

D R A F T

SUMMARY

Establishes Water Supply Development Account. Continuously appropriates funds in account to Water Resources Department to expend account moneys to make loans and grants for qualifying projects and for cost of administering loan and grant program. Establishes criteria for projects to qualify for grants and loans from account.

Allows recipient of grant for critical ground water storage project in Umatilla Basin to apply for change in grant terms and conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to water; creating new provisions; amending section 17, chapter 907, Oregon Laws 2009; appropriating money; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 16 of this 2013 Act:

(1) **“Conserved water” has the meaning given that term in ORS 537.455.**

(2) **“Economic benefit” means:**

(a) **Improved economic conditions related to job creation, the encouragement of economic development, increased local, state or tribal revenues or increased efficiency and innovation;**

(b) **Enhanced economic value of infrastructure, farmlands, public resource lands, industrial lands, commercial lands or other land uses;**

(c) **Increased revenues from tourism, recreational use, commercial fishing and other activities that result from the restoration or protection of waters for in-stream use;**

(d) **Reduction the risk or damage that may occur in the absence of**

1 **the project;**

2 **(e) Enhanced ability to leverage other funds; and**

3 **(f) Other improvements in economic conditions identified by the**
4 **Water Resources Department.**

5 **(3) “Environmental benefit” means:**

6 **(a) A measurable improvement in protected streamflows that:**

7 **(A) Restores the natural hydrograph;**

8 **(B) Restores floodplain function; or**

9 **(C) Supports state or federally listed sensitive, threatened or en-**
10 **dangered fish species;**

11 **(b) A measurable improvement in ground water levels that en-**
12 **hances environmental conditions in ground water restricted areas or**
13 **other areas;**

14 **(c) A measurable improvement in the quality of surface water or**
15 **ground water;**

16 **(d) Water conservation;**

17 **(e) Increased ecosystem resiliency to climate change impacts;**

18 **(f) Improvements that address one or more limiting ecological fac-**
19 **tors in the project watershed; and**

20 **(g) Other improvements in environmental conditions identified by**
21 **the department.**

22 **(4) “Newly developed water” means the new increment of water:**

23 **(a) Stored by a project that provides new or expanded storage; or**

24 **(b) Allocated under a secondary water right by a project that allo-**
25 **cates water stored under an existing water right.**

26 **(5) “Seasonally varying flows” means the streamflows needed to**
27 **protect and maintain the following biological, ecological and physical**
28 **functions in a given basin:**

29 **(a) Stream channel development and maintenance;**

30 **(b) Longitudinal, lateral and vertical connectivity to floodplains;**

31 **(c) Sediment transport and deposition;**

1 (d) Migration triggers for upstream movement of adult fish and
2 downstream movement of fry and juveniles;

3 (e) Fish spawning and incubation;

4 (f) Juvenile fish rearing; and

5 (g) Adult fish passage.

6 (6) "Social or cultural benefit" means:

7 (a) The promotion of public health and safety and local food sys-
8 tems;

9 (b) A measurable improvement in conditions for members of mi-
10 nority or low-income communities, tribal communities and other
11 communities traditionally underrepresented in public processes;

12 (c) The promotion of recreation and scenic values;

13 (d) Contribution to the body of scientific data publicly available in
14 Oregon;

15 (e) The promotion of state or local priorities;

16 (f) The promotion of place-based integrated water resources plan-
17 ning under the integrated state water resources strategy or of other
18 collaborative basin planning efforts; and

19 (g) Other improvements in social or cultural conditions identified
20 by the department.

21 SECTION 2. (1) The Water Supply Development Account is estab-
22 lished in the State Treasury, separate and distinct from the General
23 Fund. Interest earned by the Water Supply Development Account shall
24 be credited to the account. Moneys in the account are continuously
25 appropriated to the Water Resources Department for use in carrying
26 out sections 1 to 16 of this 2013 Act.

