

1 77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

2 **Senate Bill 839**

3 Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

4 **SUMMARY**

5 The following summary is not prepared by the sponsors of the measure and is not a
6 part of the body thereof subject to consideration by the Legislative Assembly. It is an
7 editor's brief statement of the essential features of the measure **as introduced**.

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

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

14 Declares emergency, effective on passage.

15 **A BILL FOR AN ACT**

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

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

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

20 **(1) "Conserved water," for a project involving the conservation of**
21 **water under ORS 537.455-500, has the meaning given that term in ORS**
22 **537.455.**

23 **(2) "Economic benefit" means:**

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

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

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

32 ~~—(d) Reduction the risk or damage that may occur in the absence of~~
33 ~~the project;~~

34 ~~—(e) Enhanced ability to leverage other funds; and~~

1 ~~_____ (f) Other improvements in economic conditions identified by the~~
2 ~~Water Resources Department.~~

3 ~~(3) “Environmental benefit” means:~~

4 ~~_____ (a) A measurable improvement in protected streamflows that:~~

5 ~~_____ (A) Restores the natural hydrograph;~~

6 ~~_____ (B) Restores floodplain function; or~~

7 ~~_____ (C) Supports state or federally listed sensitive, threatened or~~
8 ~~endangered fish species;~~

9 ~~_____ (b) A measurable improvement in ground water levels that enhances~~
10 ~~environmental conditions in ground water restricted areas or other areas;~~

11 ~~_____ (c) A measurable improvement in the quality of surface water or~~
12 ~~ground water;~~

13 ~~_____ (d) Water conservation;~~

14 ~~_____ (e) Increased ecosystem resiliency to climate change impacts;~~

15 ~~_____ (f) Improvements that address one or more limiting ecological~~
16 ~~factors in the project watershed; and~~

17 ~~_____ (g) Other improvements in environmental conditions identified by~~
18 ~~the department.~~

19 ~~(42) “Newly developed water” means the new increment of water:~~

20 ~~(a) Stored by a project that provides new or expanded storage; or~~

21 ~~_____ (b) Allocated under a secondary water right by a project that~~
22 ~~allocates water stored under an existing water right.~~

23 ~~_____ (a) Stored, for a project providing new or expanded storage;~~

24 ~~_____ (b) Allocated under a secondary water right, for a project involving~~
25 ~~the allocation of water stored under an existing water right;~~

26 ~~_____ (c) Conserved, as defined by the Allocation of Conserved Water~~
27 ~~Program, for a project involving the conservation of water under the~~
28 ~~Allocation of Conserved Water Program authorized by ORS 537.455-500;~~

29 ~~_____ (d) Reused before returning to the environment, for a water reuse~~
30 ~~project; or~~

31 ~~_____ (e) Treated, for a desalination or other water treatment project.~~

32 ~~(53) “Seasonally varying flows” means the streamflows needed to~~
33 ~~protect and maintain the following biological, ecological and physical~~
34 ~~functions in a given basin:~~

35 ~~(a) Stream channel development and maintenance;~~

36 ~~(b) Longitudinal, lateral and vertical connectivity to floodplains;~~

37 ~~(c) Sediment transport and deposition;~~

38 ~~(d) Migration triggers for upstream movement of adult fish and~~
39 ~~downstream movement of fry and juveniles;~~

40 ~~(e) Fish spawning and incubation;~~

1 (f) Juvenile fish rearing; and

2 (g) Adult fish passage.

