Outlook

Fwd: Discussion

From Caleb Kinser [redacted]
Date Wed 10/7/2026 10:27 AM
To MEINZ Kelly A * WRD <kelly.a.meinz@water.oregon.gov>

Caleb Kinser Construction

[redacted]

---------- Forwarded message ---------
From: **Caleb Kinser** [redacted]
Date: Wed, Oct 7, 2026 at 10:09 AM
Subject: Discussion
To: <kelley.a.meinz@oregon.water.gov>

Hello Kelley here are some thoughts.
Could we discuss more the appurtenance of water to properties that are selling water from exempt wells via water truck. Also, potential fiscal impact of property values when a neighborhood aquifer is damaged.
Why do we allow for exempt wells to sell water when there is no enforcement and why is this allowed since it creates a loophole to sell water and bypass having to have an approved commercial well?
Thanks
Caleb
Sent from my iPhone

Outlook

RE: Reminder to Submit Any Additional Comments By October 7, 2026, by 5 PM

From Keri Handaly [redacted]
Date Tue 10/6/2026 6:20 PM
To MEINZ Kelly A * WRD <Kelly.A.MEINZ@water.oregon.gov>

Hello Kelly,
In a recent meeting with Alyssa and Ryan, we talked about how when crop irrigation occurs, the amount of water withdrawn from the creek/stream in terms of calculating water availability includes an assumption that some amount of water not uptaken by the crop will return to the creek/stream.

My “comment” which is dependant on the explanation.
Below it says…
water diverted exceeds the quantity required to meet the beneficial use specified in a water right, not including reasonable system losses, return flows,

Would it be better to say “calculated return flows”?
IE, who gets to say whether a portion of the diverted water returns—I assume the water master’s model has like temperature of the soil and air and some agrarian figure for water uptake by type of crop. So, my comment is that the language needs to not leave a loop hole for the irrigator to say that they took an extra X amount of water because they knew it would return back to the source and therefore they were not “wasting” it.

I hope this makes sense (what I’m trying to convey) 😊

Thanks,
Keri Morin Handaly

From: MEINZ Kelly A * WRD <Kelly.A.MEINZ@water.oregon.gov>
Sent: Monday, October 5, 2026 3:21 PM
Subject: Reminder to Submit Any Additional Comments By October 7, 2026, by 5 PM

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Hi RAC Members,

Thank you all for attending last week's meeting. **As a reminder, please send any additional comments on the rules in writing by 5 pm on October 7, 2026.**

During our last meeting, we said we would provide definitions of waste in our rules; please see below.

1. **Rule (OAR) 690-260-0010(6):** “Waste” means, for purposes of assessing civil penalties, when the quantity of water diverted exceeds the quantity required to meet the beneficial use specified in a water right, not including reasonable system losses, return flows, or diversion rates of water allowed in a water right or a rotation agreement.

2. **OAR 690-400-0010(16):** "Waste" means the continued use of more water than is needed to satisfy the specific beneficial uses for which a right was granted. The need for water shall be based on using the technology and management practices that provide for the efficient use of water, considering:
    a. The economic feasibility of use of the technology and management
    b. practices by the water user;
    c. The environmental impacts of making modifications;
    d. The available proven technology;
    e. The time needed to make modifications;
    f. Local variations in soil type and weather; and
    g. Relevant water management plans and subbasin conservation plans.

3. **OAR 690-008-0001(13):** "Wasteful Use (of groundwater)" means any artificial discharge or withdrawn of groundwater from an aquifer that is not put to a beneficial use described in a permit or water right, including leakage from one aquifer to another aquifer within a well bore.

If you have any questions, please let me know.

Take care,

Kelly Meinz, EIT (he/him)
Water Policy Analyst
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690-340-0010 Exempt Uses

(1) (b) **Lawn**, non-commercial, or commercial garden watering of not more than one-half acre in total can be irrigated in an amount not exceeding 3,000 gallons a day.

Question: I understand that the 3,000 gallons per day watering exemption is the listed amount in recent statute, but this is an enormous volume of water closer to a weekly, or twice weekly watering rate in the heat of summer with high evaporation rates. Average single family use in the arid west is under 800 gallons per day including landscape irrigation.

