



Environmental and Natural Resources Law Center

POLICY ANALYSIS: OR HB 3372

WHAT DOES OREGON'S NEW
GROUNDWATER USE
EXEMPTION MEAN FOR
COMMUNITY-SCALE
PRODUCERS?

S P R I N G 2 0 2 6



**A REPORT OF THE ENR CENTER'S
FOOD SOVEREIGNTY PROJECT**

About this Report

This report is a collaborative effort of the Food Sovereignty Project (FSP)—an interdisciplinary research initiative housed within the University of Oregon School of Law’s Environmental and Natural Resources Law (ENR) Center. The mission of the FSP is to work with Indigenous Peoples and community-based organizations to pursue more equitable and just food systems.

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About the ENR Center

As part of its mission of engaging the law to support sustainability on Earth, the Environmental and Natural Resources Law (ENR) Center houses seven interdisciplinary research projects, each thematically organized around an area of vital socioecological importance. Grounded in faculty expertise and shaped by student ambition, these projects promote outcome-driven collaboration and impactful community engagement around today’s most pressing climate-and-justice challenges. The project themes are Conservation Trust; Energy Law and Policy; Food Sovereignty; Global Environmental Democracy; Native Environmental Sovereignty; Oceans, Coasts, and Watersheds; and Sustainable Land Use. To learn more about the ENR Center, visit www.law.uoregon.edu/academic/centers/enr.

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Oregon: An Occupying Government

The State of Oregon exists through the violent displacement and colonization of Indigenous Peoples. The settler-colonial government of Oregon now assumes responsibility for the management of water resources located within its colonial borders. In spite of time-immemorial connections to these waters—connections that confer unique, culturally-grounded stewardship responsibilities—Indigenous Peoples and Tribal Nations now face significant barriers to the full enjoyment of their water rights.

The context of Oregon’s occupation of Tribal lands and waters is vital for understanding the water crisis Oregonians now face. The extraction of water resources, the entrenchment of corporate power, and the machinery of settler colonialism are driving the extreme drought, overallocation, and water quality issues impacting communities in so-called Oregon and beyond.

This report examines OR HB 3372—recent state legislation that creates a new groundwater use exemption for small commercial and non-commercial gardens.

In providing this analysis, this report seeks not to legitimize the occupying government’s authority over lands and waters of which Tribal Peoples are the original and rightful stewards. Nor does the report aim to undermine Indigenous-led efforts to assert time-immemorial, treaty-based, or other water rights. Rather, in examining OR HB 3372, this report works to illuminate potential opportunities the new legislation makes available to community-scale producers—including Tribal gardeners and farmers who are seeking to better feed themselves and their communities.

State Regulation of Groundwater Use

Regardless of its source, all water within Oregon belongs to the public. *OR § 537.110*. The Oregon Water Resources Department (OWRD) is the agency responsible for managing the use of the state’s water resources. According to the agency’s public Vision Statement, “[t]he vision of the Oregon Water Resources Department is to assure sufficient and sustainable water supplies are available to meet current and future needs.”

State water use permits provide a right to use water according to specified terms. Since 1955, the OWRD has required all groundwater users to obtain a water use permit before using groundwater in a new place or manner. For example, if a small-scale farmer wants to build a well for non-commercial irrigation, she could be required to first seek a water use permit from

the OWRD. This permitting system is purportedly designed to enable the OWRD to responsibly track and manage the allocation of water resources.

Currently, in some parts of the state, the OWRD will not issue permits for any new water uses. In areas where new uses may be permitted, engaging with OWRD's permitting process can be time consuming and complicated. In light of these potential barriers, water users may benefit from understanding how to avoid the permitting process while remaining in compliance with state water law.

Groundwater Use Exemptions

The Oregon Legislature has recognized several water uses that do not require a permit. These are called "exempt uses." The most common exempt uses of groundwater include household and domestic uses, small industrial or commercial uses, and public interest uses such as for firefighting. The Legislature has also exempted certain water uses up to a maximum amount of water used (e.g., 1,000 gallons per day) and/or the acreage watered (e.g., ½ acre per day).

When a property or development is using water for an exempt purpose, the exemption is applied to the entire property or development. This means the total amount of water used—including for exempt uses—across the entire property or development must not exceed statutory limitations. The exempt uses may be served by multiple water sources (e.g., wells), or a single source may provide water for multiple exempt uses.

