWRD's ability to use this tool to reallocate water. It would create inconsistencies within the transfer statutes. Moreover, it would impose serious new restrictions on an existing water right certificate, which is a form of property right. It would also be unnecessarily duplicative of other environmental protections that already exist. For example, a landowner wishing to build a new reservoir would have to acquire permits at the local, state, and possibly federal level for anything from land use to excavation to engineering. Most of these permits require significant environmental analysis and protection. The OAN will strongly oppose any effort to insert such elevated standards into the existing transfer statutes.

Although the OAN believes SB 946 requires additional work, we ask that the Committee move it to the floor for a vote. This will allow the interested parties will continue to work in the House to refine the bill.

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