

---

# MEMORANDUM

Legislative Fiscal Office  
900 Court St. NE, Room H-178  
Salem, Oregon 97301  
Phone 503-986-1828  
FAX 503-373-7807

---

**To:** *Natural Resources Subcommittee*

**From:** *Susie Jordan, Legislative Fiscal Office*  
*(503) 986-1835*

**Date:** June 27, 2013

**Subject:** *SB 839*  
*Work Session Recommendations*

---

SB 839 establishes a Water Supply Development Account and continuously appropriates funds to the Water Resources Department (WRD). WRD is authorized to expend money from the account for making loans and grants for qualifying projects; costs of administering loans and grants; and to support ongoing studies conducted by the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation to allocated stored water. The measure further:

- Establishes application requirements for in-stream and out of stream water development projects;
- Provides prospective applicant opportunity to participate in a pre-application conference;
- Requires WRD to develop system for scoring and ranking projects and prescribes minimum criteria;
- Requires public notice and receipt of public comment on applications;
- Requires preliminary review and initial scoring by a technical review team from WRD, DEQ, ODFW, ODA, OBDD, affected Indian tribes and others;
- Specifies Water Resource Commission (WRC) makes final decision on scores and ranking of projects and based on greatest public benefits; Requires WRC to offer additional opportunity for public comments before final decision;
- Requires awards be made each year;
- Specifies public benefits are economic, environmental, and social or cultural benefits are given equal weight;
- Requires recipient of grant for development of new or expanded above-ground storage facility meets specified standards; dedicate 25% of conserved or newly developed water to in-stream use;
- Specifies that any other project can demonstrate sufficient environmental benefit by dedicating 25% of conserved or newly developed water to in-stream use or by demonstrating other sufficient environmental benefit;
- Requires WRD to make determination of seasonally varying flow requirements if application is for project that requires issuance of new water storage or aquifer recharge permits or limited license outside official irrigation season with certain parameters;
- Allows recipient of grant for critical ground water storage project in Umatilla Basin

- to apply for change in grant terms and conditions
- Requires Governor to convene task group to review structure of water development project loans and grants; provides for reasonable travel expenses to be reimbursed from the Water Supply Account; requires report from the task force to Governor, interim committee of the legislature related to natural resources not later than July 1, 2014; Sunsets water development task force July 2, 2017.
  - Requires Governor to appoint a task force to act as an advisory body on the functional needs of watersheds for seasonally varying flows and financial feasibility of new water storage projects; provides for reasonable travel expenses to be reimbursed from the Water Supply Account; Requires report to Governor, interim legislative committee related to natural resources and WRC not later than July 1, 2014. Sunsets watershed task force January 2, 2015.

The measure, the original staff measure summary, preliminary Joint Committee on Ways and Means staff measure summary, revenue impact statement [if available], and fiscal impact statement are available on the Oregon Legislative Information System (OLIS).

The measure previously had a public hearing in April before the Senate Committee on Environment and Natural Resources and was referred to the Committee on Ways and Means.

The measure has a \$415,531 General Funds fiscal impact impact for the 2013-15 biennium that was approved in SB 5547. In addition, the measure establishes a water supply development account for which it is anticipated lottery-backed bond proceeds will be deposited in to fund grants and loans anticipated by the bill. The measure establishes two task forces with a fiscal impact of \$30,000 General Fund.

### Amendment

There is a –A19 amendment to the measure that replaces the original bill. The amendment clarifies provisions of previous versions of the bill and adds an appropriation of \$30,000 General Fund to support the two task forces.

### **Motion #2: Move the –A19 amendment to SB 839-A**

### **Measure as Modified**

The measure, as amended, is recommended to be moved to the full Committee on Joint Ways and Means.

### **Motion #3: Move SB 839-A to the full committee with a “do pass” recommendation, as amended.**

### **Assignment of Carriers**

Full: \_\_\_\_\_  
2nd Chamber: \_\_\_\_\_

**FISCAL IMPACT OF PROPOSED LEGISLATION**

Measure: SB 839 - A18

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office***Only Impacts on Original or Engrossed  
Versions are Considered Official***

---

Prepared by: Krista McDowell  
Reviewed by: Susie Jordan, Steve Bender, Paul Siebert  
Date: 6/26/2013

---

**Measure Description:**

Establishes Water Supply Development Account.

**Government Unit(s) Affected:**

Water Resources Department, Department of Agriculture, Business Development Department (Business Oregon), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW)

**Summary of Expenditure Impact:**

See analysis

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

This bill establishes a Water Supply Development Account in the State Treasury for the purpose of funding qualifying projects with grants or loans. Criteria for application and receipt of funds are established in the bill. The 2013-15 legislatively adopted budget for the Water Resources Department (WRD) budget provides \$415,000 General Fund and two (2.0 FTE) staff to carry out technical provisions of this measure and administrative support for the task forces. Lottery-backed bonds have been requested in SB 5506 to provide \$10 million for which the agency anticipates utilizing to carry out the capital grant and loan provisions of the bill. Senate Bill 5506 has not been approved at this time.

Under provisions of the bill the WRD is directed to establish seasonally varying flows before issuing a loan or grant and may use account moneys to pay the costs of establishing a seasonally varying flow and to pay other costs directly related to the project development. Between two to four grants or loans per biennium are assumed to meet the criteria for which such action will be required. It is expected that these costs will be absorbable within the parameters of the agency's budget; however in the event those resources are unavailable, funds from the Water Supply Development Account would be considered for use if it meets the allowable uses of bonded funds.

Costs associated with bond issuance and debt service, including expenses incurred by securing a loan applicant(s) first lien or other collateral, are also expected to be funded from the Water Supply Development Account.

The Water Resources Commission is directed to adopt rules as well as set operative and repeal dates for certain sections in the measure by January 1, 2015. Costs associated with rule making are assumed to be absorbable within the parameters of the agency's legislatively adopted budget.

The bill creates two task forces whose members may be reimbursed for actual and necessary travel and other expenses. Assuming each task force has eight to ten members, meeting six to eight times; the estimated fiscal impact would be \$30,000 to \$40,000 General Fund or \$2,500 per meeting. This assumes that about half the members will have significant travel time with a quarter of the members needing overnight lodging for meetings and the cost of a meeting room in a central location. The bill specifies that claims for these expenses shall be paid out of funds appropriated to the department for

purposes of the task force. No provision has been made for these expenses in the agency budget approved by the Legislature. Bond proceeds would not be an allowable use for expenses of the task forces.

A minimal fiscal impact or a reprioritization of existing work is estimated to the following agencies that are part of the technical review team to score and rank projects: Department of Agriculture, Business Development Department (Business Oregon), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW). While this individual measure has a "Minimal" fiscal impact to these previously stated agencies, an agency may incur a net fiscal impact greater than minimal depending on the cumulative impact of all measures enacted into law that affect the agency.

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 839**

1 On page 1 of the printed A-engrossed bill, line 2, after “amending” delete  
2 the rest of the line and line 3 and insert “ORS 541.700, 541.710, 541.720,  
3 541.730, 541.740 and 541.830 and sections 17, 33, 34 and 46, chapter 907,  
4 Oregon Laws 2009; repealing ORS 541.600, 541.606, 541.611, 541.616, 541.621,  
5 541.631, 541.636, 541.641, 541.646 and 541.725; appropriating money; and de-  
6 claring an emergency.”.

7 Delete lines 5 through 22 and delete pages 2 through 10 and insert:

8 **“SECTION 1. As used in sections 1 to 15 of this 2013 Act:**

9 **“(1) ‘Newly developed water’ means the new increment of water:**

10 **“(a) Stored for a project providing new or expanded storage;**

11 **“(b) Allocated to a use under a secondary water right for a project**  
12 **involving the allocation of previously uncontracted water stored by the**  
13 **United States Army Corps of Engineers under an existing water right;**  
14 **or**

15 **“(c) Conserved for a project to allocate conserved water under the**  
16 **program described in ORS 537.455 to 537.500.**

17 **“(2) ‘Seasonally varying flows’ means the duration, timing, fre-**  
18 **quency and volume of flows, identified for the purpose of determining**  
19 **conditions for a new or expanded storage project, that must remain**  
20 **in-stream outside of the official irrigation season in order to protect**  
21 **and maintain the biological, ecological and physical functions of the**  
22 **watershed downstream of the point of diversion, with due regard given**

1 to the need for balancing the functions against the need to store water  
2 for multiple purposes.

