



**Testimony before House Committee on Agriculture, Land Use,  
Natural Resources, and Water  
House Bill 3501 - Relating Water Transfers**

By Steve Shropshire, Jordan Ramis  
on behalf of the Oregon Association of Nurseries  
March 5, 2025

Co-Chairs Helm and Owens, Vice Chair Finger-McDonald, members of the committee, my name is Steve Shropshire and I'm appearing today on behalf of the Oregon Association of Nurseries. It is my hope to address the water right transfer-related provisions of HB 3501, a bill that was introduced by Rep. Mark Owens at our request.

**Background on the Nursery and Greenhouse Industry**

The nursery and greenhouse industry is the state's largest agricultural sector, with over \$1.2 billion in sales across the nation and the globe. Nationally, Oregon ranks third in nursery production. **Traded Sector:** Nearly 80% of the nursery stock grown in our state leaves our borders – with over 50% reaching markets east of the Mississippi River. **By the numbers:** #1 in US: sales of conifers, shade trees, Christmas trees, and flowering trees. \$443.2 million in annual payroll - \$44,108 average annual pay. We send ecologically friendly, carbon sequestering, green products out of the state, and we bring traded sector dollars back to Oregon. **Who we are:** 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.

I have been an Oregon water lawyer for more than 25 years. I have filed and litigated many water right transfers during that time.

The OAN's members rely on the water right transfer process to efficiently manage water use and to secure additional water supplies when new water rights are not available.

**The OAN supports House Bill 3501 because it is necessary to protect Oregon's transfer process and our citizens who depend on it.**

I'd like to start with a brief overview of legal issues that are relevant to this subject:

A water right in Oregon is known as a usufructuary right—in other words, a right to use the waters of the state. Oregon and federal courts have recognized that water rights are property rights, which in many cases are protected by the 5<sup>th</sup> Amendment takings clause in the U.S. Constitution.

Oregon water rights are obtained either through a general stream adjudication and corresponding court decree or through the OWRD application process. Once issued, a water right has certain attributes that are part of the right. These include place of use, point of diversion (which for groundwater is called a point of appropriation), and character of use. These attributes can be changed by using the transfer process set forth in ORS Chapter 540.

As a result of changes to Oregon water law over the last decade, water users find themselves in a far more restrictive and challenging regulatory environment. The latest example is the Water Resources Commission's September 2024 adoption of groundwater allocation rules, which will effectively end new groundwater appropriations statewide.

Against this backdrop, Oregon is entering a new era where transfers will be the primary water management tool. We must have administrative processes that facilitate responsible, flexible water management and use.

The transfer process is critical to manage future water needs. A few examples include:

1. Changing a water right's attributes to conform the right to achieve conservation or efficiency goals
2. Changing the place of use for a water right needed to expand an agricultural operation or to adapt to climate change

3. Changing a point of diversion to a new location in the event a flood or other natural disaster renders an existing POD unusable or a well failure renders an existing POA unusable.

When the Oregon Water Resources Department receives a transfer application it reviews that application to determine whether it will cause injury to other water rights or enlarge the subject right. This includes statutory protections for existing instream rights. These are highly technical analyses that take significant time to complete.

Mid-way through last year, we became aware that the Governor's office was contemplating legislation that would add new public interest review criteria into the transfer process. In fact, there are now two bills pending in the Senate that would do so in one form or another. In addition, as this Committee is well aware, there are many other water-related bills pending this session.

The effort to incorporate public interest review into the transfer process will result in even more complexity and delay. Most transfer applications take a minimum of 18 months to process, but many take years—especially if they are challenged. OWRD already has significant transfer application backlogs. In addition, OWRD has a current contested case backlog of more than 220 cases. Those existing backlogs should be addressed and fixed before we consider adding significant new requirements to the transfer analysis.

I don't have to tell you Oregon's water code is a complex and interrelated body of law. Changing Oregon transfer laws to add a public interest test is a monumental step that will have ramifications for years to come. Such a change would need to be considered as part of a broader set of issues. HB 3501 would preserve the current approach to the transfer process while these broader questions can be considered in a comprehensive manner outside the demands and short timeline of a full legislative session.

In conclusion, we need to *enhance* water management flexibility. HB 3501 preserves the status quo while we take the time to thoughtfully consider how transfers should be handled in our state in the future. For that reason, we urge the Committee to support the bill.

Thank you for the opportunity to testify today. I am happy to answer any questions.