

Senate Bill 886

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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**.

Imposes limits on exempt use of water at confined animal feeding operations and concentrated animal feeding operations.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to limitations on exempt water uses; creating new provisions; amending ORS 537.141 and
3 537.545; and prescribing an effective date.

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

5 **SECTION 1.** ORS 537.141 is amended to read:

6 537.141. (1) The following water uses do not require an application under ORS 537.130 or
7 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

8 (a) Emergency fire-fighting uses;

9 (b) Nonemergency fire-fighting training, provided:

10 (A) The source of the water is existing storage and the use occurs with permission of the owner
11 of the stored water; or

12 (B) If the source of water is other than existing storage, the use occurs with the prior written
13 approval of the watermaster in the district where the training will take place and subject to any
14 conditions the watermaster determines are necessary to prevent injury to existing water rights and
15 to protect in-stream resources;

16 (c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed
17 under an existing water right permit or certificate for the reservoir;

18 (d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the Water Re-
19 sources Commission;

20 (e) Land management practices intended to save soil and improve water quality by temporarily
21 impeding or changing the natural flow of diffuse surface water across agricultural lands when stor-
22 age of public waters is not an intended purpose. Such practices include but are not limited to:

23 (A) Terraces;

24 (B) Dikes;

25 (C) Retention dams and other temporary impoundments; and

26 (D) Agronomic practices designed to improve water quality and control surface runoff to prevent
27 erosion, such as ripping, pitting, rough tillage and cross slope farming;

28 (f) Livestock watering operations that comply with the requirements under subsections (2) and
29 (3) of this section;

30 (g) Forest management activities that require the use of water in conjunction with mixing pes-
31 ticides as defined in ORS 634.006, or in slash burning;

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 (h) The collection of precipitation water from an artificial impervious surface and the use of
2 such water;

3 (i) Land application of ground water so long as the ground water:

4 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625
5 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water
6 for confined animal feeding purposes;

7 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the
8 reused water has never been discharged to the waters of the state; and

9 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the
10 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal
11 system or ORS 468B.215 to operate a confined animal feeding operation; and

12 (j) Surface mining practices that result in the removal of water from a surface mine subject to
13 an operating permit or reclamation plan approved by the State Department of Geology and Mineral
14 Industries, unless the water is used for a subsequent beneficial use.

15 (2) The use of surface water for livestock watering may be exempted under subsection (1) of this
16 section if:

17 (a) The water is diverted from a stream or other surface water source to a trough or tank
18 through an enclosed water delivery system;

19 (b) The delivery system either is equipped with an automatic shutoff or flow control mechanism
20 or includes a means for returning water to the surface water source through an enclosed delivery
21 system; *[and]*

22 (c) The operation is located on land from which the livestock would otherwise have legal access
23 to both the use and source of the surface water source[.];

24 **(d) Within a ground water management area declared by the Department of Environ-**
25 **mental Quality under ORS 468B.180, the amount of use does not exceed _____ gallons**
26 **per day at a confined animal feeding operation or a concentrated animal feeding operation;**
27 **and**

28 **(e) Within areas of this state not described in paragraph (d) of this subsection, the**
29 **amount of use does not exceed _____ gallons per day at a confined animal feeding op-**
30 **eration or a concentrated animal feeding operation.**

31 (3) If the diversion system described in subsection (2) of this section is located within or above
32 a scenic waterway, the *[amount]* rate of water that may be used without a water right is limited to
33 one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall
34 prevent the Water Resources Commission from approving an application for a water right permit for
35 a delivery system not qualifying under subsection (2) of this section.

36 (4) The Water Resources Department, in conjunction with local soil and water conservation
37 districts, the Oregon State University Extension Service, the State Department of Agriculture and
38 the State Department of Fish and Wildlife and any other organization interested in participating,
39 shall develop and implement a voluntary educational program on livestock management techniques
40 designed to keep livestock away from streams and riparian areas.

41 (5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

42 (a) Submit notice of the proposed use, including the identification of the proposed water source,
43 to the Water Resources Department and to the State Department of Fish and Wildlife at the time
44 notice is provided to other affected agencies pursuant to ORS 527.670; and

45 (b) Comply with any restrictions imposed by the department pertaining to sources of water that

1 may not be used in conjunction with the proposed activity.

2 (6) Except for the use of water under subsection (1)(i) of this section, the Water Resources
 3 Commission by rule may require any person or public agency diverting water as described in sub-
 4 section (1) of this section to furnish information with regard to such water and the use thereof. For
 5 a use of water described in subsection (1)(i) of this section, the Department of Environmental Qual-
 6 ity or the State Department of Agriculture shall provide to the Water Resources Department a copy
 7 of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground
 8 water for reuse. The permit shall provide the information regarding the place of use of such water
 9 and the nature of the beneficial reuse.