3 **“SECTION 2. (1) The purpose of sections 1 to 15 of this 2013 Act is**  
4 **to establish a means for state government to support the development**  
5 **of water resource projects having economic, environmental and com-**  
6 **munity benefits.**

7 **“(2) The Legislative Assembly intends that any conditions or re-**  
8 **quirements described in sections 1 to 15 of this 2013 Act apply only to**  
9 **projects that receive loans or grants from the Water Supply Develop-**  
10 **ment Account established in section 3 of this 2013 Act.**

11 **“SECTION 3. (1) The Water Supply Development Account is estab-**  
12 **lished in the State Treasury, separate and distinct from the General**  
13 **Fund. Interest earned by the Water Supply Development Account shall**  
14 **be credited to the account. Moneys in the account are continuously**  
15 **appropriated to the Water Resources Department for use in carrying**  
16 **out sections 1 to 15 of this 2013 Act.**

17 **“(2) The department may expend moneys from the account for:**

18 **“(a) Subject to subsection (4) of this section, making loans and**  
19 **grants to evaluate, plan and develop in-stream and out-of-stream wa-**  
20 **ter development projects approved by the Water Resources Commis-**  
21 **sion, including but not limited to projects that:**

22 **“(A) Repair or replace infrastructure to increase the efficiency of**  
23 **water use;**

24 **“(B) Provide new or expanded water storage;**

25 **“(C) Improve or alter operations of existing water storage facilities**  
26 **in connection with newly developed water;**

27 **“(D) Create new, expanded, improved or altered water distribution,**  
28 **conveyance or delivery systems in connection with newly developed**  
29 **water;**

30 **“(E) Allocate federally stored water;**

1       “(F) Promote water reuse;

2       “(G) Promote water conservation;

3       “(H) Provide streamflow protection or restoration;

4       “(I) Provide for water management or measurement in connection  
5 with newly developed water; and

6       “(J) Determine seasonally varying flows in connection with newly  
7 developed water.

8       “(b) Paying the necessary administrative and technical costs of the  
9 department in carrying out sections 1 to 15 of this 2013 Act.

10       “(3)(a) In addition to any other permissible uses of moneys in the  
11 account, the department may expend moneys from the account to  
12 support:

13       “(A) Ongoing studies conducted by the United States Army Corps  
14 of Engineers to allocate stored water; and

15       “(B) Comprehensive basin studies conducted by the United States  
16 Bureau of Reclamation.

17       “(b) Expenditures described in this subsection are not subject to any  
18 grant or loan procedures, public benefit scoring or ranking or other  
19 requirements or restrictions for grants or loans established under  
20 sections 1 to 15 of this 2013 Act.

21       “(4) The department may expend account moneys under subsection  
22 (2) of this section for loans and grants to develop in-stream and out-  
23 of-stream water development projects only if the department deter-  
24 mines under ORS 540.530 that any transfer of water rights for the  
25 project will not injure existing water rights.

26       “SECTION 4. Loans and grants may be made from the Water Sup-  
27 ply Development Account to persons as defined in ORS 536.007, Indian  
28 tribes as defined in ORS 391.802 and nonprofit organizations. If an ap-  
29 plicant is required to have a water management and conservation  
30 plan, the plan must be submitted to the Water Resources Department

1 and receive approval prior to department acceptance of an application  
2 for a loan or grant from the account.

3 **“SECTION 5. (1) A prospective applicant for a loan or grant from**  
4 **the Water Supply Development Account may participate in a preap-**  
5 **plication conference with the Water Resources Department.**

6 **“(2) At the preapplication conference, the department shall inform**  
7 **the prospective applicant of the procedural and substantive require-**  
8 **ments of a loan or grant application and of the scoring system used**  
9 **to evaluate loan and grant requests. The department shall assist the**  
10 **prospective applicant by identifying known issues that may affect**  
11 **project eligibility for a loan or grant from the account.**

12 **“(3) Not less than 14 days before the preapplication conference, the**  
13 **prospective applicant must provide the department with adequate**  
14 **project information to prepare for the preapplication conference.**

15 **“(4) The prospective applicant may request additional preapplication**  
16 **consultation with the department.**

17 **“SECTION 6. Applications for a loan or grant from the Water Sup-**  
18 **ply Development Account must be in a form prescribed by the Water**  
19 **Resources Department and must include the following:**

20 **“(1) A description of the need, purpose and nature of the project,**  
21 **including what the applicant intends to complete and how the appli-**  
22 **cant intends to proceed.**

23 **“(2) Sufficient information to allow evaluation of the application**  
24 **based upon the public benefit scoring and ranking of the project.**

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

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

30 **“(5) The location of the proposed project, using public land survey**



1 reference points, latitude and longitude, county, watershed, river and  
2 stream mile, if appropriate.

3 “(6) An itemized budget for the project, including fiscal and ad-  
4 ministrative costs.

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

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

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

9 “(10) A completed feasibility analysis if appropriate.

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

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

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

17 “(14) Letters of support for the proposed project.

18 “(15) If required by the department, a description of consultations  
19 with affected Indian tribes regarding the project.

20 “(16) Any other information required by the department.

21 **“SECTION 7. (1) The Water Resources Commission shall adopt rules**  
22 **establishing a system for scoring and ranking projects to determine**  
23 **which projects are to be awarded loans and grants from the Water**  
24 **Supply Development Account, including but not limited to the appli-**  
25 **cation of minimum criteria designed to achieve the outcomes de-**  
26 **scribed in section 9 of this 2013 Act. The criteria shall be based on the**  
27 **public benefit categories described in section 8 of this 2013 Act. The**  
28 **commission shall make the loan and grant funding decisions once each**  
29 **year. Applications must be filed with the Water Resources Depart-**  
30 **ment. The department shall accept an application for a loan or grant**

1 at any time, but shall establish a yearly deadline for the consideration  
2 of a pool of applications.

3 “(2) The department shall conduct a preliminary review of applica-  
4 tions to check for completeness, eligibility and minimum requirements  
5 upon receipt of each application. The department shall return incom-  
6 plete applications to the applicant. The department shall provide pub-  
7 lic notice by posting new funding applications on the department’s  
8 website for a 60-day period prior to reviewing the applications. The  
9 department shall provide for the receipt of public comment on the  
10 applications during the 60-day period that applications are posted on  
11 the department’s website.

12 “(3) The department shall forward applications that have passed  
13 preliminary review, along with any comments received from applicants  
14 or the public, to a technical review team consisting of representatives  
15 of the Water Resources Department, the Department of Environ-  
16 mental Quality, the State Department of Fish and Wildlife, the State  
17 Department of Agriculture, the Oregon Business Development De-  
18 partment, affected Indian tribes, any collaborative body established  
19 by the Governor to address challenges, opportunities and priorities for  
20 the region affected by the project and additional experts as determined  
21 by the Water Resources Department. The technical review team shall  
22 conduct the initial scoring and ranking for the projects described in  
23 the applications, consider comments from applicants and the public  
24 and make loan and grant funding recommendations to the commis-  
25 sion. The commission shall determine the final scoring and ranking  
26 of projects and make the final decision regarding which projects are  
27 awarded loans or grants from the account. Before the commission  
28 makes a final decision on an application, the commission shall offer  
29 one additional opportunity for public comment.

30 “(4) The commission is not required to obligate all available account

1 moneys during a funding cycle. Any available account moneys that are  
2 not obligated during a funding cycle shall be carried forward and be  
3 made available for projects in future funding cycles.

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

7 **“SECTION 8. (1) Projects applying under section 7 of this 2013 Act**  
8 **for funding from the Water Supply Development Account shall be**  
9 **evaluated based upon the public benefits of the project. The evalu-**  
10 **ation must consider both positive and negative effects of a project. The**  
11 **three categories of public benefit to be considered in the project eval-**  
12 **uation are economic benefits, environmental benefits and social or**  
13 **cultural benefits. Each category of benefits shall be given equal im-**  
14 **portance in the evaluation of a project. The technical review team**  
15 **described in section 7 of this 2013 Act shall use the evaluation system**  
16 **to assign initial scores and rankings to projects. The Water Resources**  
17 **Commission shall use the evaluation system to assign final scorings**  
18 **and rankings to the projects. The commission shall award loan and**  
19 **grant funding from the account to the projects that have the greatest**  
20 **public benefit and will best achieve the outcomes described in section**  
21 **9 of this 2013 Act.**

22 “(2) The evaluation of economic benefits for a project shall be based  
23 on the changes in economic conditions expected to result from the  
24 project, including but not limited to conditions related to:

25 “(a) Job creation or retention;

26 “(b) Increases in economic activity;

27 “(c) Increases in efficiency or innovation;

28 “(d) Enhancement of infrastructure, farmland, public resource  
29 lands, industrial lands, commercial lands or lands having other key  
30 uses;

1       “(e) Enhanced economic value associated with tourism or recre-  
2       ational or commercial fishing, with fisheries involving native fish of  
3       cultural significance to Indian tribes or with other economic values  
4       resulting from restoring or protecting water in-stream; and

5       “(f) Increases in irrigated land for agriculture.