(1) (c) Single or group domestic water uses of no more than **15,000 gallons per day**;

Comment: as written, this sounds like the single as well as group domestic water use exemption is 15,000 gallons per day, which is also how this exemption has been represented to me in past discussions with neighbors as well as agency staff. Consider adding clarifying language: (c) Single or group domestic water uses **of no more than 3,000 gallons per day per individual living unit or up to a maximum of 15,000 gallons per day for four living units).**

Comment: I understand that the 15,000 gallon per day exemption is intended for a single well supplying multiple housing units. But without sideboards of some sort – like a maximum of four single family residences or a single multi-family residence with four or fewer apartments – 15,000 gallons per day is an enormous volume of water.

(1) (d) Any single industrial or commercial water use, **other than watering any lawn or commercial garden**, not exceeding 5,000 gallons per day **based on peak daily use**.

Comment: I think this reads as if an industrial well may use up to 8,000 gallons per day (3k for watering + 5 k for its non-lawn watering industrial use. I understand that other rulemaking sections limit the combined total use to the 5,000 gallons per day exemption but suggest that such clarifying language be added here to make that clear.

Comment: Why is the exemption based on "**peak daily use**" (or peak demand) as opposed to total daily use (or total daily consumption)?

I understand why an industrial user would have an interest in peak demand as a project management tool, but it is total water consumption that reflects the demand on available water resources. The exempt industrial well user functionally has a 5,000 gallons per day water right and it is that demand on groundwater and compliance with the exemption right that require measurement. The language – and reporting requirements – should be changed to account for **total daily use**.

(6) Surface water exemptions…and groundwater exemptions are limited to the quantity of water **both in rate and duty…**

Comment: Define rate and duty and provide unit guidance for rate.

WATER LEAGUE

Engaging the public in water stewardship.

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October 7, 2026

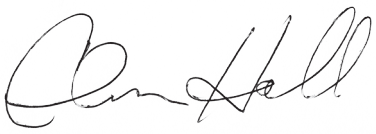
Kelly Meinz, Water Policy Analyst
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Water League submits comments on *OAR 690-300-0010 and 690-340-0010* following the September 28, 2026, RAC meeting on the *Exempt Use of Water Rulemaking*. We will be providing more extensive comments related to appurtenancy in the near future.

As always, we appreciate the opportunity to share our thoughts.

Thank you,



Christopher Hall
Executive Director

Water League Comments on Exempt Use of Water RAC #1

By Christopher Hall, Water League, October 7, 2026

Introduction

Wells supply water for Exempt Uses not requiring a water right; the state authorizes and regulates those uses.[1] Below, we discuss OAR 690-300-0010 *Definitions* and OAR 690-340-0010 *Water Use authorizations – Exempt Uses*, and we comment on proposed revisions to those rules. We limit our comments to those discussed/covered in the September 28, 2026, RAC. Our discussion and comments apply to the existing rules, OWRD's proposed rule revisions, and proposed rule language by Water League and others.

OWRD said that it is only revising rules related to Exempt Use, as noted in the title of the RAC. OWRD also said that it will make house-cleaning updates to the rules while they are open for the primary purpose of revising rules required by recent statutory changes. We strongly support revising the rules when they are open for house-cleaning updates, and note that setting boundaries around only making revisions that are related to the Exempt Use of water ought to be consistent if that is the stated goal.

Aside from section headings in our comments, **all bolded text** is a suggested revision.

Discussion and Comments Related to Division 300

1) Add this definition to Division 300:

(39) "Premises," as used in OAR chapter 690, division 340, means the property boundary within which the exempt use well is located or the contiguous tax-lots for which a single well system supplies water for an exemption.

[1] ORS 537.545(2) "A ground water use for a purpose that is exempt under subsection (1) of this section, to the extent that the use is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700."

We explain later on in our comments why the term "Premises" should be defined; it is related to clearing up the harmful ambiguity of the term as it relates to appurtenancy.

