

# House Bill 2256

Sponsored by Representative OWENS (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**.

Establishes that perfected and developed water right is not subject to forfeiture if owner of water right ceased to use all or part of water appropriated for period of five successive years because owner engaged in water conservation practices or distribution of water that owner received from water district was less than certificated maximum for period of at least five successive years. Removes reference to federal statute that is no longer in effect.

## A BILL FOR AN ACT

Relating to the forfeiture of water rights; amending ORS 540.610.

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

**SECTION 1.** ORS 540.610 is amended to read:

540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right, **except as provided in subsection (3) of this section**.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

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

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

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

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

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

**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 federal reserve program.

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

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

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

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

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

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

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

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

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

30 (3) Notwithstanding subsection (1) of this section[,]:

31 (a) If the owner of a perfected and developed water right uses less water to accomplish the  
 32 beneficial use allowed by the right, the right is not subject to forfeiture so long as:

33 [(a)] (A) The user has a facility capable of handling the entire rate and duty authorized under  
 34 the right; and

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

36 (b) **A perfected and developed water right is not subject to forfeiture if the owner of the**  
 37 **water right ceased to use all or part of the water appropriated for a period of five successive**  
 38 **years because:**

39 (A) **The owner of the water right engaged in water conservation practices, including but**  
 40 **not limited to practices of changing irrigation equipment or methods to conserve water; or**

41 (B) **The distribution of water that the owner of the water right received from a water**  
 42 **district was less than the certificated maximum for a period of at least five successive years.**

43 (4) The right of all cities and towns in this state to acquire rights to the use of the water of  
 44 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-  
 45 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes

1 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water  
2 supply in cases of emergency, is expressly confirmed.

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

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