6       “(3) The evaluation of environmental benefits for a project shall be  
7       based on the changes in environmental conditions expected to result  
8       from the project, including but not limited to conditions related to:

9       “(a) A measurable improvement in protected streamflows that:

10       “(A) Supports the natural hydrograph;

11       “(B) Improves floodplain function;

12       “(C) Supports state or federally listed sensitive, threatened or en-  
13       dangered fish species;

14       “(D) Supports native fish species of cultural importance to Indian  
15       tribes; or

16       “(E) Supports riparian habitat important for wildlife;

17       “(b) A measurable improvement in ground water levels that en-  
18       hances environmental conditions in ground water restricted areas or  
19       other areas;

20       “(c) A measurable improvement in the quality of surface water or  
21       ground water;

22       “(d) Water conservation;

23       “(e) Increased ecosystem resiliency to climate change impacts; and

24       “(f) Improvements that address one or more limiting ecological  
25       factors in the project watershed.

26       “(4) The evaluation of the social or cultural benefits for a project  
27       shall be based on the changes in social or cultural conditions expected  
28       to result from the project, including but not limited to conditions re-  
29       lated to:

30       “(a) The promotion of public health and safety and of local food

1 systems;

2 “(b) A measurable improvement in conditions for members of mi-  
3 nority or low-income communities, economically distressed rural  
4 communities, tribal communities or other communities traditionally  
5 underrepresented in public processes;

6 “(c) The promotion of recreation and scenic values;

7 “(d) Contribution to the body of scientific data publicly available in  
8 this state;

9 “(e) The promotion of state or local priorities, including but not  
10 limited to the restoration and protection of native fish species of cul-  
11 tural significance to Indian tribes; and

12 “(f) The promotion of collaborative basin planning efforts, including  
13 but not limited to efforts under the state integrated water resources  
14 strategy.

15 **“SECTION 9. (1) The Water Resources Commission shall design the**  
16 **minimum criteria for the project scoring and ranking system described**  
17 **in section 7 of this 2013 Act to achieve the following outcomes:**

18 “(a) The issuance of grants or loans only to projects that provide  
19 benefits in each of the three categories of public benefit described in  
20 section 8 of this 2013 Act.

21 “(b) Preference for partnerships and collaborative projects.

22 “(c) The funding of projects of diverse sizes, types and geographic  
23 locations.

24 “(d) If a project proposes to divert water, preference for projects  
25 that provide a measurable improvement in protected streamflows.

26 “(e) If a project proposes to increase efficiency, preference for  
27 projects that provide a measurable increased efficiency of water use.

28 “(2) The Water Resources Department shall review the loan and  
29 grant program on a biennial basis to assess to what extent the out-  
30 comes described in subsection (1) of this section are being achieved,

1 and shall report the review findings to the Water Resources Commis-  
2 sion. The commission shall modify the project selection process as  
3 necessary to better achieve the outcomes described in subsection (1)  
4 of this section.

5 **SECTION 10.** (1) The recipient of a grant from the Water Supply  
6 Development Account must agree to the condition set forth in sub-  
7 section (2) of this section if the grant is for the development of a new  
8 or expanded above-ground storage facility that:

9 **“(a) Impounds surface water on a perennial stream;**

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

12 **“(c) Diverts more than 500 acre-feet of water annually.**

13 **“(2) Twenty-five percent of the newly developed water from a**  
14 **project described in subsection (1) of this section must be dedicated to**  
15 **in-stream use.**

16 **“(3) To establish that a project complies with subsection (2) of this**  
17 **section, the grant recipient may include water dedicated to in-stream**  
18 **use as a result of the conditions of federal, state or local permits for**  
19 **the project.**

20 **SECTION 11.** (1) A project that receives a loan or grant from the  
21 Water Supply Development Account must:

22 **“(a) Demonstrate social or cultural benefits and economic benefits**  
23 **sufficient to qualify the project under the scoring and ranking system**  
24 **described in section 7 of this 2013 Act; and**

25 **“(b) Except as otherwise provided in section 10 of this 2013 Act,**  
26 **demonstrate environmental benefits:**

27 **“(A) By dedicating 25 percent of conserved water or newly developed**  
28 **water to in-stream use; or**

29 **“(B) By demonstrating environmental benefits that are sufficient**  
30 **to qualify the project under the scoring and ranking system described**

1 in section 7 of this 2013 Act.

2 “(2) The description of public benefit requirements in subsection (1)  
3 of this section does not exempt any project from meeting the mini-  
4 mum criteria designed by the Water Resources Commission under  
5 section 9 of this 2013 Act.

6 “(3) To establish that a project complies with subsection (1)(b) of  
7 this section, the loan or grant recipient may include water dedicated  
8 to in-stream use as a result of the conditions of federal, state or local  
9 permits for the project.

10 **“SECTION 12.** If a project dedicates water to in-stream use under  
11 the requirements described in section 10 of this 2013 Act or as allowed  
12 under section 11 of this 2013 Act, the Water Resources Department  
13 shall protect the dedicated water in-stream consistent with the prior-  
14 ity of the dedicated water source. Dedicated water from projects may  
15 come from newly developed water or from other sources and may be  
16 put in-stream at other locations in the tributary if the department  
17 determines as provided under ORS 540.530 that the alternate location  
18 would not injure existing water rights and, in consultation with the  
19 State Department of Fish and Wildlife, determines that the alternate  
20 location would provide greater or equal environmental benefit. The  
21 Water Resources Department, in consultation with the State Depart-  
22 ment of Fish and Wildlife, shall determine the timing of the flows to  
23 maximize in-stream benefits in a manner consistent with public health  
24 and safety.

25 **“SECTION 13.** (1) The Water Resources Department shall make a  
26 determination as provided under subsection (2) of this section if an  
27 application for a loan or grant from the Water Supply Development  
28 Account is for a project that requires a new water storage or aquifer  
29 recharge permit or limited license for the storage of water outside of  
30 the official irrigation season and:

1       “(a) Impounds surface water on a perennial stream;

2       “(b) Diverts water from a stream that supports state or federally

3 listed sensitive, threatened or endangered fish species; or

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

5       “(2) The department shall review a completed application for a

6 project described in subsection (1) of this section to determine whether

7 the applicable seasonally varying flows have been established under

8 this section for the stream of interest. If the department determines

9 that the applicable seasonally varying flows have not been established,

10 the department shall establish the seasonally varying flows before is-

11 suing a loan or grant from the account. The department may use ac-

12 count moneys to pay the cost of establishing a seasonally varying flow

13 and to pay other costs directly related to project development.

14       “(3) The department shall establish any seasonally varying flows

15 under subsection (2) of this section in consultation with the State

16 Department of Fish and Wildlife and any affected Indian tribes. The

17 department may rely upon existing scientific data and analysis or may

18 fund new data and analysis. The department shall establish seasonally

19 varying flows using a methodology established by Water Resources

20 Commission rules. If seasonally varying flows are established for a

21 stream, a subsequent water storage or aquifer recharge permit or

22 limited license for the storage of water must be conditioned in ac-

23 cordance with the applicable seasonally varying flows if the license or

24 permit:

25       “(a) Is for a project receiving a loan or grant from the account;

26       “(b) Is for the storage of water outside of the official irrigation

27 season; and

28       “(c) Has a diversion point that is subject to seasonally varying

29 flows.

30       “(4) The applicant for a permit or license described in subsection (3)



1 of this section may request that seasonally varying flows be altered  
2 based upon new information. There is, however, a rebuttable  
3 presumption that existing applicable seasonally varying flows protect  
4 and maintain the biological, ecological and physical functions of the  
5 stream to the extent required by commission rules.

6 “(5) The department shall condition the new water storage permit  
7 and resulting certificate, new aquifer recharge permit and resulting  
8 certificate or new limited license associated with a project that re-  
9 ceives a grant or loan from the account to protect the seasonally  
10 varying flow in effect at the time the loan or grant is issued for the  
11 project.