(*Note: Renumber the rest of the OAR 300-0010 definitions accordingly. Despite this renumbering, we refer to the original numbering throughout our comments to maintain order.*)

2) Revise (6) "Commercial Water Use:"

OWRD had proposed SB 326 related language to the Commercial Water Use definition [*proposed text in italics*]:

> Such uses shall not include irrigation or landscape maintenance of more than *one-half* ~~1/2~~ *acre and shall not include irrigation of marijuana plants or industrial hemp plants unless the plants are grown by a person licensed under ORS 475C.065, 475C.792 or 571.281 in a manner consistent with the license*.

Before discussion on this definition, OWRD proposed backtracking on all of the new language except the "one-half ~~1/2~~" clarification. Instead of fixing the obvious error in the text that made it appear that the Commercial Use of Water did include irrigating lawful cannabis, the decision was to just walk away from it all. Then, in the portion of the definition for Commercial Water Use related to irrigation authorized by water rights, OWRD proposed striking the word "irrigation" in the first sentence below:

> Such uses shall not include ~~irrigation or~~ landscape maintenance of more than one-half ~~1/2~~ acre. Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance.

The proposed deletion of "irrigation or" means that Commercial Water Use authorized by a water right certificate can now be construed to include irrigation. The very broad and general language in the definition of Commercial Water Use now potentially includes irrigation. The reason why the current rules language expressly prohibits irrigation is to unambiguously prevent any water users, who hold a water right certificate that authorizes Commercial Water Use, from attempting to use that water right for irrigation. We note that OWRD has not proposed deleting that language from the definitions in (2) "Agricultural Water Use," (25) "Forestland and

Rangeland Management," and (29) "Industrial Water Use," and to do so would be a considerable error in judgment.

This deletion is a significant rules language change, and we oppose deleting "irrigation or" on the basis that the definition of Commercial Water Use is very broad and it should retain an unambiguous statement that Commercial Water Use is not Irrigation Water Use. If the original proposed language relating to SB 326 that OWRD immediately proposed to walk back before discussion began on the topic were never proposed in the first place, then there would be no pretense for deleting "irrigation or" from the definition of Commercial Use of Water because that sentence refers to water rights, not exemptions. The following sentence: "Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance" is the exemption sentence.

We note that staff opened the discussion on the Division 300 rules by stating that only definition changes related to Exempt Use would be made in this rulemaking process,[2] and then did the opposite of that by striking "irrigation or" from the water right section of the existing definition for Commercial Water Use. The deletion of the term has nothing to do with Exempt Use.[3] We acknowledge that OWRD has unconditional preemptive authority to write administrative rules as it sees fit; however, we request staff not make such contradictory statements in such quick succession…or at all.

The conversation continued on the topic of Commercial Use water rights – not exempt use – which resulted in a striking contradiction when staff tried to explain why they proposed to delete the term "irrigation or." The full statement bears quoting in full [**emphasis added**]:

> **Is the intent that any commercial water use water rights should also allow for commercial propagation of crops? No, that would be an irrigation right.** What was the intent of what you were trying to build out? And so in conversations with our water rights group, it was that, yeah, it would make sense to have landscape maintenance like the lawn in front of your business or industry site, any kind of like ornamental

[2] "Folks might think that a number of definitions should be updated, and **we are really viewing this through the scope of exempt uses, and only updating those definitions pertaining to exempt uses.**" (02:31:57 to 02:32:12)

[3] "**It's intended that somebody gets a commercial water use right**, and they have a little bit of landscaping around their business, and that, **under that permitted water right for commercial use**, would be allowed." (02:33:42 to 02:33:56)

> landscaping around the building, **but to also allow a commercial irrigation to occur at the same site, that would make sense to have that as additional water right being an irrigation water right.** ***So that was the idea here of just striking that language***.[4]

To be clear, striking "irrigation or" language from the existing rule on Commercial Water Use is the exact opposite intent of ensuring that irrigation is not ever misconstrued as a Commercial Water Use. What are RAC members and the public to make of such an unambiguous contradiction?

The most straightforward and unambiguous way to address the problem of taking an action that directly counters the stated intention is this rule revision:

> **Such uses shall not include irrigation; nor shall such uses include landscape maintenance of more than one-half 1/2 acre.**

If OWRD is serious that Commercial Use of Water shall not include irrigation, then it will make unambiguous rules language to that effect.