27 (2) The department may expend moneys from the account for ac-
28 tivities supporting the assessment, planning and development of in-
29 stream and out-of-stream water development projects, including but
30 not limited to:

31 (a) Loans and grants to:

- 1 (A) Repair or replace infrastructure;
- 2 (B) Provide new or expanded water storage;
- 3 (C) Improve or alter operations of existing water storage facilities;
- 4 (D) Create new, expanded, improved or altered water distribution,
- 5 conveyance or delivery;
- 6 (E) Allocate stored water;
- 7 (F) Promote water reuse;
- 8 (G) Promote water conservation;
- 9 (H) Provide streamflow protection or restoration;
- 10 (I) Provide for water management or measurement; and
- 11 (J) Determine seasonally varying flow requirements; and
- 12 (b) Paying the related administrative costs of the department in
- 13 carrying out sections 1 to 16 of this 2013 Act.

14 **SECTION 3.** Loans and grants may be issued from the Water Supply
15 Development Account to persons as defined in ORS 536.007, Indian
16 tribes as defined in ORS 391.802 and nonprofit organizations. The Wa-
17 ter Resources Department may require an applicant that is a munici-
18 pal or agricultural water supplier to have water management and
19 conservation plans submitted to or approved by the department prior
20 to department acceptance of an application for a loan or grant from
21 the account.

22 **SECTION 4.** (1) A potential applicant for a loan or grant from the
23 Water Supply Development Account may participate in a preapplica-
24 tion conference with the Water Resources Department.

25 (2) At the preapplication conference, the department shall inform
26 the potential applicant of the procedural and substantive requirements
27 of a loan or grant application and of the scoring system used by the
28 department to evaluate loan and grant requests. The department shall
29 help the potential applicant to identify issues that may affect project
30 eligibility for a loan or grant from the account.

31 (3) Not less than 14 days before the preapplication conference, the

1 applicant must provide the department with adequate project infor-
2 mation to prepare for the preapplication conference.

3 (4) The applicant may request additional preapplication consulta-
4 tion with the department.

5 **SECTION 5. Applications for a loan or grant from the Water Supply**
6 **Development Account must be in a form prescribed by the Water Re-**
7 **sources Department and must include the following:**

8 (1) A description of the need, purpose and nature of the project,
9 including what the applicant intends to complete and how the appli-
10 cant intends to proceed.

11 (2) Sufficient information for the department to score and rank the
12 application according to the public benefits of the project.

13 (3) Current contact information for the principal contact, fiscal of-
14 ficer and involved landowners.

15 (4) For applications involving physical changes or monitoring on
16 private land, evidence that landowners are aware of and agree to the
17 proposal and are aware that monitoring information is a public record.

18 (5) The location of the proposed project, using public land survey
19 reference points, latitude and longitude, county, watershed, river and
20 stream mile if appropriate.

21 (6) An itemized budget for the project, including fiscal and admin-
22 istrative costs.

23 (7) A description of funds, services or materials available to the
24 project.

25 (8) A project schedule, including beginning and completion dates.

26 (9) Any conditions that may affect the completion of the project.

27 (10) A completed feasibility analysis if appropriate.

28 (11) Suggestions for interim and long-term project performance
29 benchmarks.

30 (12) If the application is for a grant, demonstrated in-kind and cash
31 cost match of not less than 25 percent of the amount of the grant

1 sought from the account.

2 (13) If the application is for a loan, evidence demonstrating ability
3 to repay the loan and provide collateral.

4 (14) Letters of support for the proposed project.

5 (15) Any other information required by the department.

6 **SECTION 6. (1) The Water Resources Commission shall adopt rules**
7 **establishing a system for scoring and ranking project types for pur-**
8 **poses of determining which projects receive loans and grants from the**
9 **Water Supply Development Account. The system shall be designed to**
10 **provide funding for projects having the greatest public benefit. The**
11 **Water Resources Department shall make the loan and grant funding**
12 **decisions once each year. The department shall accept an application**
13 **for a loan or grant at any time but shall establish a yearly deadline**
14 **to consider a pool of applications.**

15 (2) The department shall check for completeness, eligibility and
16 minimum requirements upon receipt of each application. The depart-
17 ment shall return incomplete applications to the applicant. The de-
18 partment shall provide public notice by posting new funding
19 applications on the department's website for a 60-day period prior to
20 reviewing the applications. The department shall provide for the re-
21 ceipt of public comment on the applications during the 60-day period
22 that applications are posted on the department's website.

