

# House Bill 2727

Sponsored by Representative BENTZ (at the request of Oregon Association of Conservation Districts, Jan Lee)

## 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**.

Allows water right holder to rebut presumption of forfeiture by showing that nonuse occurred during period land was subject to conservation easement, conservation covenant or similar interest. Deletes reference to nonuse under federal law repealed in 1965.

## A BILL FOR AN ACT

1  
2 Relating to rebutting presumptions of water right forfeiture; amending ORS 540.610.

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

4 **SECTION 1.** ORS 540.610 is amended to read:

5 540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use  
6 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails  
7 to use all or part of the water appropriated for a period of five successive years, the failure to use  
8 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

9 (2) Upon a showing of failure to use beneficially for five successive years, the appropriator has  
10 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

11 (a) The water right is for use of water, or rights of use, acquired by cities and towns in this  
12 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

13 (b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,  
14 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,  
15 or which may hereafter be acquired.

16 (c) The use of water, or rights of use, are appurtenant to property obtained by the Department  
17 of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period  
18 of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans'  
19 Affairs, even if during such time the water is not used for a period of more than five successive  
20 years.

21 (d) The use of water, or rights of use, under a water right, if the owner of the property to which  
22 the right is appurtenant is unable to use the water due to economic hardship as defined by rule by  
23 the Water Resources Commission.

24 (e) The period of nonuse occurred during a period of time within which land was withdrawn  
25 from use in accordance with the [*Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;*  
26 *1821-1824; 1831-1837)*, or *the*] Federal Conservation Reserve Program, [*Act of Congress of December*  
27 *23, 1985, chapter 198*] (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding  
28 under this section, the water right holder rebutting the presumption under this paragraph shall  
29 provide documentation that the water right holder's land was withdrawn from use under a federal  
30 reserve program.

31 **(f) The period of nonuse occurred during a period of time that the land was subject to**

**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 **an interest described in ORS 271.715 to 271.795. The water right holder rebutting the**  
 2 **presumption under this paragraph shall provide documentation that the water right was**  
 3 **appurtenant to land subject to the interest.**

4 [(f)] (g) The end of the alleged period of nonuse occurred more than 15 years before the date  
 5 upon which evidence of nonuse was submitted to the commission or the commission initiated can-  
 6 cellation proceedings under ORS 540.631, whichever occurs first.

7 [(g)] (h) The owner of the property to which the water right was appurtenant is unable to use  
 8 the water because the use of water under the right is discontinued under an order of the commission  
 9 under ORS 537.775.

10 [(h)] (i) The nonuse occurred during a period of time within which the water right holder was  
 11 using reclaimed water in lieu of using water under an existing water right.

12 [(i)] (j) The nonuse occurred during a period of time within which the water right holder was  
 13 reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu  
 14 of using water under an existing water right.

15 [(j)] (k) The owner or occupant of the property to which the water right is appurtenant was  
 16 unable to make full beneficial use of the water because water was not available. A water right  
 17 holder rebutting the presumption under this paragraph shall provide evidence that the water right  
 18 holder was ready, willing and able to use the water had it been available.

19 [(k)] (L) The holder of a water right is prohibited by law from using the water. If the prohibition  
 20 is subject to remedial action that would allow the use of the water, the water right holder shall  
 21 provide evidence that the water right holder is conducting the remedial action with reasonable  
 22 diligence.

23 [(L)] (m) The nonuse occurred during a period of time within which the exercise of all or part  
 24 of the water right was not necessary due to climatic conditions, so long as the water right holder  
 25 had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing  
 26 and able to use the entire amount of water allowed under the water right.

27 [(m)] (n) The nonuse occurred during a period of time within which the water was included in  
 28 a transfer application pending before the Water Resources Department.

29 [(n)] (o) The nonuse of a supplemental water right occurred during a period of time when the  
 30 primary water right used in conjunction with that supplemental water right was leased as an in-  
 31 stream water right pursuant to ORS 537.348.

32 (3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed  
 33 water right uses less water to accomplish the beneficial use allowed by the right, the right is not  
 34 subject to forfeiture [so] as long as:

35 (a) The user has a facility capable of handling the entire rate and duty authorized under the  
 36 right; and

37 (b) The user is otherwise ready, willing and able to make full use of the right.

38 (4) The right of all cities and towns in this state to acquire rights to the use of the water of  
 39 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-  
 40 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes  
 41 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water  
 42 supply in cases of emergency, is expressly confirmed.

43 (5) After a water right is forfeited under subsection (1) of this section, the water that was the  
 44 subject of use shall revert to the public and become again the subject of appropriation in the manner  
 45 provided by law, subject to existing priorities.