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

4 ~~—(a) The promotion of public health and safety and local food~~
5 ~~systems;~~

6 ~~—(b) A measurable improvement in conditions for members of~~
7 ~~minority or low-income communities, tribal communities and other~~
8 ~~communities traditionally underrepresented in public processes;~~

9 ~~—(c) The promotion of recreation and scenic values;~~

10 ~~—(d) Contribution to the body of scientific data publicly available in~~
11 ~~Oregon;~~

12 ~~—(e) The promotion of state or local priorities;~~

13 ~~—(f) The promotion of place-based integrated water resources planning~~
14 ~~under the integrated state water resources strategy or of other~~
15 ~~collaborative basin planning efforts; and~~

16 ~~—(g) Other improvements in social or cultural conditions identified by~~
17 ~~the department.~~

18 SECTION 2. (1) The Water Supply Development Account is
19 established in the State Treasury, separate and distinct from the General
20 Fund, ~~and separate and distinct from the account created by Chapter~~
21 ~~907, Or Laws 2009. The account shall consist of moneys appropriated to~~
22 ~~the account by the Legislative Assembly, interest earned on the account,~~
23 ~~and any moneys received from other sources to carry out this 2013 Act.~~
24 ~~Interest earned by the Water Supply Development Account shall be~~
25 ~~credited to the account.~~ Moneys in the account are continuously
26 appropriated to the Water Resources Department for use in carrying out
27 ~~sections 1 to 16 of this 2013 Act.~~

28 (2) The department may expend moneys from the account to:

29 ~~(a) Make loans or grants for activities supporting the to evaluate~~
30 ~~assessment, planning and development of~~ in-stream and out-of-stream
31 water development projects, including but not limited to:

32 ~~(a) Loans and grants to:~~

33 (A) Repair or replacement of infrastructure;

34 (B) ~~Provide n~~New or expanded water storage;

35 (C) Improvement or alteration of operations of existing water storage
36 facilities;

37 (D) ~~Create n~~New, expanded, improved or altered water distribution,
38 conveyance or delivery;

39 (E) Allocation of stored water;

40 (F) Promotion of water reuse;

- 1 (G) Promotion of water conservation;
- 2 (H) ~~Provide s~~Streamflow protection or restoration;
- 3 (I) ~~Provide for w~~Water management or measurement; ~~and~~
- 4 (J) ~~Determining e~~ seasonally varying flow requirements;
- 5 ~~Carrying out comprehensive basin-wide studies; and~~

6 (b) Paying the related administrative costs of the department in
7 carrying out ~~sections 1 to 16 of~~ this 2013 Act.

8 SECTION 3. Loans and grants may be ~~made~~issued from the Water
9 Supply Development Account to persons as defined in ORS 536.007,
10 Indian tribes as defined in ORS 391.802 and ~~to~~ nonprofit organizations. If
11 an applicant is required to have a water management and conservation
12 plan, the plan must be ~~The Water Resources Department may require an~~
13 ~~applicant that is a municipal or agricultural water supplier to have water~~
14 ~~management and conservation plans~~ submitted to or approved by the
15 department prior to department acceptance of an application for a loan or
16 grant from the account.

17 SECTION 4. (1) A potential applicant for a loan or grant from the
18 Water Supply Development Account may participate in a preapplication
19 conference with the Water Resources Department.

20 (2) At the preapplication conference, the department shall inform
21 the potential applicant of the procedural and substantive requirements of
22 a loan or grant application and of the scoring system used by the
23 department to evaluate loan and grant requests. The department shall
24 ~~assist help~~ the potential applicant ~~by~~to identifying known issues that may
25 affect project eligibility for a loan or grant from the account.

26 (3) Not less than 14 days before the preapplication conference, the
27 applicant must provide the department with adequate project information
28 to prepare for the preapplication conference.

29 (4) The applicant may request additional preapplication consultation
30 with the department.

31 SECTION 5. (1) For the purposes of scoring and ranking grant and
32 loan applications under this 2013 Act, public benefits are divided into
33 three equally important categories: economic benefits, environmental
34 benefits, and social or cultural benefits. A project that seeks funding
35 from the Water Supply Development Account will be evaluated based on
36 its public benefits, and the Department will award funding to those
37 projects that provide the greatest public benefits.