23 (3) The department shall conduct a preliminary review and scoring
24 of all applications and submit the results, along with any comments
25 received from applicants or the public, to a technical review team
26 consisting of representatives of the department, the Department of
27 Environmental Quality, the State Department of Fish and Wildlife, the
28 State Department of Agriculture, affected Indian tribes and additional
29 experts as determined by the Water Resources Department. The tech-
30 nical review team shall score and rank the projects described in the
31 applications, consider comments from applicants and the public and

1 return loan and grant funding recommendations to the Water Re-
2 sources Department. Before the department makes a final decision on
3 an application, the department shall offer one additional opportunity
4 for public comment.

5 (4) The department shall evaluate a project that is the subject of
6 an application for a loan or grant from the account to determine the
7 social and cultural benefits, economic benefits and environmental
8 benefits of the project. The department shall issue loans or grants to
9 projects that the department determines to have the greatest overall
10 benefit.

11 (5) The department is not required to obligate all available account
12 moneys during a funding cycle. Any available account moneys that are
13 not obligated during a funding cycle shall be carried forward and be
14 made available for projects in future funding cycles.

15 (6) The department shall document the ranking of all applications
16 and make the application ranking publicly available after funding de-
17 cisions have been published.

18 **SECTION 7. (1) The Water Resources Department shall design cri-**
19 **teria for the project scoring and ranking system described in section**
20 **6 of this 2013 Act to achieve the following outcomes:**

21 (a) The issuance of grants or loans only to projects that provide
22 benefits in each category of public benefit.

23 (b) Preference for partnerships and collaborative projects.

24 (c) The funding of projects of diverse sizes, types and geographic
25 locations.

26 (2) The department shall review the loan and grant program on a
27 biennial basis to assess to what extent the outcomes described in
28 subsection (1) of this section are being achieved, report the review
29 findings to the Water Resources Commission and modify the project
30 selection process as necessary to better achieve the outcomes de-
31 scribed in subsection (1) of this section.

1 **SECTION 8.** (1) The recipient of a grant from the Water Supply
2 Development Account must agree to the conditions set forth in sub-
3 section (2) of this section if the grant is for the development of a new
4 or expanded above-ground storage facility that:

5 (a) Impounds surface water on a perennial stream;

6 (b) Diverts water from a stream that supports state or federally
7 listed sensitive, threatened or endangered fish species; or

8 (c) Diverts more than 500 acre-feet of water annually.

9 (2) Twenty-five percent of conserved water or newly developed wa-
10 ter from a project described in subsection (1) of this section must be
11 dedicated to in-stream use.

12 **SECTION 9.** (1) A project that receives a loan or grant from the
13 Water Supply Development Account must:

14 (a) Demonstrate social and cultural benefits or economic benefits
15 sufficient to qualify the project under the scoring and ranking system
16 described in section 6 of this 2013 Act; and

17 (b) Demonstrate environmental benefits:

18 (A) By dedicating 25 percent of conserved water or newly developed
19 water to instream use; or

20 (B) If the project is not subject to section 8 of this 2013 Act, suffi-
21 cient to qualify the project under the scoring and ranking system de-
22 scribed in section 6 of this 2013 Act.

23 **SECTION 10.** If a project dedicates water to in-stream use under the
24 requirements described in section 8 of this 2013 Act or as allowed under
25 section 9 of this 2013 Act, the Water Resources Department shall issue
26 in-stream use permits for the dedicated water. Dedicated water may
27 come from other sources and be put in-stream at other locations in
28 the watershed if the department, in consultation with the State De-
29 partment of Fish and Wildlife, determines that the alternate location
30 would provide greater or equal environmental benefit. The Water Re-
31 sources Department, in consultation with the State Department of

1 **Fish and Wildlife, shall determine the timing of the flows to maximize**
2 **in-stream benefits in a manner consistent with public health and**
3 **safety.**

4 **SECTION 11. (1) The Water Resources Department shall make a**
5 **determination as provided under subsection (2) of this section if an**
6 **application for a loan or grant from the Water Supply Development**
7 **Account is for a project that requires a new water storage or aquifer**
8 **recharge permit, certificate or limited license outside of the official**
9 **irrigation season and:**

10 (a) **Impounds surface water on a perennial stream;**

11 (b) **Diverts water from a stream that supports state or federally**
12 **listed sensitive, threatened or endangered fish species; or**

