

House Bill 3074

Sponsored by Representative JENSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes persistence of certain fish species as condition for extension of permit for construction of irrigation or other work. Removes persistence of certain fish species as condition for extension of permit for construction of well or other means of securing ground water.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to municipal water right permit extensions; amending ORS 537.230 and 537.630; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 537.230 is amended to read:

6 537.230. (1) Except for a holder of a permit for municipal use, the holder of a water right permit
7 shall prosecute the construction of any proposed irrigation or other work with reasonable diligence
8 and complete the construction within a reasonable time, as fixed in the permit by the Water Re-
9 sources Department, not to exceed five years from the date of approval.

10 (2) The holder of a permit for municipal use shall commence and complete the construction of
11 any proposed works within 20 years from the date on which a permit for municipal use is issued
12 under ORS 537.211. The construction must proceed with reasonable diligence and be completed
13 within the time specified in the permit, not to exceed 20 years. However, the department may order
14 and allow an extension of time to complete construction or to perfect a water right beyond the time
15 specified in the permit under the following conditions:

16 (a) The holder shows good cause. In determining the extension, the department shall give due
17 weight to the considerations described under ORS 539.010 (5) and to whether other governmental
18 requirements relating to the project have significantly delayed completion of construction or per-
19 fection of the right; **and**

20 (b) The extension of time is conditioned to provide that the holder may divert water beyond the
21 maximum rate diverted for beneficial use before the extension only upon approval by the department
22 of a water management and conservation plan[; *and*].

23 *[(c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before*
24 *November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to*
25 *maintain, in the portions of waterways affected by water use under the permit, the persistence of fish*
26 *species listed as sensitive, threatened or endangered under state or federal law. The department shall*
27 *base its finding on existing data and upon the advice of the State Department of Fish and Wildlife.*
28 *An existing fish protection agreement between the permit holder and a state or federal agency that in-*
29 *cludes conditions to maintain the persistence of any listed fish species in the affected portion of the*
30 *waterway is conclusive for purposes of the finding.]*

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of this section, the Water
2 Resources Department, for good cause shown, shall order and allow an extension of time, including
3 an extension beyond the five-year limit established in subsection (1) of this section within which ir-
4 rigation or other works shall be completed or the right perfected. In determining the extension, the
5 department shall give due weight to the considerations described under ORS 539.010 (5) and to
6 whether other governmental requirements relating to the project have significantly delayed com-
7 pletion of construction or perfection of the right.

8 (4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of
9 beneficial use as required under this section, the permittee shall hire a water right examiner certi-
10 fied under ORS 537.798 to survey the appropriation. Within one year after application of water to
11 a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map
12 of the survey as required by the Water Resources Department, which shall accompany the request
13 for a water right certificate submitted to the department under ORS 537.250. If any property de-
14 scribed in the permit is not included in the request for a water right certificate, the permittee shall
15 state the identity of the record owner of that property.

16 (5) The Water Resources Director may waive the requirement under subsection (4) of this sec-
17 tion that a permittee hire a water right examiner certified under ORS 537.798 if:

18 (a) The permit is a supplemental water right that shares the same distribution system and same
19 place of use as the primary water right; and

20 (b) The department determines that there is sufficient information in the records of the depart-
21 ment to determine proof of beneficial use.

22 (6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS
23 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the
24 full rate and duty of water requested from the supplemental source and be otherwise ready, willing
25 and able to use the amount of water requested, up to the amount of water approved in the water
26 right permit. To obtain a certificate for a supplemental water right, the permittee is not required
27 to have actually used water from the supplemental source if:

28 (a) Water was available from the source of the primary water right and the primary water right
29 was used pursuant to the terms of the primary water right; or

30 (b) The nonuse of water from the supplemental source occurred during a period of time within
31 which the exercise of the supplemental water right permit was not necessary due to climatic con-
32 ditions.