38 (2) The Water Resources Department shall evaluate economic
39 benefits based on the improvement of economic conditions expected to
40 result from a project, which benefits may include, but are not limited to:

- (a) Job creation or retention;
- (b) Increased local, state or tribal revenues;
- (c) Increased efficiency or innovation;
- (d) Enhanced infrastructure; farmland, public resource lands, industrial lands, commercial lands, or other key land uses;
- (e) Enhanced economic value associated with tourism, recreational or commercial fisheries, or other economic benefits of restoring or protecting water in-stream.

(3) The Water Resources Department shall evaluate environmental benefits based on the improvement of environmental conditions expected to result from a project, which benefits may include, but are not limited to:

- (a) A measurable improvement in protected streamflows that:
 - (A) Restores the natural hydrograph;
 - (B) Restores floodplain function; or
 - (C) Supports state or federally listed sensitive, threatened or endangered fish species;
- (b) A measurable improvement in ground water levels that enhances environmental conditions in ground water restricted areas or other areas;
- (c) A measurable improvement in the quality of surface water or ground water;
- (d) Water conservation;
- (e) Increased ecosystem resiliency to climate change impacts;
- (f) Improvements that address one or more limiting ecological factors in the project watershed; and
- (g) Other improvements in environmental conditions.

(4) The Water Resources Department shall evaluate social and cultural benefits based on the improvement of social or cultural conditions expected to result from a project, which benefits may include, but are not limited to:

- (a) The promotion of public health and safety and local food systems;
- (b) A measurable improvement in conditions for members of minority or low-income communities, tribal communities or other communities traditionally under-represented in public processes;
- (c) The promotion of recreation and scenic values;
- (d) Contribution to the body of scientific data publicly available in Oregon;
- (e) The promotion of state or local priorities;

(f) The promotion of collaborative basin planning efforts using a place-based integrated water resources planning approach under the state integrated water resources strategy; and

(g) Other improvements in social or cultural conditions.

SECTION 65. Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:

(1) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed.

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

(3) Current contact information for the principal contact, fiscal officer and involved landowners.

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

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

(6) An itemized budget for the project, including fiscal and administrative costs.

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

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

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

(10) A completed feasibility analysis if appropriate.

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

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

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

(14) Letters of support for the proposed project.

(15) Any other information required by the department.

SECTION 76. (1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking ~~project types for purposes of determining which projects receive loans and grants from the Water Supply Development Account. The system shall be designed to provide~~

1 ~~funding for projects having the greatest public benefit~~ projects, including
2 minimum criteria, for purposes of determining which projects to award
3 loans and grants from the Water Supply Development Account. The
4 system shall be based on the public benefit categories set forth in Section
5 5 of this 2013 Act. The Water Resources Department shall make the loan
6 and grant funding decisions once each year. The department shall accept
7 an application for a loan or grant at any time but shall establish a yearly
8 deadline to consider a pool of applications.

9 (2) The department shall conduct a preliminary review, checking for
10 completeness, eligibility and minimum requirements upon receipt of each
11 application. The department shall return incomplete applications to the
12 applicant. The department shall provide public notice by posting new
13 funding applications on the department's website for a 60-day period prior
14 to reviewing the applications. The department shall provide for the
15 receipt of public comment on the applications during the 60-day period
16 that applications are posted on the department's website.

17 (3) The department shall ~~conduct a preliminary review and scoring~~
18 ~~of all applications and submit the results forward complete applications,~~
19 along with any comments received from applicants or the public, to a
20 technical review team consisting of representatives of the department,
21 the Department of Environmental Quality, the State Department of Fish
22 and Wildlife, the State Department of Agriculture, affected Indian tribes
23 and additional experts as determined by the Water Resources Department.
24 The technical review team shall score and rank the projects described in
25 the applications, consider comments from applicants and the public and
26 return loan and grant funding recommendations to the Water Resources
27 Department. ~~Before the department makes a final decision on an~~
28 ~~application, the department shall offer one additional opportunity for~~
29 ~~public comment~~ The Water Resources Commission shall make the final
30 decision about which loan or grant application to fund. Before the
31 Commission makes a final decision on an application, the Commission
32 shall offer one additional opportunity for public comment.

