

D R A F T

SUMMARY

Changes water management and conservation plan approval condition for extension of time to construct works or perfect right for municipal use of water.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to community water supply; creating new provisions; amending ORS 537.230 and 537.630; and declaring an emergency.

Whereas municipal water systems provide crucial water supply that supports manufacturing, the food processing, leisure, hospitality and health care industries and other businesses and that can accommodate future economic and job creation opportunities; and

Whereas municipalities are responsible for providing services to all businesses and other consumers within the service territory and for forecasting future demands for water; and

Whereas a stable, ample water supply for municipalities is necessary to meet drinking water, sanitation, fire suppression and other public health and safety needs; and

Whereas municipal water systems represent approximately six percent of the out-of-stream water demand in Oregon, but provide drinking water to approximately 3.3 million people making up approximately 88 percent of Oregon's population; and

Whereas the population of Oregon according to the 2010 federal decennial census was 3.8 million people and is anticipated to approach 5.4 million people by 2040; now, therefore,

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.

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

SECTION 1. ORS 537.230 is amended to read:

537.230. (1) Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

(2)(a) **As used in this subsection, “undeveloped portion of the permit” means the portion of a water right permit that is the difference between the maximum rate or duty of water authorized by the permit and the maximum rate or duty of water diverted for beneficial use as of the later of:**

(A) December 11, 2013; or

(B) The time specified in the permit, or in the last-approved extension of time, to perfect the water right.

(b) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

[(a)] (A) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

[(b) *The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and*

1 *conservation plan; and]*

2 **(B) The extension of time is conditioned to provide that the holder**
3 **may divert the undeveloped portion of the permit only upon approval**
4 **by the department of a water management and conservation plan; and**

5 [(c)] (C) For the first extension **of time** issued after June 29, 2005, for a
6 permit for municipal use issued before November 2, 1998, the department
7 finds that the undeveloped portion of the permit is conditioned to maintain,
8 in the portions of waterways affected by water use under the permit, the
9 persistence of fish species listed as sensitive, threatened or endangered under
10 state or federal law. The department shall base its finding on existing data
11 and upon the advice of the State Department of Fish and Wildlife. An ex-
12 isting fish protection agreement between the permit holder and a state or
13 federal agency that includes conditions to maintain the persistence of any
14 listed fish species in the affected portion of the waterway is conclusive for
15 purposes of the finding.

16 (3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of
17 this section, the Water Resources Department, for good cause shown, shall
18 order and allow an extension of time, including an extension beyond the
19 five-year limit established in subsection (1) of this section within which ir-
20 rigation or other works shall be completed or the right perfected. In deter-
21 mining the extension, the department shall give due weight to the
22 considerations described under ORS 539.010 (5) and to whether other gov-
23 ernmental requirements relating to the project have significantly delayed
24 completion of construction or perfection of the right.

25 (4) Except as provided in subsection (5) of this section and ORS 537.409,
26 upon completion of beneficial use as required under this section, the
27 permittee shall hire a water right examiner certified under ORS 537.798 to
28 survey the appropriation. Within one year after application of water to a
29 beneficial use or the beneficial use date allowed in the permit, the permittee
30 shall submit a map of the survey as required by the Water Resources De-
31 partment, which shall accompany the request for a water right certificate

submitted to the department under ORS 537.250. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(5) The Water Resources Director may waive the requirement under subsection (4) of this section that a permittee hire a water right examiner certified under ORS 537.798 if:

(a) The permit is a supplemental water right that shares the same distribution system and same place of use as the primary water right; and

(b) The department determines that there is sufficient information in the records of the department to determine proof of beneficial use.

(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions.

SECTION 2. ORS 537.630 is amended to read:

537.630. (1) Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department,

1 for good cause shown, shall order and allow an extension of time, including
2 an extension beyond the five-year period, for the completion of the well or
3 other means of developing and securing the ground water or for complete
4 application of water to beneficial use. In determining the extension, the de-
5 partment shall give due weight to the considerations described under ORS
6 539.010 (5) and to whether other governmental requirements relating to the
7 project have significantly delayed completion of construction or perfection
8 of the right.

9 (2)(a) As used in this subsection, “undeveloped portion of the
10 permit” means the portion of a water right permit that is the differ-
11 ence between the maximum rate or duty of water authorized by the
12 permit and the maximum rate or duty of water diverted for beneficial
13 use as of the later of:

14 (A) December 11, 2013; or

15 (B) The time specified in the permit, or in the last-approved exten-
16 sion of time, to perfect the water right.

17 (b) The holder of a permit for municipal use shall commence and complete
18 the construction of any proposed works within 20 years from the date on
19 which the permit for municipal use is issued under ORS 537.625. The con-
20 struction must proceed with reasonable diligence and be completed within
21 the time specified in the permit, not to exceed 20 years. However, the de-
22 partment may order and allow an extension of time to complete construction
23 or to perfect a water right beyond the time specified in the permit under the
24 following conditions:

25 [(a)] (A) The holder shows good cause. In determining the extension, the
26 department shall give due weight to the considerations described under ORS
27 539.010 (5) and to whether other governmental requirements relating to the
28 project have significantly delayed completion of construction or perfection
29 of the right;

30 [(b) The extension of time is conditioned to provide that the holder may
31 divert water beyond the maximum rate diverted for beneficial use before the

extension only upon approval by the department of a water management and conservation plan; and]

(B) The extension of time is conditioned to provide that the holder may divert the undeveloped portion of the permit only upon approval by the department of a water management and conservation plan; and

[(c)] (C) For the first extension **of time** issued after June 29, 2005, for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

(3) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after the completion, or if the construction is completed before the date of approval, within 30 days after the date of approval, the permit holder shall file a certificate of completion with the Water Resources Department, disclosing:

(a) The depth to the water table;

(b) The depth, diameter and type of each well, and the kind and amount of the casing;

(c) The capacity of the well pump in gallons per minute and the drawdown thereof;

(d) The identity of the record owner of any property that was described in the application for a permit under ORS 537.625 but is not included in the certificate of completion; and

(e) Any other information the department considers necessary.

(4) Upon completion of beneficial use necessary to secure the ground water as required under this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after applying the water to beneficial use or the beneficial use date allowed in the permit, the permit holder shall submit the survey as required by the Water Resources Department to the department along with the certificate of completion required under subsection (3) of this section. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(5) After the department has received a certificate of completion and a copy of the survey as required by subsections (3) and (4) of this section that show, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795 and 537.992, the department shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in ORS 537.700.

(6) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

(7) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under subsection (5) of this section for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a

1 period of time within which the exercise of the supplemental water right
2 permit was not necessary due to climatic conditions.

3 **SECTION 3. The amendments to ORS 537.230 and 537.630 by sections**
4 **1 and 2 of this 2016 Act apply to extensions of time that the Water**
5 **Resources Department approves on or after the effective date of this**
6 **2016 Act to authorize construction or perfection during periods that**
7 **begin before, on or after the effective date of this 2016 Act.**

8 **SECTION 4. This 2016 Act being necessary for the immediate pres-**
9 **ervation of the public peace, health and safety, an emergency is de-**
10 **clared to exist, and this 2016 Act takes effect on its passage.**