

Senate Bill 791

Sponsored by Senator LINTHICUM; Senators BOQUIST, GIROD, HANSELL, HEARD, JOHNSON, OLSEN, ROBLAN, STEINER HAYWARD, THATCHER, Representatives BARRETO, LEIF, NEARMAN, RESCHKE, SMITH DB, ZIKA

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**.

Establishes criteria for determining existence or lack of new ground water use impairment or interference with water right having earlier priority date.

A BILL FOR AN ACT

1
2 Relating to water rights; creating new provisions; and amending ORS 537.525, 537.629 and 537.780.

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

4 **SECTION 1. (1) For purposes of ORS 537.525 (9), 537.629 (1) and 537.708 (2)(b), impairment**
5 **or interference occurs only if an individual ground water use causes a decrease of available**
6 **water in a surface water source that is appropriated under an individual water use right**
7 **having an earlier priority date and the decrease in the availability of water:**

8 (a) **Becomes measurable within one season of use as set forth in the water use right**
9 **having an earlier priority date;**

10 (b) **Is 0.1 cubic feet per second or more; and**

11 (c) **Results in the available water in the surface source being insufficient to satisfy the**
12 **earlier water use right.**

13 (2) **Except as provided in this subsection, the probability, presence or lack of an impair-**
14 **ment or interference described in this section may be determined through the application**
15 **of suitable equations, graphical techniques and modelings generally accepted by the scientific**
16 **community. If site-specific data for an individual ground water use is produced by a regis-**
17 **tered geologist as defined in ORS 672.505, the site-specific data is substantial evidence re-**
18 **garding the existence or lack of impairment or interference with an individual water use**
19 **right having an earlier priority.**

20 **SECTION 2.** ORS 537.525 is amended to read:

21 537.525. The Legislative Assembly recognizes, declares and finds that the right to reasonable
22 control of all water within this state from all sources of water supply belongs to the public, and that
23 in order to insure the preservation of the public welfare, safety and health it is necessary that:

24 (1) Provision be made for the final determination of relative rights to appropriate ground water
25 everywhere within this state and of other matters with regard thereto through a system of regis-
26 tration, permits and adjudication.

27 (2) Rights to appropriate ground water and priority thereof be acknowledged and protected, ex-
28 cept when, under certain conditions, the public welfare, safety and health require otherwise.

29 (3) Beneficial use without waste, within the capacity of available sources, be the basis, measure
30 and extent of the right to appropriate ground water.

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 (4) All claims to rights to appropriate ground water be made a matter of public record.

2 (5) Adequate and safe supplies of ground water for human consumption be assured, while con-
3 serving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recre-
4 ational and other beneficial uses.

5 (6) The location, extent, capacity, quality and other characteristics of particular sources of
6 ground water be determined.

7 (7) Reasonably stable ground water levels be determined and maintained.

8 (8) Depletion of ground water supplies below economic levels, impairment of natural quality of
9 ground water by pollution and wasteful practices in connection with ground water be prevented or
10 controlled within practicable limits.

11 (9) Whenever wasteful use of ground water, impairment of or interference with existing rights
12 to appropriate surface water **as described in section 1 of this 2019 Act**, declining ground water
13 levels, alteration of ground water temperatures that may adversely affect priorities or impair the
14 long-term stability of the thermal properties of the ground water, interference among wells, thermal
15 interference among wells, overdrawing of ground water supplies or pollution of ground water exists
16 or impends, controlled use of the ground water concerned be authorized and imposed under volun-
17 tary joint action by the Water Resources Commission and the ground water users concerned when-
18 ever possible, but by the commission under the police power of the state except as specified in ORS
19 537.796, when such voluntary joint action is not taken or is ineffective.

20 (10) Location, construction, depth, capacity, yield and other characteristics of and matters in
21 connection with wells be controlled in accordance with the purposes set forth in this section.

22 (11) All activities in the state that affect the quality or quantity of ground water shall be con-
23 sistent with the goal set forth in ORS 468B.155.