12 “(6) For purposes of any project that receives a loan or grant from  
13 the account and has the characteristics described in subsection (1) of  
14 this section, or any project described in subsection (3) of this section,  
15 the department shall use a seasonally varying flow methodology pro-  
16 vided by commission rules in lieu of any other methodologies for de-  
17 termining seasonally varying flows or any methodologies for  
18 determining peak and ecological flows outside of the official irrigation  
19 season.

20 “(7) Subsections (1) to (6) of this section do not eliminate or alter  
21 any applicable standard for department review of an application to  
22 determine whether water is available for purposes of reviewing an ap-  
23 plication for a new water storage or aquifer recharge permit or a  
24 limited license for the storage of water.

25 “SECTION 14. (1) Before loan or grant moneys are expended from  
26 the Water Supply Development Account for the construction of a  
27 project, the recipient must obtain all applicable local, state and federal  
28 permits. Project materials must include a notation indicating that  
29 Water Resources Department funding was used for the project.

30 “(2) The loans or grants may be conditioned to require that the re-

1 recipient complete and operate the funded project as described in the  
2 loan or grant application. The department may require that before  
3 commencing the operation of a project funded with account moneys,  
4 the funding recipient demonstrate that the public benefits identified  
5 for the project, including any environmental benefits proposed at a  
6 location other than the project site, will be realized in a timely fash-  
7 ion.

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

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

22 “SECTION 15. (1) The Water Resources Commission shall adopt  
23 rules establishing standards for borrowers obtaining loans issued from  
24 the Water Supply Development Account. The commission shall design  
25 the standards to ensure that all loans have a high probability of re-  
26 payment and that all loans are adequately secured in the event of a  
27 default. The commission shall solicit comments from the Oregon De-  
28 partment of Administrative Services and the State Treasurer when  
29 designing the standards. The standards may include, but need not be  
30 limited to, standards that give preference to entities with ad valorem

1 **taxing authority.**

2 **“(2) If the Water Resources Department approves a loan from the**  
3 **account for the implementation of a water development project, the**  
4 **department may require that the applicant enter into a loan contract,**  
5 **secured by a first lien or by other good and sufficient collateral.**

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

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

11 **“(a)** Aquifer storage and recovery as described in ORS 537.534 and  
12 streamflow augmentation and restoration; or

13 **“(b)** Recharging ground water basins and reservoirs as described in ORS  
14 537.135 and streamflow augmentation and restoration.

15 **“(2)** The Water Resources Department may issue a grant under this sec-  
16 tion only for a critical ground water storage project that is located in the  
17 Umatilla Basin and that meets the conditions described in this section.

18 **“(3)(a)** [*Except as provided in subsection (4) of this section, notwithstand-*  
19 *ing ORS 537.534,*] If the project uses artificial recharge to recharge an  
20 alluvial aquifer that is not confined, the project must be designed:

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

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

1 will provide the maximum net environmental public benefit or in-stream  
2 benefit.

3 **“(b) For purposes of determining whether a project described in this**  
4 **subsection produces the required net environmental public benefit, the**  
5 **project shall be considered to be for the development of not more than**  
6 **25,000 acre-feet of aquifer recharge as described in a final grant report**  
7 **submitted by the grantee to the department.**

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

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

22 “(6) The department shall require as a contractual condition for issuing  
23 [*the grant*] **additional grant moneys for projects established as provided**  
24 **under this section**, and as a condition of any new ground water recharge  
25 permit or water right certificate issued for the project, that if the project  
26 receives grants or loans from state moneys other than a grant issued under  
27 this section **or other state moneys used to complete the feasibility de-**  
28 **sign and pilot phase of project development funded by a grant under**  
29 **this section**, the project must be operated in a manner that actually dedi-  
30 cates the percentage of new stored water for net environmental public ben-

1 efit or in-stream benefit that the project was designed to dedicate for those  
2 purposes.

3 “(7) This section does not limit the authority granted the Environmental  
4 Quality Commission or the Department of Environmental Quality under ORS  
5 chapter 468B.

6 “(8) This section is repealed [*January 2, 2030*] **July 1, 2015.**

7 **“SECTION 17. At the request of the grantee, the terms and condi-**  
8 **tions of a grant approved by the Water Resources Department under**  
9 **section 17, chapter 907, Oregon Laws 2009, prior to the effective date**  
10 **of this 2013 Act shall be amended to replace the terms and conditions**  
11 **originally imposed for the grant with terms and conditions similar to**  
12 **the terms and conditions imposed for grants issued under section 17,**  
13 **chapter 907, Oregon Laws 2009, as amended by section 16 of this 2013**  
14 **Act.**

15 **“SECTION 18. (1) The Governor, or a designee of the Governor,**  
16 **shall appoint a nonlegislative task force composed of members the**  
17 **Governor or designee deems to be appropriate and to be sufficiently**  
18 **representative of agricultural, municipal, conservation and tribal in-**  
19 **terests and of other groups having an interest in water resources de-**  
20 **velopment.**

21 **“(2) The task force shall meet at times and places specified by the**  
22 **Governor or the designee of the Governor.**

23 **“(3) The task force shall review the structure established for water**  
24 **development project loans and grants under sections 1 to 15 of this 2013**  
25 **Act and develop any proposals for changing the structure that the task**  
26 **force determines to be warranted. The review may include but need**  
27 **not be limited to possible changes in the long-term structure of the**  
28 **decision-making process regarding:**

29 **“(a) The appropriate role of the state in providing loan and grant**  
30 **funding for multipurpose water resource development under sections**

1 1 to 15 of this 2013 Act; and

2 “(b) The decision-making process for the allocation of newly devel-  
3 oped water from projects for which the uses of the water were not  
4 specified in the funding application.

5 “(4) The Water Resources Department shall provide staff support  
6 to the task force.

7 “(5) The task force shall submit a report in the manner provided in  
8 ORS 192.245, including any recommendations for legislation, to the  
9 Governor and to an interim committee of the Legislative Assembly  
10 related to natural resources no later than July 1, 2014.

11 “(6) Members of the task force are not entitled to compensation,  
12 but may be reimbursed for actual and necessary travel and other ex-  
13 penses incurred by them in the performance of their official duties in  
14 the manner and amounts provided for in ORS 292.495. Claims for ex-  
15 penses shall be paid out of funds appropriated to the department for  
16 purposes of the task force.

17 SECTION 19. (1) As used in this section:

18 “(a) ‘Consensus’ means that no more than one member of a sub-  
19 group or task force objects to the product of the subgroup or task  
20 force.

21 “(b) ‘Seasonally varying flows’ has the meaning given that term in  
22 section 1 of this 2013 Act.

23 “(2) The Governor shall appoint a task force consisting, subject to  
24 subsection (3) of this section, of such members as the Governor deems  
25 to be appropriate and sufficient to act as an advisory body on the  
26 functional needs of watersheds for seasonally varying flows and the  
27 financial feasibility of new water storage projects. The Governor shall  
28 consult with the President of the Senate, the Speaker of the House of  
29 Representatives, the Minority Leader of the Senate, the Minority  
30 Leader of the House of Representatives and the Water Resources

1 Commission prior to making appointments to the task force under this  
2 section.

3 “(3) The task force membership shall include, but need not be lim-  
4 ited to, a subgroup for addressing the functional needs of watersheds  
5 for seasonally varying flows and a subgroup to address the financial  
6 feasibility of new water storage projects. Each subgroup must have at  
7 least three members. Subgroup members must be persons with exper-  
8 tise in subjects relevant to the work of the subgroup. Task force  
9 members who are not subgroup members must be persons representing  
10 the interests of irrigated agriculture, municipal water suppliers,  
11 counties, the conservation community, Indian tribes, irrigation dis-  
12 tricts and industrial water users.

13 “(4) When carrying out its functions, the subgroup on functional  
14 needs for seasonally varying flows shall consider the biological, eco-  
15 logical and physical functions in watersheds during periods that are  
16 outside of the official irrigation season, including but not limited to:

17 “(a) Stream channel development and maintenance;

18 “(b) Connectivity to floodplains;

19 “(c) Sediment transport and deposition;

20 “(d) Migration triggers for upstream movement of adult fish and  
21 downstream movement of fry and juvenile fish;

22 “(e) Fish spawning and incubation;

23 “(f) Juvenile fish rearing; and

24 “(g) Adult fish passage.