33 (4) ~~The department shall evaluate a project that is the subject of an~~
34 ~~application for a loan or grant from the account to determine the social~~
35 ~~and cultural benefits, economic benefits and environmental benefits of~~
36 ~~the project. The department shall issue loans or grants to projects that~~
37 ~~the department determines to have the greatest overall benefit.~~

38 (54) The department is not required to obligate all available ~~account~~
39 moneys in the Water Supply Development Account during a funding cycle.
40 Any available account moneys that are not obligated during a funding

1 cycle shall be carried forward and be made available for projects in future
2 funding cycles.

3 (65) The department shall document the ranking of all applications
4 and make the application ranking publicly available after funding
5 decisions have been published.

6 SECTION 87. ~~(1) The Water Resources Department shall design~~
7 ~~criteria for the project scoring and ranking system described in section 6~~
8 ~~of this 2013 Act to achieve the following outcomes~~(1) The criteria for
9 project scoring and ranking shall be designed to achieve the following
10 outcomes:

11 (a) The issuance of grants or loans only to projects that provide
12 benefits in each ~~category of public benefit of the three categories of public~~
13 ~~benefit set forth in section 5 of this 2013 Act;~~

14 (b) Preference for partnerships and collaborative projects;

15 (c) The funding of projects of diverse sizes, types and geographic
16 locations;

17 (d) For projects that propose to divert water, preference for those
18 projects that provide a measurable improvement in protected
19 streamflows.

20 (2) The department shall review the loan and grant program on a
21 biennial basis to assess to what extent the outcomes described in
22 subsection (1) of this section are being achieved, report the review
23 findings to the Water Resources Commission and modify the project
24 selection process as necessary to better achieve the outcomes described
25 in subsection (1) of this section.

26 SECTION 9. (1) The department may, notwithstanding Sections 2, 7
27 and 8 any other sections of this 2013 act, provide funding from the Water
28 Supply Development Account to support:

29 (a) Ongoing studies conducted by the United States Army Corps of
30 Engineers to reallocate federal stored water; and

31 (b) Comprehensive basin studies conducted by the United States
32 Bureau of Reclamation.

33 SECTION 108. (1) The recipient of a grant from the Water Supply
34 Development Account must agree to the conditions set forth in
35 subsection (2) of this section if the grant is for the development of a new
36 or expanded above-ground storage facility that:

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

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

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

1 (2) Twenty-five percent of ~~the conserved water or~~ newly developed
2 water from a project described in subsection (1) of this section must be
3 dedicated to in-stream use.

4 SECTION 119. (1) A project that receives a loan or grant from the
5 Water Supply Development Account must:

6 (a) ~~Demonstrate social and cultural benefits or economic benefits~~
7 ~~sufficient to qualify the~~ Demonstrate social or cultural benefits and
8 economic benefits sufficient to qualify the project under the scoring and
9 ranking system described in section 56 of this 2013 Act; and

10 (b) Demonstrate environmental benefits:

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

13 (B) If the project is not subject to section 810 of this 2013 Act,
14 other environmental benefits sufficient to qualify the project under the
15 scoring and ranking system described in section 56 of this 2013 Act.

16 SECTION 1210. If a project dedicates water to in-stream use under
17 the requirements described in section 810 of this 2013 Act or as allowed
18 under section 911 of this 2013 Act, the Resources Department shall
19 protect dedicated water in-stream. Dedicated water may come from
20 newly developed water or other sources, and may be put instream at other
21 locations in the watershed ~~Water Resources Department shall issue in-~~
22 ~~stream use permits for the dedicated water. Dedicated water may come~~
23 ~~from other sources and be put in-stream at other locations in the~~
24 watershed if the department, in consultation with the State Department
25 of Fish and Wildlife, determines that the alternate location would provide
26 greater or equal environmental benefit. The Water Resources Department,
27 in consultation with the State Department of Fish and Wildlife, shall
28 determine the timing of the flows to maximize in-stream benefits in a
29 manner consistent with public health and safety.

