

A-Engrossed
Senate Bill 718

Ordered by the Senate April 5
Including Senate Amendments dated April 5

Sponsored by Senator GIROD; Senators FINDLEY, HANSELL, SMITH DB (Presession 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.

Provides that year in which Governor declares that drought exists, or is likely to exist, within county does not count toward period of time for forfeiture of water right for nonuse for *[owner]* **holder** of water right within county.

Removes reference to repealed federal law.

A BILL FOR AN ACT

1
2 Relating to drought effects on the forfeiture of water rights; 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]* **holder** of a perfected and developed water right ceases
7 or fails to use all or part of the water appropriated for a period of five successive years, **or for a**
8 **period of five years that is calculated in whole or in part as described in subsection (4) of this**
9 **section**, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the
10 water right.

11 (2) Upon a showing of failure to use beneficially for five successive years, **or for a period of**
12 **five years that is calculated in whole or in part as described in subsection (4) of this section**,
13 the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more
14 of the following:

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

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

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

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

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 (e) The period of nonuse occurred during a period of time within which land was withdrawn
2 from use in accordance with [*the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;*
3 *1821-1824; 1831-1837), or*] the Federal Conservation Reserve Program, Act of Congress of December
4 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-
5 der this section, the water right holder rebutting the presumption under this paragraph shall provide
6 documentation that the water right holder's land was withdrawn from use under a federal reserve
7 program.

8 (f) The end of the alleged period of nonuse occurred more than 15 years before the date upon
9 which evidence of nonuse was submitted to the commission or the commission initiated cancellation
10 proceedings under ORS 540.631, whichever occurs first.

11 (g) The owner of the property to which the water right was appurtenant is unable to use the
12 water because the use of water under the right is discontinued under an order of the commission
13 under ORS 537.775.

14 (h) The nonuse occurred during a period of time within which the water right holder was using
15 reclaimed water in lieu of using water under an existing water right.

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

19 (j) The owner or occupant of the property to which the water right is appurtenant was unable
20 to make full beneficial use of the water because water was not available. A water right holder re-
21 butting the presumption under this paragraph shall provide evidence that the water right holder
22 was ready, willing and able to use the water had it been available.

23 (k) The holder of a water right is prohibited by law from using the water. If the prohibition is
24 subject to remedial action that would allow the use of the water, the water right holder shall pro-
25 vide evidence that the water right holder is conducting the remedial action with reasonable dili-
26 gence.

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

31 (m) The nonuse occurred during a period of time within which the water was included in a
32 transfer application pending before the Water Resources Department.

33 (n) The nonuse of a supplemental water right occurred during a period of time when the primary
34 water right used in conjunction with that supplemental water right was leased as an in-stream water
35 right pursuant to ORS 537.348.

36 (3) Notwithstanding subsection (1) of this section, if the [*owner*] **holder** of a perfected and de-
37 veloped water right uses less water to accomplish the beneficial use allowed by the right, the right
38 is not subject to forfeiture so long as:

39 (a) The [*user*] **holder** has a facility capable of handling the entire rate and duty authorized under
40 the right; and

41 (b) The [*user*] **holder** is otherwise ready, willing and able to make full use of the right.

42 (4)(a) **As used in this subsection, "drought year" means a calendar year in which the**
43 **Governor declares, pursuant to ORS 536.740, that a severe, continuing drought exists, or is**
44 **likely to exist, within a county.**

45 **(b) A drought year does not count as a year for purposes of forfeiture under this section**

1 **for a holder of a perfected and developed water right within the county for which the drought**
2 **year was declared, if the holder has a facility capable of handling the entire rate and duty**
3 **authorized under the water right and is otherwise ready, willing and able to make full use**
4 **of the water right.**

5 **(c) A year, during which nonuse occurs, that precedes or follows a drought year counts**
6 **as a year for purposes of forfeiture under this section for a holder of a perfected and devel-**
7 **oped water right within the county for which the drought year was declared.**

8 **(d) This subsection may not have any effect on consideration of an application under ORS**
9 **540.520.**

10 [(4)] (5) The right of all cities and towns in this state to acquire rights to the use of the water
11 of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-
12 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes
13 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water
14 supply in cases of emergency, is expressly confirmed.

15 [(5)] (6) After a water right is forfeited under subsection (1) of this section, the water that was
16 the subject of use shall revert to the public and become again the subject of appropriation in the
17 manner provided by law, subject to existing priorities.

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