13 (c) **Diverts more than 500 acre-feet of surface water annually.**

14 (2) **The department shall review a completed application for a**
15 **project described in subsection (1) of this section to determine whether**
16 **seasonally varying flow requirements have been established for the**
17 **stream of interest. If the department determines that the require-**
18 **ments have not been established, the department shall establish sea-**
19 **sonally varying flow requirements before issuing a loan or grant from**
20 **the account. For purposes of establishing the requirements, the de-**
21 **partment may rely upon existing scientific data and analysis or may**
22 **fund new data and analysis. The department may use account moneys**
23 **to pay the cost of establishing seasonally varying flow requirements.**

24 (3) **The department shall develop methods and standards for estab-**
25 **lishing seasonally varying flows in consultation with the State De-**
26 **partment of Fish and Wildlife and affected Indian tribes.**

27 (4) **The Water Resources Department shall provide the applicant**
28 **and the public an opportunity for comment prior to establishing sea-**
29 **sonally varying flow requirements under subsection (2) of this section.**
30 **The burden of rebutting the accuracy of a seasonally varying flow re-**
31 **quirement proposed by the department is on the applicant or member**

1 of the public.

2 (5) The department shall condition any new water storage or aquifer
3 recharge permit, certificate or limited license issued for a project re-
4 ceiving a grant or loan from the account upon the project complying
5 with seasonally varying flow requirements.

6 **SECTION 12.** (1) Before loan or grant moneys are expended from the
7 Water Supply Development Account for any construction project, the
8 recipient must obtain all applicable local, state, tribal and federal
9 permits and show that the project complies with local land use laws.
10 Project materials must include a notation indicating that Water Re-
11 sources Department funding was used for the project.

12 (2) Project completion and operation must comply with applicable
13 local, state, tribal and federal laws and permitting requirements.

14 (3) Loan or grant recipients must complete and operate the funded
15 project as described in the loan or grant application. Before com-
16 mencing implementation of a project funded with account moneys, the
17 recipient must demonstrate to the satisfaction of the department that
18 the public benefits identified for the project, including any environ-
19 mental benefits proposed at a location other than the project site, will
20 be realized in a timely fashion.

21 (4) At regular intervals, and upon completion of the project, the
22 loan or grant recipient must submit updates to the department that
23 describe the completed work, the public benefits achieved and project
24 expenditures. The recipient must regularly measure and report the
25 water diverted and used from the project. The recipient must monitor,
26 evaluate and maintain the projects for the life of the loan, or for a
27 specified number of years for a grant, and provide annual progress
28 reports to the department. The department may impose other
29 project-specific conditions by noting the conditions during project
30 evaluation and including the condition in the funding agreement for
31 the project.

1 (5) The department may terminate, reduce or delay funding for a
2 project if the loan or grant recipient fails to comply with any provision
3 of subsections (1) to (4) of this section.

4 **SECTION 13.** (1) The Water Resources Commission shall adopt rules
5 establishing standards for borrowers obtaining loans issued from the
6 Water Supply Development Account. The commission shall design the
7 standards to ensure that all loans have a high probability of repay-
8 ment and that all loans are adequately secured in the event of a de-
9 fault. The commission shall solicit comments from the Oregon
10 Department of Administrative Services and the State Treasurer when
11 designing the standards. The standards may include, but need not be
12 limited to, standards that give preference to entities with ad valorem
13 taxing authority.

14 (2) If the Water Resources Department approves the financing for
15 the implementation of a water development project, the department
16 and the applicant may enter into a loan contract, secured by a first
17 lien or by other good and sufficient collateral in the manner provided
18 in ORS 541.740.

19 **SECTION 14.** The Water Resources Department may enter into
20 water service contracts to recover all or a portion of moneys loaned
21 from the Water Supply Development Account. Moneys received
22 through the water service contracts, or as repayment of account loans,
23 must be deposited in the account.

24 **SECTION 15.** The Water Resources Commission shall adopt rules
25 to implement sections 1 to 16 of this 2013 Act.

26 **SECTION 16.** The Water Resources Department may:

- 27 (1) Invest in water development projects;
28 (2) Assess the feasibility of water development projects; and
29 (3) Enter into and issue contracts to put water to beneficial use.