25 “(5) When carrying out its functions, the subgroup on the financial  
26 feasibility of new water storage projects shall consider the practical  
27 aspects of developing and operating new water development projects,  
28 including but not limited to:

29 “(a) Practical engineering methods and applications;

30 “(b) The costs and benefits of the methodology and alternatives;

1       “(c) The economic feasibility of water storage development; and  
2       “(d) The cost of complying with environmental benefit standards.  
3       “(6)(a) The subgroups shall report their findings and recommen-  
4       dations to the full task force no later than February 1, 2014. The  
5       findings and recommendations of a subgroup must have a consensus  
6       of the subgroup. Any member of a subgroup who objects to the  
7       findings and recommendations of the subgroup may provide separate  
8       findings and recommendations to the task force.  
9       “(b) The task force shall meet at times and places specified by the  
10      Governor or a designee of the Governor. The task force shall consider  
11      the subgroup reports and by consensus develop a recommended meth-  
12      odology for determining seasonally varying flows that optimizes the  
13      functional benefits to watersheds while also recognizing that:  
14      “(A) Many of the functional benefits will not occur unless a new  
15      water storage project is financially feasible; and  
16      “(B) New water storage will not be appropriate or feasible in many  
17      locations.  
18      “(c) The recommended methodology developed by the task force  
19      must utilize the best available scientific knowledge. Any member of  
20      the task force who objects to the recommended methodology developed  
21      by the task force may provide a separate recommendation for a  
22      methodology to the parties receiving the report under subsection (7)  
23      of this section.  
24      “(7) The task force shall submit a report in the manner provided in  
25      ORS 192.245, including any recommendations for legislation, to the  
26      Governor, to an interim committee of the Legislative Assembly related  
27      to natural resources and to the Water Resources Commission no later  
28      than July 1, 2014.  
29      “(8) The Water Resources Department shall provide staff support  
30      to the task force.



1       “(9) Members of the task force are not entitled to compensation,  
2 but may be reimbursed for actual and necessary travel and other ex-  
3 penses incurred by them in the performance of their official duties in  
4 the manner and amounts provided for in ORS 292.495. Claims for ex-  
5 penses shall be paid out of funds appropriated to the department for  
6 purposes of the task force.

7       “SECTION 20. (1) On or after the date that the Water Resources  
8 Commission receives a copy of the task force report required under  
9 section 19 of this 2013 Act, the commission shall adopt rules to estab-  
10 lish a methodology for use in determining the seasonally varying flows  
11 for a stream of interest. In adopting the rules, the commission shall  
12 give consideration to adoption of the methodology described in the  
13 task force report. The commission shall complete adoption of the rule  
14 in time for the rule to take effect on January 1, 2015. As used in this  
15 subsection, ‘seasonally varying flow’ has the meaning given that term  
16 in section 1 of this 2013 Act.

17       “(2) The commission shall appoint the task force established in  
18 section 19 of this 2013 Act as provided in ORS 183.333 to act as an ad-  
19 visory committee to the commission for the consideration of rule  
20 adoption under this section.

21       “SECTION 21. Section 13 of this 2013 Act becomes operative January  
22 1, 2015.

23       “SECTION 22. Section 18 of this 2013 Act is repealed on the date of  
24 the convening of the 2015 regular session of the Legislative Assembly  
25 as specified in ORS 171.010.

26       “SECTION 23. Section 19 of this 2013 Act is repealed on the date of  
27 the convening of the 2016 regular session of the Legislative Assembly  
28 as specified in ORS 171.010.

29       “SECTION 24. In addition to and not in lieu of any other appropri-  
30 ation, there is appropriated to the Water Resources Department, for

1 the biennium beginning July 1, 2013, out of the General Fund, the  
2 amount of \$30,000, which may be expended for providing services to the  
3 task forces created in sections 18 and 19 of this 2013 Act and for paying  
4 the expenses of the task forces.

5 **“SECTION 25.** Notwithstanding section 3 of this 2013 Act, moneys  
6 may not be expended from the Water Supply Development Account for  
7 the construction of projects that:

8 **“(1)** Impound surface water on a perennial stream;

9 **“(2)** Diverts water from a stream that supports state or federally  
10 listed sensitive, threatened or endangered fish species; or

11 **“(3)** Diverts more than 500 acre-feet of water annually.

12 **“SECTION 26.** Section 25 of this 2013 Act is repealed January 2, 2015.

13 **“SECTION 27.** Notwithstanding section 3 of this 2013 Act, the Water  
14 Resources Department may expend moneys from the Water Supply  
15 Development Account for the purposes of paying the necessary ad-  
16 ministrative and technical costs of the department in carrying out  
17 sections 17 to 20 of this 2013 Act.

18 **“SECTION 28.** Section 27 of this 2013 Act is repealed July 1, 2017.

19 **“SECTION 29.** Section 33, chapter 907, Oregon Laws 2009, is amended to  
20 read:

21 **“Sec. 33.** (1) Notwithstanding [*sections 19 and 21 to 23 of this 2009 Act*]  
22 **ORS 541.611, 541.616, 541.621 and 541.631**, but subject to [*section 24 of this*  
23 *2009 Act*] **ORS 541.636**, the Water Resources Department shall waive the  
24 grant application process described in [*sections 19 and 21 to 23 of this 2009*  
25 *Act*] **ORS 541.611, 541.616, 541.621 and 541.631** when issuing a grant for  
26 water development projects that:

27 **“(a)** Are located in an area of the Umatilla Basin for which an assessment  
28 has been performed under chapter 13, Oregon Laws 2008; and

29 **“(b)** Except as provided in subsection (2) of this section, are designed:

30 **“(A)** To provide for no more than 75 percent of new stored water to be

1 withdrawn and for not less than 25 percent of the new water to be dedicated  
2 for the purpose of providing net environmental public benefits or in-stream  
3 benefits; and

4 “(B) To the extent practicable, to return dedicated new stored water for  
5 stream augmentation at a time of year that the Water Resources Department,  
6 in consultation with the State Department of Fish and Wildlife and relevant  
7 tribal governments, determines will provide the maximum net environmental  
8 public benefit or in-stream benefit.

9 “(2) If more than 25 percent of the funding for an aquifer storage and  
10 recovery project is from grants of state moneys and is not subject to repay-  
11 ment, the project must be designed to dedicate for the purpose of providing  
12 net environmental public benefit or in-stream benefit a percentage of the new  
13 stored water created by the project that equals or exceeds the percentage of  
14 funding for the project that is from grants of state moneys. The Water Re-  
15 sources Department shall manage the dedicated increment of new stored  
16 water for net environmental public benefit and in-stream benefit.

17 “(3) This section does not limit the authority granted the Environmental  
18 Quality Commission or the Department of Environmental Quality under ORS  
19 chapter 468B.

20 “(4) This section is repealed [January 2, 2030] **July 1, 2015.**

21 “**SECTION 30.** Section 34, chapter 907, Oregon Laws 2009, is amended to  
22 read:

23 “**Sec. 34.** Sections 20, 25 and 26 [of this 2009 Act], **chapter 907, Oregon**  
24 **Laws 2009,** are repealed [January 2, 2024] **July 1, 2015.** The repeal of  
25 sections 20, 25 and 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009,**  
26 by this section does not alter the terms of any loan, contract or other  
27 agreement issued under section 20, 25 or 26 [of this 2009 Act], **chapter 907,**  
28 **Oregon Laws 2009,** or alter the conditions of any water permit or water  
29 right certificate that contains conditions that are based upon sections 20, 25  
30 or 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009.**

1       **“SECTION 31.** Section 46, chapter 907, Oregon Laws 2009, as amended  
2 by section 74, chapter 9, Oregon Laws 2011, is amended to read:

3       **“Sec. 46.** (1) ORS 541.600, 541.616 and 541.641 and sections 20, 25 and 26,  
4 chapter 907, Oregon Laws 2009, and the amendments to ORS 541.700, 541.705,  
5 541.710, 541.720, 541.730, 541.740, 541.765, 541.770, 541.785, 541.830, 541.845 and  
6 541.850 by sections 3 to 14, chapter 907, Oregon Laws 2009, apply to loans  
7 from the Water Development Fund for which an application is filed on or  
8 after April 1, 2010.

9       “(2) The repeal of ORS 541.755 by section 15, chapter 907, Oregon Laws  
10 2009, becomes operative April 1, 2010.

11       “(3) The amendments to ORS 541.616, 541.641, 541.705, 541.710, 541.720,  
12 541.765, 541.785, 541.830 and 541.850 by sections 35 to 43, chapter 907, Oregon  
13 Laws 2009, become operative [*January 2, 2024*] **July 1, 2015.**

14       **“SECTION 32.** ORS 541.700 is amended to read:

15       “541.700. As used in ORS 541.700 to 541.855, unless the context requires  
16 otherwise:

17       “(1) ‘Commission’ means the Water Resources Commission appointed un-  
18 der ORS 536.022.

