



OREGON
ASSOCIATION OF
NURSERIES

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Water Resources Commission
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RE: Oregon Association of Nurseries Public Comments: 2025-26 Water Right Rulemaking

Vice-Chair Smitherman, Commissioners, and Director Gall:

On behalf of the Oregon Association of Nurseries (“OAN”), I am writing to request that the Oregon Water Resources Department (“OWRD”) revise its proposed rules for OAR Chapter 690, Division 18 to ensure the rules clearly recognize that groundwater rights are eligible for the Allocation of Conserved Water (“ACW”) program set forth in Division 18. Specifically, OAN requests that OWRD re-insert the rule provisions OWRD proposed on October 14, 2025 in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b), which clarify that groundwater conserved under the ACW program will remain in its source aquifer. As explained in this letter, OWRD’s proposed language provided important clarity on groundwater rights for a program that is uniquely positioned to benefit both water user interests and conservation interests.

OAN Rulemaking Engagement

Last fall, OAN participated in OWRD’s 2025-26 Water Rights Rulemaking as a member of the rulemaking advisory committee (“RAC”). OAN appreciated the opportunity to be at the table for this important rulemaking, and it is generally supportive of OWRD’s work to improve the efficiency of the agency’s internal processes. As a RAC member, OAN supported OWRD’s proposed revisions and insertions captured in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b).

OWRD’s proposed changes to these provisions were clear, reasonable, and in alignment with statutory authority. As such, we were surprised to see that OWRD’s December 22, 2025 version of the rules—the version of the rules OWRD released for public comment—do not feature any of

the language related to groundwater rights or preservation of water in the source aquifer that was contained in the earlier version of Division 18.

Based on OWRD's proposed rule revision document dated December 22, 2025, we understand that OWRD believes it has clear authority to process groundwater right certificates under the ACW program, but that it has replaced the proposed groundwater right provisions with general references to ORS 537.470(3) to give the agency "flexibility as it considers implementation of the statutes."

There is no question that groundwater right certificates may be processed under the ACW program. By removing reference to groundwater rights in Division 18, OWRD is missing a critical opportunity to increase clarity for OWRD staff and water right holders regarding the application of the ACW program.

Importance of the ACW Program for Conservation and Water Use Flexibility

The ACW program is a unique program that unites two important goals: conservation of water and flexible use of water. As set forth in statute and rule, a water right holder who participates in the ACW program must implement an on-farm efficiency project to reduce overall water use under the original water right, resulting in some volume of "conserved" water. An ACW program participant will be required to permanently dedicate at least 25% of the conserved water instream or to the source aquifer, and it will be allowed to use up to 75% of the conserved water on new acreage that is not authorized under the original water right. In Oregon, a water right holder may only expand its irrigated acreage under the narrow constraints of the ACW program, making the program a critical tool for operational expansion and flexibility.

The ACW process opens up new water use opportunities for a participant while yielding an overall reduction in the quantity of water used under the original water right and permanent conservation of at least 25% of the conserved water. There are few other programs that result in a true "win-win" outcome of this kind.

Statutory Authority

Since the ACW program was introduced, OWRD has processed surface water rights and groundwater rights under the program, and it recognizes that the agency has the statutory authority to do so. OWRD has specifically pointed to the legislation that established the ACW program, Senate Bill 24 (1987), which recognized that any person who holds a groundwater right certificate may participate in the ACW program. The current statutory language provides that a person or group that holds a "water use subject to transfer under ORS 540.505" may submit an application for the ACW program. See ORS 537.465(1). A "water use subject to transfer" may be a surface water right or a groundwater right.

Per OWRD's own analysis, there is no question as to whether groundwater right holders may participate in the ACW program. As we head into a future where opportunities to obtain new water rights are non-existent or extremely limited, the ACW program will be a crucial pathway for both surface water right holders and groundwater right holders to expand their operations and gain much needed operational flexibility while advancing conservation goals.

Requested Changes to Division 18 to Advance Conservation and Flexible Water Use

Oregon's policy on water conservation is set forth in no uncertain terms in ORS 537.460(2)(a), which provides that the state policy is to "[a]ggressively promote conservation." As noted above, there is no indication that groundwater rights should be excluded from such a critical conservation program.

In the interest of clarifying OWRD's existing authority, providing a roadmap for groundwater right holders who would like to participate in the ACW program, and adhering to the state's policy of promoting conservation, OWRD should reinsert its original proposed language in OAR 690-018-0050(5)(c)(C)(i), OAR 690-018-0050(5)(c)(D)(ii), OAR 690-018-0065(2)(c)(A), and OAR 690-018-0065(3)(b) into Division 18.

OWRD has acknowledged that it has statutory authority to process groundwater right certificates as part of the ACW program, and we believe that addressing groundwater right certificates specifically in the ACW program rules set forth in Division 18 is a commonsense action that will promote water conservation, flexible water use, and efficient administration of the Division 18 rules.

Please do not hesitate to reach out if you would like to discuss this matter further, and thank you for your time and consideration.

Sincerely,

Jeff Stone
Executive Director
Oregon Association of Nurseries