Exempt water uses are not free from regulation. Though a particular water use may be exempted from the permitting process, it still must adhere to certain state requirements. For example, the OWRD is required to manage all water uses—both those that require a permit and exempt uses—for "beneficial use." The agency has defined and interprets beneficial use as "the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state." [OAR 690-260-0010\(3\)](#). Additionally, whether or not a water use is exempt, the development of wells or other infrastructure required to access the water must comply with applicable state well construction requirements.

While water use exemptions generally apply statewide, the OWRD may limit exempt uses in individual water basins, termed "administrative basins." Other state regulations such as land use restrictions can also impact where the construction of new wells is allowed, potentially limiting the applicability of certain water use exemptions in particular areas.

OR HB 3372 — A New Groundwater Use Exemption

Passed by the Oregon Legislature in the 2025 Regular Session, OR HB 3372 creates a new groundwater use exemption, waiving the permitting requirement for the limited watering of eligible lawns and gardens.

Specifically, the new exemption allows for the irrigation of commercial lawns and gardens of up to ½ acre in size using no more than 3,000 gallons of water per day. *ORS § 537.545(1)(b)*. A commercial garden is defined as a garden used to grow plants for trade, sale, or barter. *ORS § 537.545(9)*.

While the new exemption has broad applicability, there are specific parameters around its use. *HB 3372 (2025)*.

- ∇ The exemption may not be used to water cannabis plants.
- ∇ The exemption may be used to support hemp production.
- ∇ The size of the area being irrigated through the exemption must not exceed ½ acre, though the total size of the property can be larger. The ½ acre need not be contiguous.
- ∇ The area irrigated through the exemption must remain the same for the entire year; however, it may change from year to year.
- ∇ The amount of water used through the exemption must not exceed 3,000 gallons per day.
- ∇ Whether or not the exemption is applied, water used for commercial purposes must not exceed 5,000 gallons per day.
- ∇ The legislation provides that, until 2028, the exemption is not applicable in the state-designated Groundwater Quality Management Area located in the Lower Umatilla Basin. This area has been designated for special management due to high levels of groundwater contamination.

Within these parameters, all water users in Oregon may be eligible to take advantage of the water use exemption OR HB 3372 creates.

Taking Advantage of the New Exemption

For each well drilled or converted to supply water for an exempt use, the OWRD requires the well driller or landowner to obtain applicable well construction permits, provide a map showing the location of the well, and submit a \$300 recording fee. *ORS § 537.545(6)–(7)*. The well driller must also comply with Oregon’s well construction standards and submit a well report *ORS § 537.545(6)*. For exempt uses, the date of the well report serves as the “priority date,” which the OWRD uses to determine the “seniority” of water uses for purposes of water allocation decision-making. *ORS § 537.545(5)*.

The required fee, map, and well report can all be submitted online through the OWRD's website at www.oregon.gov/owrd.

Community Perspectives: Potential Implications of the New Exemption

OR HB 3372 arose out of bipartisan support from a variety of sectors and communities. Prior to its passage, the irrigation of commercial gardens required a state water use permit, which could take years to obtain. Emphasizing the barriers created by the state's complicated and time-consuming water use permitting process, proponents of the legislation—including industrial and community-scale farmers—argue it provides a much needed, low-barrier way for individuals to irrigate crops. In so doing, these proponents argue it supports local food production and the vitality of local food economies. For example, some farmers noted in public comments that the water use exemption could enable them to participate in local farmers' markets, establish roadside produce stalls, and otherwise engage more fully in feeding their communities.

On the other hand—citing overallocated water supplies, chronic drought, and other concerns about sustainable water resources management—opponents of OR HB 3372 argue the legislation threatens existing water users and uses. The primary concern of these opponents is that, without proper oversight and monitoring practices, fewer restrictions on groundwater use could exacerbate water scarcity statewide.

Implications for Tribal Nations and Producers

Exempt water uses are a component of state water law. Tribal Nations and Tribal members using water through a state water use exemption must comply with state requirements for the exempt use. The use of water through an exemption does not impact the quantification and/or use of water pursuant to a Tribal Reserved Water Right. Therefore Tribal Nations and Tribal members may take advantage of OR HB 3372's water use exemption to the same extent as non-Tribal water users.