30 SECTION 1311. (1) The Water Resources Department shall make a
31 determination as provided under subsection (2) of this section if an
32 application for a loan or grant from the Water Supply Development
33 Account is for a project that requires a new water storage or aquifer
34 recharge permit, certificate or limited license outside of the official
35 irrigation season and:

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

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

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

1 **(2) The department shall review a completed application for a**
2 **project described in subsection (1) of this section to determine whether**
3 **seasonally varying flow requirements have been established for the stream**
4 **of interest. If the department determines that the requirements have not**
5 **been established, the department shall establish seasonally varying flow**
6 **requirements before issuing a loan or grant from the account. For**
7 **purposes of establishing the requirements, the department may rely upon**
8 **existing scientific data and analysis or may fund new data and analysis.**
9 **The department may use account moneys to pay the cost of establishing**
10 **seasonally varying flow requirements.**

11 **(3) The department shall develop methods and standards for**
12 **establishing seasonally varying flows in consultation with the State**
13 **Department of Fish and Wildlife and affected Indian tribes.**

14 ~~**(4) The Water Resources Department shall provide the applicant and**~~
15 ~~**the public an opportunity for comment prior to establishing seasonally**~~
16 ~~**varying flow requirements under subsection (2) of this section. The**~~
17 ~~**burden of rebutting the accuracy of a seasonally varying flow requirement**~~
18 ~~**proposed by the department is on the applicant or member of the public.**~~

19 ~~**(5) The department shall condition any new water storage or aquifer**~~
20 ~~**recharge permit, certificate or limited license issued for a project**~~
21 ~~**receiving a grant or loan from the account upon the project complying**~~
22 ~~**with seasonally varying flow requirements.**~~

23 **(4) Once a seasonally varying flow requirement has been established,**
24 **the department shall condition any new water storage permit, certificate,**
25 **or limited license associated with a project receiving a grant or loan from**
26 **the Water Supply Development Account to protect seasonally varying flow**
27 **requirements.**

28 **(5) After a seasonally varying flow requirement has been established,**
29 **the department shall condition subsequent water permits, certificates,**
30 **and limited licenses as necessary to protect those flow requirements.**

31 **(6) The process described in this section should be used to develop**
32 **permit conditions, after a determination of water availability has been**
33 **completed and water right applicants have met all existing permit**
34 **requirements as described in statute, rule, and policy.**

35 **(7) A seasonally varying flow requirement for a stream under this**
36 **Section shall be entitled to a rebuttable presumption of accuracy.**

37 **SECTION 1412. (1) Before loan or grant moneys are expended from**
38 **the Water Supply Development Account for any construction project, the**
39 **recipient must obtain all applicable local, state, tribal and federal permits**
40 **and show that the project complies with local land use laws. Project**

1 materials must include a notation indicating that Water Resources
2 Department funding was used for the project.

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

5 (3) Loan or grant recipients must complete and operate the funded
6 project as described in the loan or grant application. Before commencing
7 implementation of a project funded with account moneys, the recipient
8 must demonstrate to the satisfaction of the department that the public
9 benefits identified for the project, including any environmental benefits
10 proposed at a location other than the project site, will be realized in a
11 timely fashion.

12 (4) At regular intervals, and upon completion of the project, the loan
13 or grant recipient must submit updates to the department that describe
14 the completed work, the public benefits achieved and project
15 expenditures. The recipient must regularly measure and report the water
16 diverted and used from the project. The recipient must monitor, evaluate
17 and maintain the projects for the life of the loan, or for a specified
18 number of years for a grant, and provide annual progress reports to the
19 department. The department may impose other project specific
20 conditions by noting the conditions during project evaluation and
21 including the condition in the funding agreement for the project.