19       “(2) ‘Construction’ means the construction, or improvement or rehabili-  
20 tation, in whole or in part, of a water development project, including plan-  
21 ning and engineering work, purchasing or refinancing directly related to  
22 such construction or improvement or rehabilitation, or any combination of  
23 such construction or improvement or rehabilitation. As used in this sub-  
24 section:

25       “(a) ‘Purchasing’ means the purchasing of materials, land or existing fa-  
26 cilities necessary to complete a water development project.

27       “(b) ‘Refinancing’ includes refinancing existing debt of a water developer,  
28 as defined in subsection (7)(f) to (m) and (o) of this section, in order to  
29 complete a water development project or to provide adequate security for a  
30 water development loan, but does not include refinancing existing debt only

1 to reduce interest rates or costs to the borrower or to pay off existing debt.

2 “(3) ‘Director’ means the Water Resources Director appointed pursuant  
3 to ORS 536.032.

4 “(4) ‘Federal water development project’ means any water development  
5 project that receives funding from the federal government, or any agency or  
6 instrumentality of the United States.

7 “(5)(a) ‘Secondary use’ means:

8 “(A) Any water-related recreational use.

9 “(B) Any flood control use.

10 “(C) Any power generation use.

11 “(D) Any water supply system utilized as a domestic water system for the  
12 benefit of an individual residence related to the operation of the water de-  
13 velopment project.

14 “(b) ‘Secondary use’ does not include any use that is incompatible with  
15 a water development project.

16 “(6) ‘Water development project’ means:

17 “(a) An undertaking, in whole or in part, in this state for the purpose of  
18 irrigation, including structures for the application of water for agricultural  
19 harvest activities, dams, storage reservoirs, wells or well systems, pumping  
20 plants, pipelines, canals, ditches, revetments, water supply systems used for  
21 the purpose of agricultural temperature control and any other structure, fa-  
22 cility and property necessary or convenient for supplying lands with water  
23 for irrigation purposes.

24 “(b) An undertaking, in whole or in part, in this state for the purpose of  
25 drainage, including ditching, tiling, piping, channel improvement, pumping  
26 plants or other agronomically approved methods of land drainage that will  
27 increase soil versatility and productivity.

28 “(c) An undertaking, in whole or in part, in this state for the purpose of  
29 providing water for municipal use, which may include safe drinking water  
30 for communities with population less than 30,000, including dams, storage

1 reservoirs, wells or well systems, pumping plants, treatment facilities, pipe-  
2 lines, canals, ditches, revetments and all other structures and facilities nec-  
3 essary or convenient for supplying water. An undertaking may provide water  
4 to two or more communities with a combined population of more than 30,000.  
5 An undertaking may be part of a project that provides water to a community  
6 with a population of more than 30,000, but loans of moneys from the Water  
7 Development Fund, including moneys in ORS 285B.563 (11) may be made only  
8 to communities served by the project that have a population of less than  
9 30,000.

10 “(d) An undertaking, in whole or in part, in this state for the purpose of  
11 fish protection, including fish screening or by-pass devices, fishways and all  
12 other structures and facilities necessary or convenient for providing fish  
13 protection.

14 “(e) An undertaking, in whole or in part, in this state for the purpose of  
15 enhancing watershed health or improving fish habitat, including methods and  
16 materials to restore, maintain and enhance [*water quality, streamflows and*]  
17 the biological, chemical and physical integrity of the riparian zones and as-  
18 sociated uplands of the state’s rivers, lakes and estuaries systems and re-  
19 commended by the Oregon Watershed Enhancement Board established under  
20 ORS 541.900.

21 “(f) Secondary uses in conjunction with projects described in paragraphs  
22 (a) to (e) of this subsection.

23 “(7) ‘Water developer’ means:

24 “(a) Any individual resident of this state;

25 “(b) Any partnership for profit subject to the provisions of ORS chapter  
26 67 or 70, whose principal income is from farming in Oregon;

27 “(c) Any corporation for profit subject to the provisions of ORS chapter  
28 60, whose principal income is from farming in Oregon;

29 “(d) Any nonprofit corporation subject to the provisions of ORS chapter  
30 65, whose principal income is from farming in Oregon;

1 “(e) Any cooperative subject to the provisions of ORS chapter 62, whose  
2 principal income is from farming in Oregon;

3 “(f) Any irrigation district organized under or subject to ORS chapter 545;

4 “(g) Any water improvement district organized under ORS chapter 552;

5 “(h) Any water control district organized under ORS chapter 553;

6 “(i) Any irrigation or drainage corporation organized under or subject to  
7 ORS chapter 554;

8 “(j) Any drainage district organized under ORS chapter 547 or subject to  
9 all or part of ORS chapter 545;

10 “(k) Any corporation, cooperative, company or other association formed  
11 prior to 1917 for the purpose of distributing water for irrigation purposes;

12 “(L) Any port district organized under ORS 777.005 to 777.725, 777.915 to  
13 777.953 and 777.990;

14 “(m) Any city or county;

15 “(n) Any organization formed for the purpose of distributing water for  
16 community water supply; or

17 “(o) Any local soil and water conservation district organized under ORS  
18 568.210 to 568.808 and 568.900 to 568.933.

19 **“SECTION 33.** ORS 541.710, as amended by section 36, chapter 907,  
20 Oregon Laws 2009, is amended to read:

21 “541.710. (1) Upon receipt of an application filed as provided in ORS  
22 541.705, the Water Resources Commission shall determine whether the feasi-  
23 bility study described in ORS 541.705 for the water development project set  
24 forth in or accompanying the application is satisfactory and if the commis-  
25 sion determines that it is not satisfactory, the commission may:

26 “(a) Reject the application;

27 “(b) Require the applicant to submit additional information and revision  
28 of the feasibility study as may be necessary; or

29 “(c) Make such revisions of the feasibility study as the commission con-  
30 siders necessary to make the plan satisfactory.

1       “(2) Except as provided in subsection (3) of this section, the commission  
2 shall charge and collect from the applicant at the time the application is  
3 filed [*an application fee equal to the lesser of 0.10 percent of the loan applied*  
4 *for or \$2,500. In addition, the commission may require the applicant to pay for*  
5 *costs that exceed the application fee if the Water Resources Director determines*  
6 *that the costs are incurred solely in connection with processing the application.*  
7 *Before incurring the additional costs, the commission shall advise the appli-*  
8 *cant of the additional costs to be paid by the applicant.] a fee of \$100. In*  
9 **addition, the commission shall charge the applicant the amount re-**  
10 **quired to reimburse the commission for costs that exceed the applica-**  
11 **tion fee incurred in connection with the application.** Moneys referred  
12 to in this subsection shall be paid into the Water Development Adminis-  
13 tration and Bond Sinking Fund.

14       “(3) The commission may establish [*a reduced application fee*] by rule **an**  
15 **application fee of less than \$100** for a water development project that is  
16 for fish protection or for watershed enhancement.

17       “**SECTION 34.** ORS 541.720, as amended by section 37, chapter 907,  
18 Oregon Laws 2009, is amended to read:

19       “541.720. [(1)] The Water Resources Commission may approve the financ-  
20 ing for the construction of a water development project described in an ap-  
21 plication filed [*under*] **as provided in** ORS 541.705[,] using moneys in the  
22 Water Development Fund, secured by a first, **parity or second** lien [*or by*  
23 *other good and sufficient collateral*] in the manner provided in ORS 541.740,  
24 if, after investigation, the commission finds that:

25       “[(a)] (1) The proposed water development project is feasible and a rea-  
26 sonable risk from practical and economic standpoints;

27       “[(b)] (2) The plan for the construction, operation and maintenance of the  
28 proposed water development project is satisfactory and, if the primary pur-  
29 poses of the project include irrigation or drainage, the agricultural potential  
30 is confirmed;



1       “[(c)] (3) The plan for construction and operation will provide multipur-  
2       pose facilities, to the extent practicable;

3       “[(d)] (4) The applicant is a qualified, credit-worthy and responsible water  
4       developer *[that meets the standards established by commission rule]* and is  
5       willing and able to enter into a contract with the commission for con-  
6       struction and repayment as provided in ORS 541.730;

7       “[(e)] (5) Moneys in the Water Development Fund are or will be available  
8       for the construction of the proposed water development project;

9       “[(f)] (6) There is a need for the proposed water development project, the  
10       proposed project is in the public interest and the applicant’s financial re-  
11       sources are adequate to provide the working capital needed to operate and  
12       maintain the project; and

13       “[(g)] (7) The construction cost associated with any secondary use does  
14       not exceed the construction cost of the primary use of the water development  
15       project.

