

D R A F T

SUMMARY

Imposes limits on exempt use of water at confined animal feeding operations and concentrated animal feeding operations.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to limitations on exempt water uses; creating new provisions; amending ORS 537.141 and 537.545; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 537.141 is amended to read:

537.141. (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;

(b) Nonemergency fire-fighting training, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

1 (d) Fish screens, fishways and fish by-pass structures, as exempted by rule
2 of the Water Resources Commission;

3 (e) Land management practices intended to save soil and improve water
4 quality by temporarily impeding or changing the natural flow of diffuse
5 surface water across agricultural lands when storage of public waters is not
6 an intended purpose. Such practices include but are not limited to:

7 (A) Terraces;

8 (B) Dikes;

9 (C) Retention dams and other temporary impoundments; and

10 (D) Agronomic practices designed to improve water quality and control
11 surface runoff to prevent erosion, such as ripping, pitting, rough tillage and
12 cross slope farming;

13 (f) Livestock watering operations that comply with the requirements un-
14 der subsections (2) and (3) of this section;

15 (g) Forest management activities that require the use of water in con-
16 junction with mixing pesticides as defined in ORS 634.006, or in slash burn-
17 ing;

18 (h) The collection of precipitation water from an artificial impervious
19 surface and the use of such water;

20 (i) Land application of ground water so long as the ground water:

21 (A) Has first been appropriated and used under a permit or certificate
22 issued under ORS 537.625 or 537.630 for a water right issued for industrial
23 purposes or a water right authorizing use of water for confined animal
24 feeding purposes;

25 (B) Is reused for irrigation purposes and the period of irrigation is a pe-
26 riod during which the reused water has never been discharged to the waters
27 of the state; and

28 (C) Is applied pursuant to a permit issued by the Department of Envi-
29 ronmental Quality or the State Department of Agriculture under either ORS
30 468B.050 to construct and operate a disposal system or ORS 468B.215 to op-
31 erate a confined animal feeding operation; and

1 (j) Surface mining practices that result in the removal of water from a
2 surface mine subject to an operating permit or reclamation plan approved
3 by the State Department of Geology and Mineral Industries, unless the water
4 is used for a subsequent beneficial use.

5 (2) The use of surface water for livestock watering may be exempted un-
6 der subsection (1) of this section if:

7 (a) The water is diverted from a stream or other surface water source to
8 a trough or tank through an enclosed water delivery system;

9 (b) The delivery system either is equipped with an automatic shutoff or
10 flow control mechanism or includes a means for returning water to the sur-
11 face water source through an enclosed delivery system; *[and]*

12 (c) The operation is located on land from which the livestock would oth-
13 erwise have legal access to both the use and source of the surface water
14 source[.];

15 **(d) Within a ground water management area declared by the De-**
16 **partment of Environmental Quality under ORS 468B.180, the amount**
17 **of use does not exceed _____ gallons per day at a confined animal**
18 **feeding operation or a concentrated animal feeding operation; and**

19 **(e) Within areas of this state not described in paragraph (d) of this**
20 **subsection, the amount of use does not exceed _____ gallons per day**
21 **at a confined animal feeding operation or a concentrated animal**
22 **feeding operation.**

23 (3) If the diversion system described in subsection (2) of this section is
24 located within or above a scenic waterway, the *[amount]* **rate** of water that
25 may be used without a water right is limited to one-tenth of one cubic foot
26 per second per 1,000 head of livestock. Nothing in this section shall prevent
27 the Water Resources Commission from approving an application for a water
28 right permit for a delivery system not qualifying under subsection (2) of this
29 section.

30 (4) The Water Resources Department, in conjunction with local soil and
31 water conservation districts, the Oregon State University Extension Service,

1 the State Department of Agriculture and the State Department of Fish and
2 Wildlife and any other organization interested in participating, shall develop
3 and implement a voluntary educational program on livestock management
4 techniques designed to keep livestock away from streams and riparian areas.

5 (5) To qualify for an exempt use under subsection (1)(g) of this section,
6 the user shall:

7 (a) Submit notice of the proposed use, including the identification of the
8 proposed water source, to the Water Resources Department and to the State
9 Department of Fish and Wildlife at the time notice is provided to other af-
10 fected agencies pursuant to ORS 527.670; and

11 (b) Comply with any restrictions imposed by the department pertaining
12 to sources of water that may not be used in conjunction with the proposed
13 activity.

14 (6) Except for the use of water under subsection (1)(i) of this section, the
15 Water Resources Commission by rule may require any person or public
16 agency diverting water as described in subsection (1) of this section to fur-
17 nish information with regard to such water and the use thereof. For a use
18 of water described in subsection (1)(i) of this section, the Department of
19 Environmental Quality or the State Department of Agriculture shall provide
20 to the Water Resources Department a copy of the permit issued under ORS
21 468B.050 or 468B.215 authorizing the land application of ground water for
22 reuse. The permit shall provide the information regarding the place of use
23 of such water and the nature of the beneficial reuse.