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

25 **SECTION ~~1513~~.** (1) The Water Resources Commission shall adopt
26 rules establishing standards for borrowers obtaining loans issued from the
27 Water Supply Development Account. The commission shall design the
28 standards to ensure that all loans have a high probability of repayment
29 and that all loans are adequately secured in the event of a default. The
30 commission shall solicit comments from the Oregon Department of
31 Administrative Services and the State Treasurer when designing the
32 standards. The standards may include, but need not be limited to,
33 standards that give preference to entities with ad valorem taxing
34 authority.

35 (2) If the Water Resources Department approves the financing for
36 the implementation of a water development project, the department and
37 the applicant may enter into a loan contract, secured by a first lien or by
38 other good and sufficient collateral in the manner provided in ORS
39 541.740.

1 **SECTION 1614.** The Water Resources Department may enter into
2 water service contracts to recover all or a portion of moneys
3 ~~loaned~~~~expended~~ from the Water Supply Development Account. Moneys
4 received through the water service contracts, or as repayment of account
5 loans, must be deposited in the account.

6 **SECTION 1715.** The Water Resources Commission ~~may~~~~shall~~ adopt
7 rules to implement sections 1 to 186 of this 2013 Act in addition to those
8 required under sections 7 and 15.

9 ~~**SECTION 16.** The Water Resources Department may:~~

10 ~~—— (1) Invest in water development projects;~~

11 ~~—— (2) Assess the feasibility of water development projects; and~~

12 ~~—— (3) Enter into and issue contracts to put water to beneficial use.~~

13 ~~**SECTION 17.** Grants and loans issued from the Water Supply~~
14 ~~Development Account are not subject to sections 20, 25 or 26, chapter~~
15 ~~907, Oregon Laws 2009.~~

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

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

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

23 (b) Recharging ground water basins and reservoirs as described in ORS
24 537.135 and streamflow augmentation and restoration.

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

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

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

36 [(b)] **(B)** To the extent practicable, to *[return dedicated new stored water*
37 *for stream]* **deliver any net environmental public benefit water to be**
38 **provided in the form of in-stream flow** augmentation at a time of year that
39 the Water Resources Department, in consultation with the State Department of

1 Fish and Wildlife and relevant tribal governments, determines will provide the
2 maximum net environmental public benefit or in-stream benefit.

3 ~~(b) Net environmental public benefit shall be determined under~~
4 ~~paragraph (a) of this subsection based upon the lesser of the water~~
5 ~~development amount described in a final grant report submitted by the~~
6 ~~grantee to the department or 25,000 acre-feet of aquifer recharge. For~~
7 ~~purposes of determining the net environmental public benefit required~~
8 ~~under subsection (3) of this section for the grant approved by the Water~~
9 ~~Resources Department under this section, the “project” shall be the~~
10 ~~development of up to 25,000 acre-feet of aquifer recharge as described in~~
11 ~~a final grant report submitted by the grantee to the Water Resources~~
12 ~~Department.~~

13 (4) If more than 25 percent of the funding for an aquifer storage and
14 recovery project is from grants of state moneys and is not subject to
15 repayment, the project must be designed to [*dedicate for the purpose of*
16 *providing*] **provide** net environmental public benefit [*or in-stream benefit a*
17 *percentage of the new stored water created by the project*] **in an amount** that
18 equals or exceeds the percentage of funding for the project that is from grants
19 of state moneys. The Water Resources Department shall manage the [*dedicated*
20 *increment of new stored water*] **amount of water provided** for net
21 environmental public benefit [*and in-stream benefit*] **in the form of in-stream**
22 **flow.**

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

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

36 (7) **At the request of the grantee, the terms and conditions of a grant**
37 **approved by the department under this section shall** ~~may~~ **be amended to**
38 **replace the terms and conditions originally imposed for the grant with**
39 **terms and conditions consistent with this section of this 2013 Act.**

1 [(7)] **(8)** This section does not limit the authority granted the
2 Environmental Quality Commission or the Department of Environmental
3 Quality under ORS chapter 468B.

4 [(8)] **(9)** This section is repealed January 2, 2030.

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