

# Senate Bill 399

Sponsored by Senator DEMBROW (Pre-session filed.)

## 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 limit on exempt use of water for livestock.

Requires person that uses water under livestock exemption to submit notice of use to Water Resources Department, measure use and report measurement.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to exempt water uses; creating new provisions; amending ORS 537.141 and 537.545; and  
3 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-

**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 ticides as defined in ORS 634.006, or in slash burning;

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

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

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

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

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

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

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

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

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

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

25 **(d) The amount of use does not exceed 5,000 gallons per day.**

26 (3) If the diversion system described in subsection (2) of this section is located within or above  
27 a scenic waterway, the amount of water that may be used without a water right is limited to one-  
28 tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent  
29 the Water Resources Commission from approving an application for a water right permit for a de-  
30 livery system not qualifying under subsection (2) of this section.

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

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

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

40 (b) Comply with any restrictions imposed by the department pertaining to sources of water that  
41 may not be used in conjunction with the proposed activity.

42 (6) Except for the use of water under subsection (1)(i) of this section, the Water Resources  
43 Commission by rule may require any person or public agency diverting water as described in sub-  
44 section (1) of this section to furnish information with regard to such water and the use thereof. For  
45 a use of water described in subsection (1)(i) of this section, the Department of Environmental Qual-

1 ity or the State Department of Agriculture shall provide to the Water Resources Department a copy  
 2 of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground  
 3 water for reuse. The permit shall provide the information regarding the place of use of such water  
 4 and the nature of the beneficial reuse.

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

6 537.545. (1) [No] **A** registration, certificate of registration, application for a permit, permit, cer-  
 7 tificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is  
 8 **not** required for the use of ground water for:

9 (a) Stockwatering purposes, **unless the use exceeds 5,000 gallons per day;**

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

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

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

14 (e) Down-hole heat exchange purposes;

15 (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons [a]  
 16 **per** day; or

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

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

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

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

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

29 (3) Except for the use of water under subsection (1)(g) of this section, the Water Resources  
 30 Commission by rule may require any person or public agency using ground water for any such  
 31 purpose to furnish information with regard to such ground water and the use thereof. For a use of  
 32 water described in subsection (1)(g) of this section, the Department of Environmental Quality or the  
 33 State Department of Agriculture shall provide to the Water Resources Department a copy of the  
 34 permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for  
 35 reuse. The permit shall provide the information regarding the place of use of such water and the  
 36 nature of the beneficial reuse.

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

42 (5) The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that constructs  
 43 a well to allow ground water use for a purpose that is exempt under subsection (1) of this section  
 44 shall provide the Water Resources Department with a map showing the exact location of the well  
 45 on the tax lot. The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that

1 constructs a well shall provide a map required by this subsection to the department, along with the  
2 well log required by ORS 537.765, no later than 30 days after the well is completed. The map must  
3 be prepared in accordance with standards established by the department. The map and well log must  
4 be accompanied by the fee described in subsection (6) of this section to record the exempt ground  
5 water use.

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

13 (7) The Water Resources Commission shall adopt rules to implement, administer and enforce  
14 subsections (5) and (6) of this section.

15 **SECTION 3. (1) A person that uses water for livestock under an exemption described in**  
16 **ORS 537.141 (2) or 537.545 (1)(a) shall:**

17 (a) **Submit notice of the use to the Water Resources Department;**

18 (b) **Measure the use; and**

19 (c) **Report measurement of the use to the department.**

20 (2) **The Water Resources Commission shall adopt rules to implement this section.**

21 **SECTION 4. Section 3 of this 2023 Act, and the amendments to ORS 537.141 and 537.545**  
22 **by sections 1 and 2 of this 2023 Act, apply to uses of water on or after the operative date**  
23 **specified in section 5 of this 2023 Act.**

24 **SECTION 5. (1) Section 3 of this 2023 Act, and the amendments to ORS 537.141 and**  
25 **537.545 by sections 1 and 2 of this 2023 Act, become operative on January 1, 2024.**

26 (2) **The Water Resources Commission and the Water Resources Department may take**  
27 **any action before the operative date specified in subsection (1) of this section that is neces-**  
28 **sary to enable the commission and the department to exercise, on and after the operative**  
29 **date specified in subsection (1) of this section, all of the duties, functions and powers con-**  
30 **ferred on the commission and the department by section 3 of this 2023 Act, and the amend-**  
31 **ments to ORS 537.141 and 537.545 by sections 1 and 2 of this 2023 Act.**

32 **SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
33 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

34