

Senate Bill 86

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Natural Resources and Wildfire Recovery)

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 large 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,
3 537.515 and 537.545; and prescribing an effective date.

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

5 **SECTION 1.** ORS 537.515 is amended to read:

6 537.515. As used in ORS 537.505 to 537.795 and 537.992, unless the context requires otherwise:

7 (1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation
8 of packers or seals and other material changes in the design of the well.

9 (2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing
10 or well screens.

11 (3) "Converting" a well means changing the use of an existing well or hole not previously used
12 to withdraw water such that the well or hole can be used to seek or withdraw water.

13 (4) "Geothermal fluid" means any ground water used for its thermal characteristics that is en-
14 countered in a well with a bottom hole temperature of less than 250 degrees Fahrenheit or any other
15 fluid that is circulated within a well with a bottom hole temperature of less than 250 degrees
16 Fahrenheit and used for its acquired thermal characteristics.

17 (5) "Ground water" means any water, except capillary moisture, beneath the land surface or
18 beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries
19 of this state, whatever may be the geological formation or structure in which such water stands,
20 flows, percolates or otherwise moves.

21 (6) "Ground water reservoir" means a designated body of standing or moving ground water
22 having exterior boundaries which may be ascertained or reasonably inferred.

23 (7) **"Large concentrated animal feeding operation" means a lot or facility:**

24 (a) **At which animals have been, are or will be stabled or confined, and fed or maintained,**
25 **for a total of 45 days or more in any 12-month period;**

26 (b) **At which crops, vegetation, forage growth or post-harvest residues are not sustained**
27 **in the normal growing season over any portion of the lot or facility; and**

28 (c) **That stables or confines at least:**

29 (A) **700 mature dairy cows, whether milked or dry;**

30 (B) **1,000 veal calves;**

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 (C) 1,000 cattle other than mature dairy cows or veal calves;

2 (D) 2,500 swine each weighing 55 pounds or more;

3 (E) 10,000 swine each weighing less than 55 pounds;

4 (F) 500 horses;

5 (G) 10,000 sheep or lambs;

6 (H) 55,000 turkeys;

7 (I) 30,000 laying hens or broilers, if the lot or facility uses a liquid manure handling sys-
8 tem;

9 (J) 125,000 chickens, other than laying hens, if the lot or facility uses other than a liquid
10 manure handling system;

11 (K) 82,000 laying hens, if the lot or facility uses other than a liquid manure handling
12 system;

13 (L) 30,000 ducks, if the lot or facility uses other than a liquid manure handling system;
14 or

15 (M) 5,000 ducks, if the lot or facility uses a liquid manure handling system.

16 [(7)] (8) "Pollution" of ground water means any impairment of the natural quality of such ground
17 water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes
18 or sewage, whether indrafted directly or through infiltration into the ground water supply.

19 [(8)] (9) "Public agency" means the United States or any agency thereof, the State of Oregon
20 or any agency thereof or any county, city, district organized for public purposes or other public
21 corporation or political subdivision of this state.

22 [(9)] (10) "Well" means any artificial opening or artificially altered natural opening, however
23 made, by which ground water is sought or through which ground water flows under natural pressure
24 or is artificially withdrawn. "Well" does not include a temporary hole drilled for the purpose of
25 gathering geotechnical ground water quality or ground water level information, a natural spring or
26 a hole drilled for the purpose of:

27 (a) Prospecting, exploration or production of oil or gas;

28 (b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005;

29 (c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of
30 greater than 2,000 feet; or

31 (d) Exploration for minerals as defined in ORS 517.750 and 517.910.

32 [(10)] (11) "Well drilling machine" means any power driven percussion, rotary, boring, digging
33 or augering machine used in the construction of water wells.

34 **SECTION 2.** ORS 537.141 is amended to read:

35 537.141. (1) The following water uses do not require an application under ORS 537.130 or
36 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

37 (a) Emergency fire-fighting uses;

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

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

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

45 (c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed

1 under an existing water right permit or certificate for the reservoir;

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

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

7 (A) Terraces;

8 (B) Dikes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 **(d) The amount of use does not exceed 5,000 gallons per day, if the use occurs at a large**
40 **concentrated animal feeding operation as defined in ORS 537.515.**

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

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

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

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

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

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

20 **SECTION 3.** ORS 537.545 is amended to read:

21 537.545. (1) [No] **A** registration, certificate of registration, application for a permit, permit, cer-
 22 tificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is
 23 **not** required for the use of ground water for:

24 (a) Stockwatering purposes, **unless the use occurs at a large concentrated animal feeding**
 25 **operation and exceeds 5,000 gallons per day;**

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

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

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

30 (e) Down-hole heat exchange purposes;

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

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

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

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

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

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

45 (3) Except for the use of water under subsection (1)(g) of this section, the Water Resources

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

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

13 (5) The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that constructs
14 a well to allow ground water use for a purpose that is exempt under subsection (1) of this section
15 shall provide the Water Resources Department with a map showing the exact location of the well
16 on the tax lot. The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that
17 constructs a well shall provide a map required by this subsection to the department, along with the
18 well log required by ORS 537.765, no later than 30 days after the well is completed. The map must
19 be prepared in accordance with standards established by the department. The map and well log must
20 be accompanied by the fee described in subsection (6) of this section to record the exempt ground
21 water use.

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

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

31 **SECTION 4. The amendments to ORS 537.141 and 537.545 by sections 2 and 3 of this 2023**
32 **Act apply to uses on or after the operative date specified in section 5 of this 2023 Act.**

33 **SECTION 5. (1) The amendments to ORS 537.141 and 537.545 by sections 2 and 3 of this**
34 **2023 Act become operative on January 1, 2024.**

35 **(2) The Water Resources Commission and the Water Resources Department may take**
36 **any action before the operative date specified in subsection (1) of this section that is neces-**
37 **sary to enable the commission and the department to exercise, on and after the operative**
38 **date specified in subsection (1) of this section, all of the duties, functions and powers con-**
39 **ferred on the commission and the department by the amendments to ORS 537.141 and 537.545**
40 **by sections 2 and 3 of this 2023 Act.**

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