30 **SECTION 17.** Grants and loans issued from the Water Supply De-
31 velopment Account are not subject to sections 20, 25 or 26, chapter 907,

1 **Oregon Laws 2009.**

2 **SECTION 18.** Section 17, chapter 907, Oregon Laws 2009, is amended to
3 read:

4 **Sec. 17.** (1) As used in this section, “critical ground water storage
5 project” means an underground or below-ground storage of river water in a
6 critical ground water area designated under ORS 537.730 for use in:

7 (a) Aquifer storage and recovery as described in ORS 537.534 and
8 streamflow augmentation and restoration; or

9 (b) Recharging ground water basins and reservoirs as described in ORS
10 537.135 and streamflow augmentation and restoration.

11 (2) The Water Resources Department may issue a grant under this section
12 only for a critical ground water storage project that is located in the
13 Umatilla Basin and that meets the conditions described in this section.

14 (3)(a) [*Except as provided in subsection (4) of this section, notwithstanding*
15 *ORS 537.534,*] If the project uses artificial recharge to recharge an alluvial
16 aquifer that is not confined, the project must be designed:

17 [(a)] (A) To provide [*for no more than 75 percent of new stored water to*
18 *be withdrawn and for not less than 25 percent of the new water to be dedicated*
19 *for the purpose of providing*] net environmental public benefits [*or in-stream*
20 *benefits*] **in an amount equal to at least 25 percent of the water stored**
21 **by the project;** and

22 [(b)] (B) To the extent practicable, to [*return dedicated new stored water*
23 *for stream*] **deliver any net environmental public benefit water to be**
24 **provided in the form of in-stream flow** augmentation at a time of year
25 that the Water Resources Department, in consultation with the State De-
26 partment of Fish and Wildlife and relevant tribal governments, determines
27 will provide the maximum net environmental public benefit or in-stream
28 benefit.

29 (b) **Net environmental public benefit shall be determined under**
30 **paragraph (a) of this subsection based upon the lesser of the water**
31 **development amount described in a final grant report submitted by the**

1 **grantee to the department or 25,000 acre-feet of aquifer recharge.**

2 (4) If more than 25 percent of the funding for an aquifer storage and re-
3 covery project is from grants of state moneys and is not subject to repay-
4 ment, the project must be designed to [*dedicate for the purpose of providing*]
5 **provide** net environmental public benefit [*or in-stream benefit a percentage*
6 *of the new stored water created by the project*] **in an amount** that equals or
7 exceeds the percentage of funding for the project that is from grants of state
8 moneys. The Water Resources Department shall manage the [*dedicated in-*
9 *crement of new stored water*] **amount of water provided** for net environ-
10 mental public benefit [*and in-stream benefit*] **in the form of in-stream**
11 **flow.**

12 (5) On or before the earlier of six years after the issuance of the ground
13 water recharge permit or the date the water right certificate is issued, the
14 department shall quantify and legally protect in-stream the increment of new
15 water returned in stream from a project described in this section.

16 (6) The department shall require as a contractual condition for issuing the
17 grant, and as a condition of any new ground water recharge permit or water
18 right certificate issued for the project, that if the project receives grants or
19 loans from state moneys other than a grant issued under this section **or**
20 **other state moneys used to complete the feasibility design and pilot**
21 **phase of project development funded by a grant under this section**, the
22 project must be operated in a manner that actually dedicates the percentage
23 of new stored water for net environmental public benefit or in-stream benefit
24 that the project was designed to dedicate for those purposes.

25 (7) **At the request of the grantee, the terms and conditions of a**
26 **grant approved by the department under this section may be amended**
27 **to replace the terms and conditions originally imposed for the grant**
28 **with terms and conditions similar to the terms and conditions imposed**
29 **for grants issued from the Water Supply Development Account estab-**
30 **lished under section 2 of this 2013 Act.**

31 [(7)] (8) This section does not limit the authority granted the Environ-

1 mental Quality Commission or the Department of Environmental Quality
2 under ORS chapter 468B.

3 [(8)] (9) This section is repealed January 2, 2030.

4 **SECTION 19. This 2013 Act being necessary for the immediate**
5 **preservation of the public peace, health and safety, an emergency is**
6 **declared to exist, and this 2013 Act takes effect on its passage.**

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