24 **SECTION 2.** ORS 537.545 is amended to read:

25 537.545. (1) [No] **A** registration, certificate of registration, application for
26 a permit, permit, certificate of completion or ground water right certificate
27 under ORS 537.505 to 537.795 and 537.992 is **not** required for the use of
28 ground water for:

29 (a) Stockwatering purposes **if the use does not exceed:**

30 **(A) Within a ground water management area declared by the De-**
31 **partment of Environmental Quality under ORS 468B.180, _____ gal-**

1 **lons per day at a confined animal feeding operation or a concentrated**
2 **animal feeding operation; or**

3 **(B) Within areas of this state not described in subparagraph (A) of**
4 **this paragraph, _____ gallons per day at a confined animal feeding**
5 **operation or a concentrated animal feeding operation;**

6 (b) Watering any lawn or noncommercial garden not exceeding one-half
7 acre in area;

8 (c) Watering the lawns, grounds and fields not exceeding 10 acres in area
9 of schools located within a critical ground water area established pursuant
10 to ORS 537.730 to 537.740;

11 (d) Single or group domestic purposes in an amount not exceeding 15,000
12 gallons a day;

13 (e) Down-hole heat exchange purposes;

14 (f) Any single industrial or commercial purpose in an amount not ex-
15 ceeding 5,000 gallons a day; or

16 (g) Land application, so long as the ground water:

17 (A) Has first been appropriated and used under a permit or certificate
18 issued under ORS 537.625 or 537.630 for a water right issued for industrial
19 purposes or a water right authorizing use of water for confined animal
20 feeding purposes;

21 (B) Is reused for irrigation purposes and the period of irrigation is a pe-
22 riod during which the reused water has never been discharged to the waters
23 of the state; and

24 (C) Is applied pursuant to a permit issued by the Department of Envi-
25 ronmental Quality or the State Department of Agriculture under either ORS
26 468B.050 to construct and operate a disposal system or ORS 468B.215 to op-
27 erate a confined animal feeding operation.

28 (2) A ground water use for a purpose that is exempt under subsection (1)
29 of this section, to the extent that the use is beneficial, constitutes a right
30 to appropriate ground water equal to that established by a ground water
31 right certificate issued under ORS 537.700.

1 (3) Except for the use of water under subsection (1)(g) of this section, the
2 Water Resources Commission by rule may require any person or public
3 agency using ground water for any such purpose to furnish information with
4 regard to such ground water and the use thereof. For a use of water de-
5 scribed in subsection (1)(g) of this section, the Department of Environmental
6 Quality or the State Department of Agriculture shall provide to the Water
7 Resources Department a copy of the permit issued under ORS 468B.050 or
8 468B.215 authorizing the land application of ground water for reuse. The
9 permit shall provide the information regarding the place of use of such water
10 and the nature of the beneficial reuse.

11 (4) If it is necessary for the Water Resources Department to regulate the
12 use or distribution of ground water, including uses for purposes that are
13 exempt under subsection (1) of this section, the department shall use as a
14 priority date for the exempt uses the date indicated in the log for the well
15 filed with the department under ORS 537.765 or other documentation pro-
16 vided by the well owner showing when water use began.

17 (5) The owner of land on which a well is drilled to allow ground water
18 use for a purpose that is exempt under subsection (1) of this section shall
19 provide the Water Resources Department with a map showing the exact lo-
20 cation of the well on the tax lot. The landowner shall provide a map required
21 by this subsection to the department no later than 30 days after the well is
22 completed. The map must be prepared in accordance with standards estab-
23 lished by the department.

24 (6) The owner of land on which a well described in subsection (5) of this
25 section is located shall file the exempt ground water use with the Water
26 Resources Department for recording. The filing must be accompanied by the
27 fee described in subsection (7) of this section. The filing must be received
28 by the department no later than 30 days after the well is completed.

29 (7) The Water Resources Department shall collect a fee of \$300 for re-
30 cording an exempt ground water use under subsection (6) of this section.
31 Moneys from fees collected under this subsection shall be deposited to the

1 credit of the Water Resources Department Water Right Operating Fund.
2 Notwithstanding ORS 536.009, moneys deposited to the fund under this sub-
3 section shall be used for the purposes of evaluating ground water supplies,
4 conducting ground water studies, carrying out ground water monitoring,
5 processing ground water data and the administration and enforcement of this
6 subsection and subsections (3), (5), (6) and (8) of this section.

7 (8) The Water Resources Commission shall adopt rules to implement, ad-
8 minister and enforce subsections (5) to (7) of this section.

9 **SECTION 3. The amendments to ORS 537.141 and 537.545 by sections**
10 **1 and 2 of this 2019 Act apply to uses on or after the operative date**
11 **specified in section 4 of this 2019 Act.**

12 **SECTION 4. (1) The amendments to ORS 537.141 and 537.545 by**
13 **sections 1 and 2 of this 2019 Act become operative on January 1, 2020.**

14 **(2) The Water Resources Commission and the Water Resources De-**
15 **partment may take any action before the operative date specified in**
16 **subsection (1) of this section that is necessary to enable the commis-**
17 **sion or the department to exercise, on and after the operative date**
18 **specified in subsection (1) of this section, all of the duties, functions**
19 **and powers conferred on the commission and the department by the**
20 **amendments to ORS 537.141 and 537.545 by sections 1 and 2 of this 2019**
21 **Act.**

22 **SECTION 5. This 2019 Act takes effect on the 91st day after the date**
23 **on which the 2019 regular session of the Eightieth Legislative Assem-**
24 **bly adjourns sine die.**

25