24 **SECTION 3.** ORS 537.629 is amended to read:

25 537.629. (1) When an application discloses the probability of wasteful use or undue interference
26 with existing wells or that any proposed use or well will impair or substantially interfere with ex-
27 isting rights to appropriate surface water by others **as described in section 1 of this 2019 Act**, or
28 that any proposed use or well will impair or substantially interfere with existing rights to appro-
29 priate ground water for the beneficial use of the water for its thermal characteristics, the Water
30 Resources Department may impose conditions or limitations in the permit to prevent the same or
31 reject the same after hearing, or, in the department's discretion, request the Water Resources
32 Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water
33 area under ORS 537.730 to 537.740.

34 (2)(a) When an application discloses the probability that a proposed use or well will impair or
35 interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250
36 degrees Fahrenheit, the department may:

37 (A) Approve the permit;

38 (B) Impose conditions or limitations in the permit to prevent the probable interference or
39 impairment;

40 (C) After a hearing under ORS 537.622, reject the application; or

41 (D) Request the commission to initiate a rulemaking proceeding to declare the affected area a
42 critical ground water area under ORS 537.730 to 537.740.

43 (b) In deciding whether to issue, deny or condition a permit under this subsection, the depart-
44 ment shall consider any orders or permits applicable to the ground water reservoir issued by the
45 State Geologist or the governing board of the State Department of Geology and Mineral Industries

1 under ORS chapter 522.

2 **SECTION 4.** ORS 537.780 is amended to read:

3 537.780. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources
4 Commission may:

5 (a) Require that all flowing wells be capped or equipped with valves so that the flow of ground
6 water may be completely stopped when the ground water is not actually being applied to a beneficial
7 use.

8 (b) Enforce:

9 (A) General standards for the construction and maintenance of wells and their casings, fittings,
10 valves, pumps and back-siphoning prevention devices; and

11 (B) Special standards for the construction and maintenance of particular wells and their casings,
12 fittings, valves and pumps.

13 (c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, stan-
14 dards for the construction, maintenance, abandonment or use of any hole through which ground
15 water may be contaminated; or

16 (B) Enter into an agreement with, or advise, other state agencies that are responsible for holes
17 other than wells through which ground water may be contaminated in order to protect the ground
18 water resource from contamination.

19 (d) Enforce uniform standards for the scientific measurement of water levels and of ground wa-
20 ter flowing or withdrawn from wells.

21 (e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS
22 537.545, casings, fittings, valves, pipes, pumps, measuring devices and back-siphoning prevention de-
23 vices.

24 (f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and
25 appear and become a party to any action, suit or proceeding in any court or before any adminis-
26 trative body when it appears to the satisfaction of the commission that the determination of the
27 action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

28 (g) Call upon and receive advice and assistance from the Environmental Quality Commission or
29 any other public agency or any person, and enter into cooperative agreements with a public agency
30 or person.

31 (h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and
32 537.992 including but not limited to rules governing:

33 (A) The form and content of registration statements, certificates of registration, applications for
34 permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps,
35 drawings, logs and licenses;

36 (B) Procedure in hearings held by the commission; and

37 (C) The circumstances under which the helpers of persons operating well drilling machinery may
38 be exempt from the requirement of direct supervision by a licensed water well constructor.

39 (i) In accordance with applicable law regarding search and seizure, apply to any court of com-
40 petent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747
41 or 537.753.

42 (2) Notwithstanding any provision of subsection (1) of this section, in administering the pro-
43 visions of ORS 537.505 to 537.795 and 537.992, the commission may not:

44 (a) Adopt any rule restricting ground water use in an area unless the rule is based on substan-
45 tial evidence in the record of the Water Resources Department to justify the imposition of re-

1 strictions.

2 (b) Make any determination that a ground water use will impair, substantially interfere or un-
3 duly interfere with a surface water source **as described in section 1 of this 2019 Act** unless the
4 determination is based on substantial evidence. Such evidence may include reports or studies pre-
5 pared with relation to the specific use or may be based on the application of generally accepted
6 hydrogeological principles to the specific use.

7 (3) At least once every three years, the commission shall review any rule adopted under sub-
8 section (2) of this section that restricts ground water use in an area. The review process shall in-
9 clude public notice and an opportunity to comment on the rule.

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