



**REPRESENTATIVE MARK OWENS
HOUSE DISTRICT 60**

Rep Owens,

Here is more information as requested.

After reviewing the 2008 legal opinion and the LC Opinion, I would like to provide you with one more piece of additional context. Prior to adoption of ORS 537.545, there was ORS 537.530. The Legislature repealed 537.530 when it adopted 537.545. Now repealed ORS 537.530 included the text “Nothing in ORS 537.510 to 537.600 shall be construed as requiring an application or permit for the developing for beneficial uses of underground waters for domestic and culinary purposes, for stock, or for the *watering of lawns and gardens for profit, and not exceeding one-half acre in area.*” This means that “watering lawns and gardens for profit” was explicitly allowed in statute and was later explicitly removed by the legislature and replaced with the term “noncommercial.”

As noted in the 2008 legal opinion, the statute is ambiguous; however, the opinion outlines why the agency has landed on the interpretation of the law. When a statute is ambiguous, it is not uncommon for there to be different legal interpretations, and those interpretations can result in litigation or a need to clarify the law. Whether it be rule or statute, OWRD prefers that laws be written clearly rather than having to be litigated. OWRD is not taking a position on this legislation at this time; however, HB 3372 does, in our opinion, resolve the ambiguity in the law.

I understand that there is a disagreement about the interpretation of the law and the agency’s implementation of it. In light of that, the legislature can specify its intent by amending the law to provide greater clarity so that the agency can execute the law as intended. In the absence of that clarity on the legislature’s intent, the agency will continue to implement the law in the manner that it does today.

Best regards,

[Racquel Rancier](#)

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