

Requested by SENATE COMMITTEE ON NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
SENATE BILL 718**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 and 3 and insert:

3 **“SECTION 1.** ORS 540.610 is amended to read:

4 “540.610. (1) Beneficial use shall be the basis, the measure and the limit
5 of all rights to the use of water in this state. Whenever the [*owner*] **holder**
6 of a perfected and developed water right ceases or fails to use all or part of
7 the water appropriated for a period of five successive years, **or for a period**
8 **of five years that is calculated in whole or in part as described in**
9 **subsection (4) of this section,** the failure to use shall establish a rebuttable
10 presumption of forfeiture of all or part of the water right.

11 “(2) Upon a showing of failure to use beneficially for five successive
12 years, **or for a period of five years that is calculated in whole or in part**
13 **as described in subsection (4) of this section,** the appropriator has the
14 burden of rebutting the presumption of forfeiture by showing one or more
15 of the following:

16 “(a) The water right is for use of water, or rights of use, acquired by
17 cities and towns in this state, by appropriation or by purchase, for all rea-
18 sonable and usual municipal purposes.

19 “(b) A finding of forfeiture would impair the rights of such cities and
20 towns to the use of water, whether acquired by appropriation or purchase,
21 or heretofore recognized by act of the legislature, or which may hereafter

1 be acquired.

2 “(c) The use of water, or rights of use, are appurtenant to property ob-
3 tained by the Department of Veterans’ Affairs under ORS 407.135 or 407.145
4 for three years after the expiration of the period of redemption provided for
5 in ORS 18.964 while the land is held by the Department of Veterans’ Affairs,
6 even if during such time the water is not used for a period of more than five
7 successive years.

8 “(d) The use of water, or rights of use, under a water right, if the owner
9 of the property to which the right is appurtenant is unable to use the water
10 due to economic hardship as defined by rule by the Water Resources Com-
11 mission.

12 “(e) The period of nonuse occurred during a period of time within which
13 land was withdrawn from use in accordance with [*the Act of Congress of May*
14 *28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or*] the Federal
15 Conservation Reserve Program, Act of Congress of December 23, 1985, chap-
16 ter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation pro-
17 ceeding under this section, the water right holder rebutting the presumption
18 under this paragraph shall provide documentation that the water right
19 holder’s land was withdrawn from use under a federal reserve program.

20 “(f) The end of the alleged period of nonuse occurred more than 15 years
21 before the date upon which evidence of nonuse was submitted to the com-
22 mission or the commission initiated cancellation proceedings under ORS
23 540.631, whichever occurs first.

24 “(g) The owner of the property to which the water right was appurtenant
25 is unable to use the water because the use of water under the right is dis-
26 continued under an order of the commission under ORS 537.775.

27 “(h) The nonuse occurred during a period of time within which the water
28 right holder was using reclaimed water in lieu of using water under an ex-
29 isting water right.

30 “(i) The nonuse occurred during a period of time within which the water

1 right holder was reusing water through land application as authorized by
2 ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing
3 water right.

4 “(j) The owner or occupant of the property to which the water right is
5 appurtenant was unable to make full beneficial use of the water because
6 water was not available. A water right holder rebutting the presumption
7 under this paragraph shall provide evidence that the water right holder was
8 ready, willing and able to use the water had it been available.

9 “(k) The holder of a water right is prohibited by law from using the wa-
10 ter. If the prohibition is subject to remedial action that would allow the use
11 of the water, the water right holder shall provide evidence that the water
12 right holder is conducting the remedial action with reasonable diligence.

13 “(L) The nonuse occurred during a period of time within which the exer-
14 cise of all or part of the water right was not necessary due to climatic con-
15 ditions, so long as the water right holder had a facility capable of handling
16 the full allowed rate and duty, and was otherwise ready, willing and able to
17 use the entire amount of water allowed under the water right.

18 “(m) The nonuse occurred during a period of time within which the water
19 was included in a transfer application pending before the Water Resources
20 Department.

21 “(n) The nonuse of a supplemental water right occurred during a period
22 of time when the primary water right used in conjunction with that supple-
23 mental water right was leased as an in-stream water right pursuant to ORS
24 537.348.

25 “(3) Notwithstanding subsection (1) of this section, if the [*owner*] **holder**
26 of a perfected and developed water right uses less water to accomplish the
27 beneficial use allowed by the right, the right is not subject to forfeiture so
28 long as:

29 “(a) The [*user*] **holder** has a facility capable of handling the entire rate
30 and duty authorized under the right; and

1 “(b) The [user] **holder** is otherwise ready, willing and able to make full
2 use of the right.

3 “(4)(a) **As used in this subsection, ‘drought year’ means a calendar**
4 **year in which the Governor declares, pursuant to ORS 536.740, that a**
5 **severe, continuing drought exists, or is likely to exist, within a county.**

6 “(b) **A drought year does not count as a year for purposes of**
7 **forfeiture under this section for a holder of a perfected and developed**
8 **water right within the county for which the drought year was de-**
9 **clared, if the holder has a facility capable of handling the entire rate**
10 **and duty authorized under the water right and is otherwise ready,**
11 **willing and able to make full use of the water right.**

12 “(c) **A year, during which nonuse occurs, that precedes or follows**
13 **a drought year counts as a year for purposes of forfeiture under this**
14 **section for a holder of a perfected and developed water right within**
15 **the county for which the drought year was declared.**

16 “(d) **This subsection may not have any effect on consideration of**
17 **an application under ORS 540.520.**

18 “[(4)] (5) The right of all cities and towns in this state to acquire rights
19 to the use of the water of natural streams and lakes, not otherwise appro-
20 priated, and subject to existing rights, for all reasonable and usual municipal
21 purposes, and for such future reasonable and usual municipal purposes as
22 may reasonably be anticipated by reason of growth of population, or to se-
23 cure sufficient water supply in cases of emergency, is expressly confirmed.

24 “[(5)] (6) After a water right is forfeited under subsection (1) of this sec-
25 tion, the water that was the subject of use shall revert to the public and
26 become again the subject of appropriation in the manner provided by law,
27 subject to existing priorities.”.

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