

WATER LEAGUE

*Engaging the public in water
stewardship.*

www.waterleague.org

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In Memoriam
John L. Gardiner

To:

- Representatives Ken Helm, Pam Marsh, and Mark Owens
- Senators Fred Girod, Jeff Golden, and Floyd Prozanski
- OWRD Water Policy Analyst/Legislative Coordinator, Bryn Hudson
- OWRD Deputy Director, Strategy & Administration. Racquel Rancier
- Senior Natural Resources Advisor to Governor Kotek, Geoffrey Huntington and
Natural Resources Advisor, Chandra Ferrari

Re:

Update to Legislative Concept to revise ORS 537.545 during the 2025 Legislative Session

Water League wrote to you on [March 27, 2024, with a Legislative Concept regarding ORS 537.545\(1\)](#); then we followed up with [an extensive discussion on the topic on April 18, 2024](#).

Now we provide you with an update following our review of [Attorney General Advice – DOJ File No. 690302 GN0836-06](#), dated December 1, 2008, which explains the limits to which Commercial Use may apply to a wide array of specific water uses, but not apply to Irrigation Use. We agree with the Attorney General's conclusion.

In our March 27, 2024, letter to you, we requested that legislators strike the word *noncommercial* from ORS 537.545(1)(b): "Watering any lawn or ~~noncommercial~~ garden not exceeding one-half acre in area." Our discussion below explains why our particular legislative request is the correct choice in light of the Attorney General Advice – DOJ File No. 690302 GN0836-06, dated December 1, 2008.

The Attorney General explains why "Irrigation" is its own distinct type of water use and why it cannot be conflated with "Commercial" water use. The Attorney General advice refers to the statutory context for an understanding:

...the text of ORS 537.545(1)(b) allows watering of "non commercial gardens" and distinguishes and prohibits the watering of "commercial gardens" by

negative implication. If the legislature had intended to allow watering of all gardens under one-half acre, whether commercial or not, then it would have referred simply to the watering of “gardens.”

The term with lowercase letter *commercial* is a common adjective; here the word modifies a type of garden. In statute, the capital letter *Commercial* refers a type of water use. In ORS 537.545(1)(b), commercial refers to a garden that is the source of commercial sales, but the term *commercial* does not describe the type of water use. The type of water used on any garden, commercial or non commercial is Irrigation Use.

Water League’s request for the simple deletion of the word “noncommercial” from ORS 537.545(1)(b) appears to align with the DOJ interpretation of the statute.

For reasons described above, we do not believe an alternative revision to ORS 537.545(1)(b) extending the 5,000 GPD single industrial or commercial use in ORS 537.545(1)(f) to also mean Irrigation is justified because 1) the water use type, as defined in OAR 690-300-0010 *Definitions* (26) *Irrigation*, has a specific meaning: “the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants,” and 2) the DOJ advice reasonably explains that the statutory context strongly infers that Commercial Use does not mean Irrigation Use and vice-versa.

We also believe the alternative revision to ORS 537.545(1)(b), including Irrigation Use alongside Industrial and Commercial Uses in ORS 537.545(1)(f) so that there are three water use types permitted to use 5,000 GPD, is not viable because Oregon’s Water Code never contemplated such an idea. Before 1955, ORS 537.530 *Application or permit for domestic use not required; limitation as to area* permitted: “...the watering of lawns and gardens for profit and not exceeding one half acre in area.” We understand legislators could go beyond the original extent of the law 70 years ago and permit 5,000 GPD of exempt use for Irrigation, but we believe maintaining the exempt use at the 1/2 acre limit is reasonable for its precedence and simplicity.

Water League agrees with and accepts the precepts of DOJ File No. 690302 GN0836-06, and we hold that the most credible and functional correction to ORS 537.545(1)(b) is to remove the word “noncommercial” as we have already requested.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall", written in a cursive style.

Christopher Hall
Executive Director