3) (7)"Commercial Garden:"

We agree with RAC members that the term "Marijuana" is a bigoted term and should not be used by the state of Oregon. **We suggest using "Recreational Cannabis" to refer to cannabis related to rules associated with ORS 475C and "Hemp" to refer to cannabis related to rules associated with ORS 571.**

4) (15) "Domestic Water Use" – Related accessory uses include or do not include…

We acknowledge that OWRD plans for a discussion on this topic at the next RAC meeting; however, we do have one comment regarding the "Related accessory uses" in reference to 690-340-0010(1)(c), which we discuss below in our Division 340 comments. There is widespread interest in providing a limit in the range described in ORS 537.545(1)(d), which states: "Single or group domestic purposes in an amount not exceeding 15,000 gallons a day."

[4] Commentary at (02:39:55 to 02:40:30).

"Single or group domestic" ranges from one to any number of dwelling units. While 1,000 GPD would be more than five times as much domestic use water a three-bedroom house uses daily, it would not be enough water to timely fill a backyard pool. We think **filling a pool once per year at a rate that the well system can operate at is a reasonable ancillary use**. See our comments on 690-340-0010(1)(c) for details on the recommendation of 1,000 GPD for a Single Domestic Purpose.

5) (18) "Emergency Fire-fighting Use" – "It does not include storage with the intent to later use to support fire suppression."

We note the strong public interest in so-called "fire ponds" and tanks to store either surface water or groundwater for the purpose of fire suppression. Water League does not believe that storage is an exempt use of water and that making storage an Exempt Use would need to be addressed in statute. We note, however, that OWRD proposes in OAR 690-340-0010(9) to permit storing 19,000 GDP into either ponds or tanks, not to exceed 19,000 on any given day. No credible argument could be made that a person was unreasonable if they broke the law and used the proposed 19,000 gallons of storage in an attempt to suppress fire on their property. Division 300-0010(18) is in conflict with Division 340-0010(9).

[The Exempt Use Rulemaking RAC stopped here in the discussion of Division 300-0010. Water League will provide comments on the remainder of Division 300 definitions following a discussion of them after the next RAC meeting.]

Discussion and Comments Related to Division 340

1) Div 340-0010(1)(b)(A) states: "Irrigation is appurtenant to the premises where groundwater is used and further limited to a space not more than one-half acre of static land space per calendar year."

We note the language that a RAC member pointed out: "Irrigation is appurtenant to the premises where groundwater is used…" This language is derived from ORS 537.705 and also associated with ORS 540.510(1): "All [ground] water used in this state for any purpose shall remain appurtenant to the premises upon which it is used…" While the question was about the circular appearance of the language, and possibly replacing the word "used" with "appropriated," **we suggest deleting the entire sub-paragraph (A).**

First, it is wrong to make the replacement ("used" with "appropriated") because the premises where the groundwater appropriation occurs is not necessarily the only place where the exempt water use might occur. While water use could occur on the tax lot where the well is located, water use could happen on several contiguous tax lots that share a well system and one exemption. We refer back to our Division 300-0010 proposed definition of "Premises," which means "as used in OAR chapter 690, division 340, the property boundary within which the exempt use well is located or the contiguous tax-lots for which a single well system supplies water for an exemption." Second, we recommend not attempting to isolate Irrigation Use apart from all the other Exempt Uses, with regard to appurtenancy. All water must remain appurtenant to the premises, not just water used for irrigation. A serious concern, which we will discuss at length in a forthcoming set of comments (but we briefly touch on herein), is the possibility that the state would interpret the exempt Commercial Use, Industrial Use, or Domestic Use of water as a means to overcome appurtenancy. Piping water or trucking water off the premises to which that water is appurtenant, to use elsewhere, is a bold challenge to ORS 537.705 that is only settled by a statute similar to ORS 540.510(3).

