



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 29, 2025

Representative Anna Scharf
900 Court Street NE H387
Salem OR 97301

Re: Definition of the term “commercial purpose” in ORS 537.545 (1)(f)

Dear Representative Scharf:

You asked what would qualify as a “commercial purpose” under ORS 537.545 (1)(f). As an example of a potential commercial purpose, you described a small farm that uses ground water for irrigation, food processing or other activities related to the business of the small farm. As another example, you described a property that uses ground water in the operation of a pet washing business.

In short, we believe a court would likely conclude that a small farm’s production of farm products for exchange or sale qualifies as a “commercial purpose” under ORS 537.545 (1)(f). However, we believe a court might conclude that the operation of a pet washing business does not qualify as a “commercial purpose” because some standard dictionary definitions of “commerce” do not include the selling of a service, such as washing pets. Please note that we had limited time to research and assess your question, so our answer cannot be entirely free from doubt.

Analysis

ORS 537.545 establishes exemptions from permitting-related requirements for certain uses of ground water, including the exemption found in subsection (1)(f), under which:

(1) A registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is not required for the use of ground water for:

(f) Any single industrial or *commercial purpose* in an amount not exceeding 5,000 gallons a day[.](Emphasis added.)

The term “commercial purpose” is not defined for purposes of ORS 537.545, and we did not find an applicable Oregon appellate opinion for clarification.¹ For those reasons, and because the term does not appear to be a term of art, a court would likely look to standard dictionary definitions.

A relevant standard dictionary definition of “commercial” is “of or relating to commerce.”² In turn, one standard dictionary defines “commerce” as “the exchange or buying and selling of commodities especially on a large scale and involving transportation from place to place.”³ Another standard dictionary defines “commerce” as “the buying and selling of goods and services[.]”⁴ Finally, a standard dictionary definition of “purpose” is “something [set up] as an object or end to be attained.”⁵

Based on those standard dictionary definitions, we believe the term “commercial purpose” in ORS 537.545 (1)(f) means an object or end to be attained that relates to the exchange or buying and selling of commodities or goods, and potentially to the buying and selling of services. Of note, at least one standard dictionary includes the buying and selling of services in the definition of “commerce,” while another standard dictionary does not include the buying and selling of services in its definition of “commerce.”

Using either definition of “commerce,” we believe a court would likely conclude that a small farm’s production of farm products—commodities or goods—constitutes a “commercial purpose” under ORS 537.545 (1)(f) and therefore that the use of up to 5,000 gallons per day of ground water for the small farm’s activities related to the production of the farm products qualifies for the exemption.

However, depending on the dictionary definition used, a court might conclude that operating a pet washing business does not constitute a “commercial purpose” because a pet washing business sells a service—washing—and not commodities or goods. With additional time for research, it is possible that other research sources, such as related statutes or the legislative history for ORS 537.545, would further clarify whether a court would likely interpret “commercial purpose” to include the buying and selling of a service.

Please let us know if we can provide any further assistance with this issue.

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¹ We found one case interpreting ORS 537.545 (1)(f), but the case is not applicable to your question. See *Kinross Copper Corp. v. State*, 160 Or. App. 513, 525 (1999) (interpreting ORS 537.545 (1)(f) as allowing the consumption of water but not the discharge of water into a river).

² Merriam-Webster Unabridged Dictionary, <https://unabridged.merriam-webster.com/unabridged/commercial> (last visited Apr. 28, 2025).

³ Merriam-Webster Unabridged Dictionary, <https://unabridged.merriam-webster.com/unabridged/commerce> (last visited Apr. 28, 2025).

⁴ Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/commerce> (last visited Apr. 28, 2025).

⁵ Merriam-Webster Unabridged Dictionary, <https://unabridged.merriam-webster.com/unabridged/purpose> (last visited Apr. 28, 2025).

and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read 'D. Johnson', with a long horizontal flourish extending to the right.

By
Aurora Goddard
Deputy Legislative Counsel