33 **SECTION 2.** ORS 537.630 is amended to read:

34 537.630. (1) Except for the holder of a permit for municipal use, the holder of a permit issued
35 pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and
36 securing the ground water with reasonable diligence and complete the construction within a rea-
37 sonable time fixed in the permit by the Water Resources Department, not to exceed five years after
38 the date of approval of the application. However, the department, for good cause shown, shall order
39 and allow an extension of time, including an extension beyond the five-year period, for the com-
40 pletion of the well or other means of developing and securing the ground water or for complete
41 application of water to beneficial use. In determining the extension, the department shall give due
42 weight to the considerations described under ORS 539.010 (5) and to whether other governmental
43 requirements relating to the project have significantly delayed completion of construction or per-
44 fection of the right.

45 (2) The holder of a permit for municipal use shall commence and complete the construction of

1 any proposed works within 20 years from the date on which the permit for municipal use is issued
2 under ORS 537.625. The construction must proceed with reasonable diligence and be completed
3 within the time specified in the permit, not to exceed 20 years. However, the department may order
4 and allow an extension of time to complete construction or to perfect a water right beyond the time
5 specified in the permit under the following conditions:

6 (a) The holder shows good cause. In determining the extension, the department shall give due
7 weight to the considerations described under ORS 539.010 (5) and to whether other governmental
8 requirements relating to the project have significantly delayed completion of construction or per-
9 fection of the right; **and**

10 (b) The extension of time is conditioned to provide that the holder may divert water beyond the
11 maximum rate diverted for beneficial use before the extension only upon approval by the department
12 of a water management and conservation plan[; *and*].

13 *[(c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before*
14 *November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to*
15 *maintain, in the portions of waterways affected by water use under the permit, the persistence of fish*
16 *species listed as sensitive, threatened or endangered under state or federal law. The department shall*
17 *base its finding on existing data and upon the advice of the State Department of Fish and Wildlife.*
18 *An existing fish protection agreement between the permit holder and a state or federal agency that in-*
19 *cludes conditions to maintain the persistence of any listed fish species in the affected portion of the*
20 *waterway is conclusive for purposes of the finding.]*

21 (3) If the construction of any well or other means of developing and securing the ground water
22 is completed after the date of approval of the application for a permit under ORS 537.625, within
23 30 days after the completion, or if the construction is completed before the date of approval, within
24 30 days after the date of approval, the permit holder shall file a certificate of completion with the
25 Water Resources Department, disclosing:

26 (a) The depth to the water table;

27 (b) The depth, diameter and type of each well, and the kind and amount of the casing;

28 (c) The capacity of the well pump in gallons per minute and the drawdown thereof;

29 (d) The identity of the record owner of any property that was described in the application for
30 a permit under ORS 537.625 but is not included in the certificate of completion; and

31 (e) Any other information the department considers necessary.

32 (4) Upon completion of beneficial use necessary to secure the ground water as required under
33 this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to
34 survey the appropriation. Within one year after applying the water to beneficial use or the beneficial
35 use date allowed in the permit, the permit holder shall submit the survey as required by the Water
36 Resources Department to the department along with the certificate of completion required under
37 subsection (3) of this section. If any property described in the permit is not included in the request
38 for a water right certificate, the permittee shall state the identity of the record owner of that
39 property.

40 (5) After the department has received a certificate of completion and a copy of the survey as
41 required by subsections (3) and (4) of this section that show, to the satisfaction of the department,
42 that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to
43 537.795 and 537.992, the department shall issue a ground water right certificate of the same char-
44 acter as that described in ORS 537.700. The certificate shall be recorded and transmitted to the
45 applicant as provided in ORS 537.700.

1 (6) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

2 (7) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under sub-
3 section (5) of this section for a supplemental water right, the permittee shall have a facility capable
4 of handling the full rate and duty of water requested from the supplemental source and be otherwise
5 ready, willing and able to use the amount of water requested, up to the amount of water approved
6 in the water right permit. To obtain a certificate for a supplemental water right, the permittee is
7 not required to have actually used water from the supplemental source if:

8 (a) Water was available from the source of the primary water right and the primary water right
9 was used pursuant to the terms of the primary water right; or

10 (b) The nonuse of water from the supplemental source occurred during a period of time within
11 which the exercise of the supplemental water right permit was not necessary due to climatic con-
12 ditions.

13 **SECTION 3. This 2007 Act being necessary for the immediate preservation of the public**
14 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
15 **on its passage.**

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