Instead of worsening the ambiguity associated with the way the statute refers to the term *appurtenancy*, the Exempt Use rulemaking process should clarify the term. The use of the term *appurtenant* may be the most consequential factor in this Exempt Use Rulemaking process. To

this point, we are concerned about how OWRD understands the term, which directly conflicts with ORS 537.705 [**emphasis added**]:

> That's the use, as the department looks at it, is which one of these exemptions you take the water out for. If you take the water out for domestic use, you put it in a 200-gallon tank, and you drive it down the road to your neighbor who has run out of well water, that's fine. **The appertenancy of the domestic use is still what it's being used for.** It maintains that character of use if it were to move through a pipeline to your neighbor or if it were to move through a water truck in that situation down the road to someone who has not, doesn't have an adequate domestic supply.[5]

OWRD has conflated the type of water use with the premises by saying that appurtenancy refers not to the premises, but instead, to the type of use. We are incredulous. Oregon water law very clearly states in ORS 537.705 that water is appurtenant to premises; furthermore, ORS 537.545 lists specific types of water use that are an Exempt Use of water.

Regarding ORS 537.705: we surmise that when "the premises upon which it [water] is used" becomes a fact (almost like a proof), thereafter, all subsequent uses "shall remain appurtenant to" those same premises. This interpretation means that a well is drilled to serve a purpose on a premises, specifically, in this case, to supply water for Exempt Uses. Once that purpose has been established on those premises, all subsequent use shall remain appurtenant to the premises. We do not see other reasonable interpretations of what ORS 537.705 means because the very nature of appurtenancy rejects the idea that "wherever water is used, it's appurtenant." Furthermore, in the real world, people drill wells to supply water for exempt water uses on premises they own or control, and in what must be nearly all instances, they intend for the well to serve those premises. Therefore, once these landowners or controllers put the groundwater to use, they have constituted a right to appropriate groundwater, and in so doing, they have established the fact of appurtenancy tied to the premises. The most reasonable and logical presumption is that the

[5] (00:54:12 to 00:54:43) Five minutes later in the discussion, this writer asked for clarification, and OWRD replied at (01:01:03 to 01:01:49): "Again, what I was probably muddling through explaining before was, **the use is appurtenant. Right?** And so if you have, let's say, a water right for water bottling, a commercial water right for water bottling, we would allow that water bottling to occur via the source, but then that bottled water is then, as part of the commercial support, is then sold and shipped elsewhere. **So that's where *there's this policy call, this kind of ambiguity in the middle there between statute and rule*** of, does that mean that the water can never leave the site, or **does it mean that each one of these uses is appurtenant to the site where the well is removed?** However, that use can support leaving the property, and so that's kind of where we're at."

premises is the property boundary within which the exempt use well is located or the contiguous tax-lots for which a single well system supplies water for an exemption. ORS 537.545(6) states that well constructors "...shall provide the Water Resources Department with a map showing the exact location of the well on the tax lot." This demonstrates that the premises to which the exempt water use is appurtenant consists of the tax lot (or contiguous tax lots) associated with the mapped well.

ORS 537.545(2) states that:

> A ground water use for a purpose that is exempt under subsection (1) of this section, to the extent that the use is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700.

Some might wonder, if not by fiat, how could an exempt groundwater use constitute a "right to appropriate ground water equal to that established by a ground water right certificate?" We surmise that at least some of the defining elements of a ground water right certificate must also apply to exempt uses of water in order for exempt uses to coexist with certificated rights under the various doctrines and Oregon's case law, statutes, and rules. Therefore, a right to appropriate water, whether one holds a certificate or is exempt, is simultaneously defined, limited, and secured by those shared elements, some of which include the priority date, the duty, the well or Point of Appropriation (POA), the premises or Place of Use (POU), and the type or Character of Use.

W**e suggest clarifying the term *appurtenant* by revising 690-340-0010(1) to say: "(1) All water used in this state for any purpose shall remain appurtenant to the premises upon which it is used. As defined in OAR 690-300-0010(39), "Premises," as used in OAR chapter 690, division 340, means the property boundary within which the exempt use well is located or the contiguous tax-lots for which a single well system supplies water for an exemption."**

Then renumber all the rest of the subsections in 340-0010, beginning with "(2) The scope and attributes of and requirements for."