10 **SECTION 2.** ORS 537.545 is amended to read:

11 537.545. (1) [No] **A** registration, certificate of registration, application for a permit, permit, cer-
 12 tificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is
 13 **not** required for the use of ground water for:

14 (a) Stockwatering purposes **if the use does not exceed:**

15 **(A) Within a ground water management area declared by the Department of Environ-**
 16 **mental Quality under ORS 468B.180, _____ gallons per day at a confined animal feeding**
 17 **operation or a concentrated animal feeding operation; or**

18 **(B) Within areas of this state not described in subparagraph (A) of this paragraph,**
 19 **_____ gallons per day at a confined animal feeding operation or a concentrated animal**
 20 **feeding operation;**

21 (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

22 (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located
 23 within a critical ground water area established pursuant to ORS 537.730 to 537.740;

24 (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

25 (e) Down-hole heat exchange purposes;

26 (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day;

27 or

28 (g) Land application, so long as the ground water:

29 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625
 30 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water
 31 for confined animal feeding purposes;

32 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the
 33 reused water has never been discharged to the waters of the state; and

34 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the
 35 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal
 36 system or ORS 468B.215 to operate a confined animal feeding operation.

37 (2) A ground water use for a purpose that is exempt under subsection (1) of this section, to the
 38 extent that the use is beneficial, constitutes a right to appropriate ground water equal to that es-
 39 tablished by a ground water right certificate issued under ORS 537.700.

40 (3) Except for the use of water under subsection (1)(g) of this section, the Water Resources
 41 Commission by rule may require any person or public agency using ground water for any such
 42 purpose to furnish information with regard to such ground water and the use thereof. For a use of
 43 water described in subsection (1)(g) of this section, the Department of Environmental Quality or the
 44 State Department of Agriculture shall provide to the Water Resources Department a copy of the
 45 permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for

1 reuse. The permit shall provide the information regarding the place of use of such water and the
2 nature of the beneficial reuse.

3 (4) If it is necessary for the Water Resources Department to regulate the use or distribution of
4 ground water, including uses for purposes that are exempt under subsection (1) of this section, the
5 department shall use as a priority date for the exempt uses the date indicated in the log for the well
6 filed with the department under ORS 537.765 or other documentation provided by the well owner
7 showing when water use began.

8 (5) The owner of land on which a well is drilled to allow ground water use for a purpose that
9 is exempt under subsection (1) of this section shall provide the Water Resources Department with
10 a map showing the exact location of the well on the tax lot. The landowner shall provide a map
11 required by this subsection to the department no later than 30 days after the well is completed. The
12 map must be prepared in accordance with standards established by the department.

13 (6) The owner of land on which a well described in subsection (5) of this section is located shall
14 file the exempt ground water use with the Water Resources Department for recording. The filing
15 must be accompanied by the fee described in subsection (7) of this section. The filing must be re-
16 ceived by the department no later than 30 days after the well is completed.

17 (7) The Water Resources Department shall collect a fee of \$300 for recording an exempt ground
18 water use under subsection (6) of this section. Moneys from fees collected under this subsection
19 shall be deposited to the credit of the Water Resources Department Water Right Operating Fund.
20 Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for
21 the purposes of evaluating ground water supplies, conducting ground water studies, carrying out
22 ground water monitoring, processing ground water data and the administration and enforcement of
23 this subsection and subsections (3), (5), (6) and (8) of this section.

24 (8) The Water Resources Commission shall adopt rules to implement, administer and enforce
25 subsections (5) to (7) of this section.

26 **SECTION 3. The amendments to ORS 537.141 and 537.545 by sections 1 and 2 of this 2019**
27 **Act apply to uses on or after the operative date specified in section 4 of this 2019 Act.**

28 **SECTION 4. (1) The amendments to ORS 537.141 and 537.545 by sections 1 and 2 of this**
29 **2019 Act become operative on January 1, 2020.**

30 **(2) The Water Resources Commission and the Water Resources Department may take**
31 **any action before the operative date specified in subsection (1) of this section that is neces-**
32 **sary to enable the commission or the department to exercise, on and after the operative date**
33 **specified in subsection (1) of this section, all of the duties, functions and powers conferred**
34 **on the commission and the department by the amendments to ORS 537.141 and 537.545 by**
35 **sections 1 and 2 of this 2019 Act.**

36 **SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019**
37 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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