16       “[(2) ORS 541.700 to 541.855 do not limit the authority granted the Envi-  
17       ronmental Quality Commission or the Department of Environmental Quality  
18       under ORS chapter 468B.]

19       “**SECTION 35.** ORS 541.730 is amended to read:

20       “541.730. [(1)] If the Water Resources Commission approves the financing  
21       for the construction of a water development project, the commission, on be-  
22       half of the state, and the applicant may enter into a loan contract, secured  
23       by a first, **parity or second** lien *[or by other good and sufficient collateral]*  
24       in the manner provided in ORS 541.740[. *The loan contract*], **that** shall set  
25       forth, among other matters:

26       “[(a)] (1) That the commission, on behalf of the state, must approve the  
27       arrangements made by the applicant for the construction, operation and  
28       maintenance of the water development project, using moneys in the Water  
29       Development Fund for the construction.

30       “[(b) A plan for the repayment of moneys borrowed from the Water Devel-

1 *opment Fund and interest on those moneys as described in subsection (3) of*  
2 *this section.]*

3       “(2) A plan for repayment by the applicant to the Water Develop-  
4 ment Administration and Bond Sinking Fund of moneys borrowed  
5 from the Water Development Fund used for the construction, opera-  
6 tion and maintenance of the water development project and interest  
7 on such moneys used at such rate of interest as the commission de-  
8 termines is necessary to provide adequate funds to recover adminis-  
9 trative expenses incurred under ORS 541.700 to 541.855. The repayment  
10 plan, among other matters:

11       “(a) Shall provide for commencement of repayment by the water  
12 developer of moneys used for construction and interest thereon not  
13 later than two years after the date of the loan contract or at such  
14 other time as the commission may provide;

15       “(b) May provide for reasonable extension of the time for making  
16 any repayment in emergency or hardship circumstances, if approved  
17 by the commission;

18       “(c) Shall provide for such evidence of debt assurance of and secu-  
19 rity for repayment by the applicant as are considered necessary or  
20 proper by the commission; and

21       “(d) Shall set forth a schedule of payments and the period of loan,  
22 which may not exceed the usable life of the constructed project, or 30  
23 years from the date of the first payment due under the financial plan,  
24 whichever is less, and shall also set forth the manner of determining  
25 when loan payments are delinquent. The payment schedule shall in-  
26 clude repayment of interest, which accrues during any period of delay  
27 in repayment authorized by paragraph (a) of this subsection, and the  
28 payment schedule may require payments of varying amounts for col-  
29 lection of such accrued interest.

30       “[(c)] (3) Provisions satisfactory to the commission for field engineering

1 and inspection, the commission to be the final judge of completion of the  
2 contract.

3 “[(d)] (4) That the liability of the state under the contract is contingent  
4 upon the availability of moneys in the Water Development Fund for use in  
5 the construction, operation and maintenance of the water development  
6 project.

7 “[(e)] (5) Such further provisions as the commission considers necessary  
8 to ensure expenditure of the funds for the purposes set forth in the approved  
9 application.

10 “[(f)] (6) That the commission may institute an appropriate action or suit  
11 to prevent use of the facilities of a water development project financed by  
12 the Water Development Fund by any person who is delinquent in the repay-  
13 ment of any moneys due the Water Development Administration and Bond  
14 Sinking Fund.

15 “[(g) *That a loan for a water development project is assignable or*  
16 *transferable to a third party only with the prior approval of the commission.*]

17 “[(2)] (7) **That a loan for a water development project is assignable**  
18 **or transferable to a third party only with the prior approval of the**  
19 **commission.** The commission may approve a loan assignment or transfer  
20 only if the commission finds that the assignee or transferee qualifies as a  
21 water developer as defined in ORS 541.700 (7) and the assignment or transfer  
22 does not have serious adverse effect upon the family farm unit structure in  
23 this state.

24 “[(3) *The commission, in consultation with the State Treasurer, shall set*  
25 *the interest rate in an amount the commission determines to be sufficient to*  
26 *cover, to the extent practicable:*]

27 “[(a) *The interest rate to be paid to bondholders on the underlying*  
28 *bonds;*]

29 “[(b) *The administrative expenses incurred by the commission, the Water*  
30 *Resources Department and the State Treasurer in connection with the loan*

1 *program;]*

2 *“[(c) All bond-related costs;]*

3 *“[(d) The establishment of Water Development Administration and Bond*  
4 *Sinking Fund reserves; and]*

5 *“[(e) An amount to be deposited to the Water Development Fund for the*  
6 *purpose of increasing the amount available for loans from that fund.]*

7 *“[(4) In addition to any other fee or charge, the commission may charge a*  
8 *loan processing fee, not to exceed one percent of the loan amount.]*

9 *“[(5) The repayment plan:]*

10 *“[(a) Shall provide for commencement of repayment by the water developer*  
11 *of moneys used for project construction and interest on those moneys not later*  
12 *than two years after the date of the loan contract or at such other time as the*  
13 *commission may provide.]*

14 *“[(b) May provide for reasonable extension of the time for making any re-*  
15 *payment in emergency or hardship circumstances, if approved by the commis-*  
16 *sion.]*

17 *“[(c) Shall provide for such evidence of debt assurance of and security for*  
18 *repayment by the applicant as are considered necessary or proper by the com-*  
19 *mission.]*

20 *“[(d) Shall set forth a schedule of payments and the period of loan. The*  
21 *period of the loan may not exceed the usable life of the constructed project, or*  
22 *30 years from the date of the first payment due under the financial plan,*  
23 *whichever is less.]*

24 *“[(e) Shall set forth the manner of determining when loan payments are*  
25 *delinquent.]*

26 *“[(f) Shall include repayment of interest that accrues during any period of*  
27 *delay in repayment authorized by paragraph (a) of this subsection, and may*  
28 *require payments of varying amounts for collection of that accrued interest.]*

29 *“[(g) May include provisions in addition to the provisions described in*  
30 *paragraphs (a) to (f) of this subsection.]*

1       **“SECTION 36.** ORS 541.740 is amended to read:

2       “541.740. (1)(a) [*Except as provided in paragraph (b) of this subsection,*]  
3       When a loan is made to a water developer other than a water developer de-  
4       scribed in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water  
5       development project under ORS 541.700 to 541.855, the State of Oregon has  
6       a lien for the amount of the unpaid balance of the loan. The lien created by  
7       this subsection attaches to the real property held in fee simple of the water  
8       developer or to the user charges, including interest, owed to or received by  
9       the water developer. The lien created by this subsection does not attach to  
10      a leasehold. At the discretion of the Water Resources Commission, the lien  
11      may attach to all real property, whether owned by the water developer or  
12      other persons, which is served by the water development project or which is  
13      served by a water source enhanced or restored by the water development  
14      project.

15      “(b) Except for tax liens, the lien created by this section is prior and su-  
16      perior to all other liens or encumbrances upon the affected real property or  
17      user charges, without regard to the date on which the other liens or  
18      encumbrances attached to the real property or user charges. [*The commis-*  
19      *sion, in consultation with the State Treasurer, may accept other good and*  
20      *sufficient collateral to secure a loan instead of, or in addition to, a lien.*]  
21      **However, the commission may elect to accept a second or parity lien**  
22      **position against the real property or user charges encumbered by this**  
23      **section, if the commission determines the lien position would provide**  
24      **adequate security for the water development loan, as set forth in rules**  
25      **adopted by the commission.**

26      “(c) The existence or foreclosure of the lien created by this subsection  
27      shall not cause the acceleration of payment of user charges or other pay-  
28      ments on affected real property. Such payments shall continue to be made  
29      as they become due.

30      “(2) [*Except as provided in this subsection,*] When a loan is made under

1 ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (7)(a),  
2 (b), (c) or (d), the loan shall be secured by a mortgage or security agreement  
3 in the full amount of the loan. The mortgage or security agreement shall be  
4 a first lien, **or a parity or second lien if the commission determines it**  
5 **would provide adequate security**, upon such real property of the water  
6 developer as the commission shall require for adequate security. [*The com-*  
7 *mission, in consultation with the State Treasurer, may accept other good and*  
8 *sufficient collateral to secure a loan instead of, or in addition to, a lien.*]

9 “(3) When a lien created by subsection (1) of this section is foreclosed, a  
10 person whose real property is subject to the lien solely because that real  
11 property is irrigated or drained by reason of a water development project or  
12 because the real property is served by a water source improved by a water  
13 development project for watershed enhancement, shall only have that portion  
14 of real property subjected to foreclosure that represents that person’s pro  
15 rata share of the indebtedness.