[*Despite this renumbering comment, we refer to the original numbering throughout our comments to maintain order.*]

2) Please note that 340-0010(1) says: "The scope of and requirements for certain exempt groundwater uses are described as follows:" and that 340-0010(2) says: "The scope of and requirements for certain exempt surface water uses are described as follows." These sentences both leave out the full language in 340-0010, which states in full [*emphasis added*]: "This rule clarifies the scope *and attributes* of and requirements for these uses." **We suggest making the statements consistent.**

3) **Add this sentence to 690-340-0010(1)(c): "The quantity of water, both in rate and in duty, that can be used beneficially without waste shall not exceed 1,000 GPD for each single domestic purpose. Any single domestic use may fill a pool once annually as an accessory use as defined in OAR 690-300-0010(15)."**

A reasonable interpretation of ORS 537.545(1)(d) strongly implies that the paragraph infers a range between single and group domestic purposes. The paragraph states: "(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day." No single domestic purpose, as defined in OAR 690-300-0010(15),[6] could use more than 1,000 GPD if the residents tried. We researched the question, and it appears that 200 GPD is on the high end for in-house domestic water use. At that volume, 15,000 GPD could serve 75 three-bedroom condos/apartments. We note that some residential landowners may want to fill their pool once per year, which could range from 20,000 to 50,000 gallons for in-ground pools, and take three to seven days at five GPM running 24 hrs/day. This may be the only sticking point in limiting, by rule, a single domestic purpose to 1,000 GPD. We suggest adding filling a pool as an "accessory use" to the definition of Domestic Water Use in Division 300-0010(15).

4) 340-0010(4) is now 31 years out of date, and based on our previous review of the statutes from that era, we do not see the value of keeping the rules on the books. (The authorizing or implemented statutes, 537.400 to 537.409, are not listed in the rules – not sure of that

[6] "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property, or related accessory uses. (This is the proposed version.)

requirement.) **We suggest repealing Section (4). If Section (4) is repealed, then the end of 340-0010(2)(e) "...and for which a written notice is submitted under section (4) of this rule" should also be repealed.**

5) OAR 690-340-0010(9) permits storage for listed duties for up to one day. Storing water is not authorized in statute; **this proposed rule should be deleted.** We discussed with OWRD staff on September 16, 2026, the topic of ORS 537.141(1)(e), that Exempt Use does not permit storage. OWRD unambiguously agreed; in fact, OWRD was as adamant as we were that Exempt Use does not permit storage. Perhaps adding storage as an Exempt Use can be tacked onto one of the legislative bills relating to storage of water in the 2027 legislative session.

WaterWatch of Oregon
Protecting Natural Flows in Oregon Rivers

October 7, 2026

VIA EMAIL

Kelly Meinz, EIT
Water Policy Analyst
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Salem, OR 97301
Email: kelly.a.meinz@water.oregon.gov

Re: Exempt Use Rules – 9/28/26 Drafts

Dear Kelly:

Thank you for the opportunity to serve on the rules advisory committee (RAC) for the exempt use rulemaking.

Along with our comments made orally at the RAC meeting on September 28, 2026, please consider our following written comments on the first set of draft rule changes (roughly in the order they were covered in the RAC meeting).

General Comments

1. Appurtenancy. The rules should generally require that all water appropriated under an exemption from permit requirements be used on the premises where the appropriation takes place. The draft rules attempt to address this for "[i]rrigation" of lawns and gardens (see comment on that below), but the concept should be applied more broadly. For example, the Department apparently allows appropriation of groundwater under the commercial/industrial exemption for water that is sold and trucked away, without treatment or use, for ultimate use that, as far as we know, is not tracked. This could lead to exempt use in excess of what was intended, for purposes that were not intended. For example, an ultimate user could arrange to buy 5,000 gallons per day from multiple well owners, each of whom could appropriate water without a permit under the commercial/industrial exemption. Without a requirement for beneficial use on the premises where the appropriation takes place, there is no limit to how much water could be used, or the purposes for which it could be used. A rule requiring all exempt use to be on the premises where the appropriation takes place would be consistent with legislative intent and therefore within the Department's rulemaking authority.