16 “(4) When a loan is made to a water developer under ORS 541.700 to  
17 541.855, the commission shall file notice of the loan with the recording offi-  
18 cer of each county in which is situated real property of the water developer  
19 or real property to which the lien created by subsection (1) or (2) of this  
20 section may attach. The notice shall contain a description of the real  
21 property of the water developer, a description of any other real property that  
22 will be served by the water development project and to which the lien is to  
23 attach, the amount of the loan and a statement that the State of Oregon has  
24 a lien against such real property as provided in subsection (1) or (2) of this  
25 section.

26 “(5) Upon payment of all amounts loaned to a water developer pursuant  
27 to ORS 541.700 to 541.855, the commission shall file with each recording of-  
28 ficer referred to in subsection (4) of this section a satisfaction notice that  
29 indicates repayment of the loan.

30 “(6) The commission may cause to be instituted appropriate proceedings

1 to foreclose liens for delinquent loan payments, and shall pay the proceeds  
2 of any such foreclosure, less expenses incurred in foreclosing, into the Water  
3 Development Administration and Bond Sinking Fund. In a foreclosure pro-  
4 ceeding, the commission may bid on property offered for sale in the pro-  
5 ceeding and may acquire title to the property on behalf of the state.

6 “(7) The commission may take any action, make any disbursement, hold  
7 any funds or institute any action or proceeding necessary to protect the  
8 state’s interest.

9 “(8) Notwithstanding ORS 293.240, the commission may compromise, re-  
10 lease, discharge, waive, cancel or settle a claim against a water developer  
11 if such action:

12 “(a) Is consistent with the purposes of ORS 541.700 to 541.855;

13 “(b) Does not impair the ability to pay the administrative expenses of the  
14 commission or the obligations of any bonds outstanding; and

15 “(c) Is, under the circumstances, the means most likely to preserve the  
16 claim or to recover the greatest part of the amount claimed.

17 “(9) The commission, by rule, may set out procedures to be used when a  
18 water developer is unable to make required loan payments because of illness,  
19 injury, death, involuntary job loss or economic stress due to factors beyond  
20 individual control. The rules shall be effective to the extent permitted by the  
21 terms of the contracts associated with affected loans. The rules:

22 “(a) May provide for a temporary reduction of loan payment;

23 “(b) May provide for any other solution jointly agreed to by the water  
24 developer and the commission;

25 “(c) Shall provide for repayment of the amount of any loan payments re-  
26 duced under the rules in accordance with terms and conditions agreed upon  
27 by the borrower and the commission; and

28 “(d) Shall require the commission to consider the effect of any payment  
29 reduction or delay on the solvency of the program as a whole, on estimates  
30 of the most probable financial position of the program in the future and on

1 other borrowers in the program.

2 “(10)(a) Upon application by a water developer, the commission may grant  
3 a partial release of security when the commission determines that granting  
4 the requested release will not jeopardize the water development loan  
5 program’s security position.

6 “(b) The remaining property must qualify as security for the loan balance  
7 under the applicable law.

8 “(c) Notwithstanding compliance with paragraph (b) of this subsection,  
9 the commission may require that the loan balance be reduced as consider-  
10 ation for granting the requested release.

11 **“SECTION 37.** ORS 541.830, as amended by section 40, chapter 907,  
12 Oregon Laws 2009, is amended to read:

13 “541.830. (1) There hereby is created the Water Development Adminis-  
14 tration and Bond Sinking Fund, separate and distinct from the General Fund,  
15 to provide for payment of:

16 “(a) Administrative expenses of the Water Resources Commission and the  
17 Water Resources Department in processing applications, investigating pro-  
18 posed water development projects and federal water development projects  
19 under ORS 541.700 to 541.855 and servicing and collecting outstanding loans  
20 made under ORS 541.700 to 541.855, if the expense is not paid directly by the  
21 applicant, including principal and interest due on bonds outstanding. These  
22 administrative expenses also may include all costs associated with the issu-  
23 ance of bonds and the funding of any credit enhancements or reserves de-  
24 termined to be necessary or advantageous in connection with the bonds.

25 “(b) Administrative expenses of the State Treasurer in carrying out the  
26 duties, functions and powers imposed upon the State Treasurer by ORS  
27 541.700 to 541.855.

28 “(c) Principal and interest of all bonds issued pursuant to the provisions  
29 of ORS 541.780 to 541.815.

30 “(2) The fund created by subsection (1) of this section shall consist of:



1       “(a) Application fees [*and additional processing costs paid under ORS*  
2 *541.710 and loan processing fees under ORS 541.730.*] **required under ORS**  
3 **541.710.**

4       “(b) Repayments of moneys loaned to water developers from the Water  
5 Development Fund, including interest on such moneys.

6       “(c) Repayments of moneys loaned for the acquisition of easements and  
7 rights of way for federal water development projects, including interest on  
8 such moneys.

9       “(d) Such moneys as may be appropriated to the fund by the Legislative  
10 Assembly, including appropriations dedicated to the partial payment for or  
11 repayment of projects affording public benefits.

12       “(e) Moneys obtained from the sale of refunding bonds and any accrued  
13 interest on such bonds.

14       “(f) Moneys received from ad valorem taxes levied pursuant to Article  
15 XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly  
16 may provide in lieu of such taxes.

17       “(g) Interest earned on cash balances invested by the State Treasurer.

18       “(h) Any revenues received by the commission under the provisions of  
19 ORS 541.745.

20       “(i) Moneys transferred from the Water Development Fund.

21       “(3) The moneys referred to in subsection (2) of this section are contin-  
22 uously appropriated to the commission for the purposes provided in sub-  
23 section (1) of this section.

24       “(4) The commission, with the approval of the Governor, may identify  
25 those projects financed under the provisions of ORS 541.700 to 541.855 that  
26 offer significant public benefit, and recommend to the Legislative Assembly  
27 funding of those projects in proportion to the public benefits offered.

28       “(5) The commission, with the approval of the State Treasurer, may  
29 transfer moneys from the fund created under subsection (1) of this section  
30 to the Water Development Fund if:

1       “(a) A cash flow projection shows that the transfer will not have any  
2 negative impact on the commission’s ability to pay bond principal, interest  
3 and administration costs;

4       “(b) The transfer will not create the need for issuance of any bonds; and

5       “(c) The transfer, together with loans outstanding from prior transfers  
6 and not refinanced by funds derived directly from a bond sale, does not ex-  
7 ceed \$1.

8       “(6) The transfer amount authorized by subsection (5) of this section may  
9 be increased by the Emergency Board.

10       **“SECTION 38. Section 39 of this 2013 Act is added to and made a  
11 part of ORS 541.700 to 541.855.**

12       **“SECTION 39. Except as provided in ORS 541.760:**

13       **“(1) If any water development project investigated under ORS  
14 541.700 to 541.855, other than a safe drinking water project financed in  
15 whole or in part from moneys in the Special Public Works Fund cre-  
16 ated by ORS 285B.455 or the Water Fund created by ORS 285B.563, is  
17 constructed with funds other than those loaned under ORS 541.700 to  
18 541.855, the amount expended by the state shall immediately become  
19 due and payable, together with interest at the rate provided in ORS  
20 541.730 (2) from the date of notification of the amount due.**

21       **“(2) If any water development project is refinanced or financial as-  
22 sistance is obtained from other sources, other than a safe drinking  
23 water project financed in whole or in part from moneys in the Special  
24 Public Works Fund created by ORS 285B.455 or the Water Fund created  
25 by ORS 285B.563, after the execution of the loan from the state, all  
26 such funds shall be first used to repay the state.**

27       **“SECTION 40. ORS 541.600, 541.606, 541.611, 541.616, 541.621, 541.631,  
28 541.636, 541.641, 541.646 and 541.725 are repealed July 1, 2015.**

29       **“SECTION 41. Section 39 of this 2013 Act and the amendments to  
30 ORS 541.700, 541.710, 541.720, 541.730, 541.740 and 541.830 by sections 32**

1 to 37 of this 2013 Act become operative July 1, 2015.

2 **SECTION 42. This 2013 Act being necessary for the immediate**  
3 **preservation of the public peace, health and safety, an emergency is**  
4 **declared to exist, and this 2013 Act takes effect on its passage.”.**

5

---