2. Storage. The Department should avoid rule language that purports to authorize storage of water appropriated under an exemption unless the statutory exemption clearly authorizes storage. In general, the statutory exemptions authorize only "uses." Storage is not a "use." *See Bridge Creek Ranch v. Water Resources Dept.*, 329 Or App 568, 581-83 (2023).

3. Regulation. The Department has authority to regulate in favor of, and against, exempt use based on priority. ORS 537.545(5). The rules should include language to that effect to help ensure that users under an exemption understand this. Even if the Department has not historically regulated for or against exempt use, it should do so in times of shortage, especially as climate change adds stress to water supplies.

4. Measurement and Reporting. The Department should establish a process, including ensuring cost-share funding mechanisms, to begin requiring measurement and reporting of all exempt use. ORS 537.545(4) gives OWRD express authority to require measurement and reporting by exempt wells. Measurement and reporting are essential to ensure compliance with the limits on exempt use and to adequately inform the Department and the public on the extent of exempt use and its impacts. Water demands increasingly exceed water supplies in Oregon. In that environment, allowing water to be used for private purposes without requiring users to measure and report how much they use is difficult to justify.

5. Reporting Location of Wells. ORS 537.545(4) gives the Department authority to require reporting of anything related to use under an exempt well. The Department lacks comprehensive data on the location and purpose of older exempt wells. The Department should use this opportunity to require exempt well users who have not already done so to submit a map with each well's exact location and purpose.

6. Reporting Character of Use. All exempt users – current and future – should also be required to report the specific nature of their exempt use. For example, a user claiming an exemption for irrigation should be required to report if it is for a lawn, commercial garden or non-commercial garden. A user claiming an exemption for stockwatering should be required to report if it is for a feedlot, a dairy or something else, and whether it is associated with a permit for a confined animal feeding operation. A user claiming a commercial/industrial exemption should be required to describe the specific nature of the commercial/industrial use. Better information on the nature and extent of exempt use will lead to better management and policy making as water resources become increasingly scarce.

* * * * *
* * * * *

Specific Comments

1. 690-340-0010(1)(b)(A). Consistent with General Comment 1, we support language to require that use of water under the exemption for watering lawns and gardens be on the premises where the water is appropriated. However, this provision should be reworded for clarity and to reflect the actual statutory intent, even if different from the precise statutory language. (As several RAC members noted, "[i]rrigation * * * appurtenant to the premises where groundwater is used" is circular and confusing.) We also support the proposed clarification that the half-acre of land be "static" over a calendar year to prevent greater acreage from being irrigated under the exemption.

2. 690-340-0010(1)(d). Consistent with General Comment 1, the rules should expressly limit the commercial/industrial exemption to beneficial use on the premises where the water is appropriated. That was the likely intent of the exemption, not appropriation for sale to other end users. This rule also should state expressly that commercial and industrial use does not include mining, which is a separate category of use under the definitions in the rules, but is regularly claimed to be a commercial or industrial use under the exemption for those uses.

3. 690-340-0010(5). "Commission" should be changed to "Department" to make clear, as described by staff in response to comments from a RAC member, that the Commission has "delegated" to the Department the authority to require measurement, reporting and other information on exempt use.

4. 690-340-0010(8). Provisions on water reuse under an exemption should make clear that storage of water is not allowed. See General Comment 2 above.

5. 690-340-0010(9). This rule would expressly prohibit storage of water "in an amount greater than the applicable daily use limit." We oppose that language because it implies that the statutory exemptions permit storage when they generally do not. Instead, we suggest language stating expressly that water appropriated under an exemption may not be stored. See General Comment 2 above. To the extent the Department disagrees, we support a limit on storage to no more than the daily limit under the claimed exemption. Any such language also should clarify that the storage needs to be in a cistern or tank, with a capacity that does not exceed the daily limit, not in a reservoir or pond, which creates secondary environmental concerns.

6. 690-300-0010(18). We support the express exclusion of storage from the definition of "Emergency Fire-fighting Use."

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Thank you for considering our comments.

Sincerely,

Brian Posewitz

Brian Posewitz
Staff Attorney