

# House Bill 2809

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT

## SUMMARY

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

Eliminates requirement that certain water development projects receiving funding through Water Resources Department reserve increment of stored water for net environmental public benefit or enhancing in-stream flows. Deletes requirement that funding decision by department include consideration of funded water development project effect on peak and ecological flows. Deletes requirement for reasonable certainty that funded water development project will produce net environmental public benefit. Subject to exceptions, applies to water development projects fully or partially funded by department on or after March 5, 2008.

Requires Water Resources Department to deliver written offer for unconditional waiver of requirement for funded water development project to return water for stream augmentation, net environmental public benefit or in-stream flow. Requires department to waive acquired legal protection of water returned to stream by funded water development project. Creates exceptions.

## A BILL FOR AN ACT

1  
2 Relating to water development projects; creating new provisions; and amending ORS 541.600,  
3 541.611, 541.621, 541.631, 541.636 and 541.700 and sections 17, 20, 25 and 33, chapter 907, Oregon  
4 Laws 2009.

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

6 **SECTION 1.** ORS 541.600 is amended to read:

7 541.600. As used in ORS 541.600 to 541.641 and sections 20, 25 and 26, chapter 907, Oregon Laws  
8 2009:

9 (1) "Economic public benefit" means the improvement of economic conditions that relate to one  
10 or more of the following:

- 11 (a) Job creation;
- 12 (b) Encouragement of economic investments;
- 13 (c) Increases in state revenues;
- 14 (d) Protection of public resource lands;
- 15 (e) Increases in the efficiency of state spending; and
- 16 (f) Other activities that enhance economic activity within the state.

17 (2) "Net environmental public benefit" means the improvement of ecological conditions, com-  
18 pared with a preproject baseline, that relate to one or more of the following:

19 (a) Water **quality**, velocity[, **and** temperature[, *stream flow levels and other stream flow*] condi-  
20 tions that provide for critical life history needs of state or federally listed sensitive, threatened or  
21 endangered fish species and that maintain or enhance population viability of those species.

22 [(b) *Stream flow conditions that support the life stages of native fish species or that will allow for*  
23 *the reintroduction of native fish species.*]

24 [(c) *Return flows to surface water bodies from aquifer recharge projects or from other underground*  
25 *water storage projects, and the in-stream protection for those return flows designed to have in-stream*  
26 *benefits.*]

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       [(d) Protection of peak flows at above-ground and underground storage projects.]

2       [(e) Protection of ecological flows at above-ground and underground storage projects.]

3       [(f)] (b) Water temperature, dissolved oxygen content and other water quality conditions, and  
4 progress toward the attainment of water standards that are not being met in the relevant water  
5 body.

6       [(g)] (c) Ground water quality or quantity.

7       [(h)] (d) Aquatic or riparian habitat restoration or enhancement.

8       [(i)] (e) Eliminating nonpoint source pollutant transport.

9       (3) "Secondary use" has the meaning given that term in ORS 541.700.

10       (4) "Social and cultural public benefit" means the improvement of conditions that relate to one  
11 or more of the following:

12       (a) Promoting public health and welfare;

13       (b) Recreational use;

14       (c) Outdoor schools; and

15       (d) Hunting and fishing.

16       (5) "Water conservation" means an undertaking that results in:

17       (a) A decrease in the consumptive use of water;

18       (b) An increase in water use efficiency; or

19       (c) An increase in water available to meet in-stream needs.

20       (6) "Water development project" means:

21       (a) A water development project as defined in ORS 541.700.

22       (b) All or part of an undertaking in this state for the purpose of:

23       (A) Water management, measurement, conservation, efficiency, reuse or storage;

24       (B) Streamflow restoration; or

25       (C) Benefiting multiple purposes, such as agricultural, domestic, commercial, recreational, mu-  
26 nicipal or in-stream purposes.

27       (c) Secondary uses in conjunction with projects described in paragraph (b) of this subsection.

28       **SECTION 2.** ORS 541.611 is amended to read:

29       541.611. (1) Any person or entity described in ORS 541.606 may file an application with the  
30 Water Resources Department for a grant from the Water Investment Grant Fund to enable the  
31 construction of a water development project located in the Columbia River Basin.

32       (2) An application filed under this section must be in a form prescribed by the Water Resources  
33 Commission and include the following:

34       (a) A description of the nature and the primary and secondary purposes of the project.

35       (b) An analysis of the need for the project and for the water that the project is intended to de-  
36 liver.

37       (c) Identification and description of the project components sufficient to meet the conditions for  
38 project funding approval under ORS 541.631.

39       (d) A description of the economic feasibility of the project, including but not limited to:

40       (A) The costs of the project; and

41       (B) Information about the financial and other aspects of the operation and maintenance plans  
42 for the project.

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

44       (f) An analysis of the project impacts including, but not limited to, the:

45       (A) Expected economic public benefits.

1 (B) Expected social and cultural public benefits.

2 (C) Expected net environmental public benefits.

3 (g) An evaluation of the potential impact on water quality, based upon water quality standards.

4 (h) Proof that the applicant has acquired at least a final order or limited license for necessary  
5 water permits from the department.

6 (i) Letters of support for the proposed water resource development project.

7 (j) If the project has not previously received state funding, a statement regarding whether other  
8 moneys are available or have been sought or received for the implementation of the project.

9 (k) Information sufficient to demonstrate that the amount of the requested funding will be  
10 matched by the funding from another source that is not less than a dollar-for-dollar match.

11 (L) Any other information required by the department.

12 (3) If the project will receive surface water impounded from a perennial stream, water diverted  
13 from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of  
14 diverted surface water annually, in addition to the other information required under this section the  
15 application shall include **an independent comparative analysis of alternative means of supply-**  
16 **ing the water intended to be generated by the project, including but not limited to the costs**  
17 **and benefits of conservation, reuse and alternatives and the extent to which long-term water**  
18 **supply needs may be met using those alternatives.** [*the following completed studies:*]

19 [(a) *An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected*  
20 *stream and of the impact of the project on those flows, that conforms to standards set by the department*  
21 *in consultation with the State Department of Fish and Wildlife and other relevant agencies;]*

22 [(b) *An independent comparative analysis of alternative means of supplying the water intended to*  
23 *be generated by the project, including but not limited to the costs and benefits of conservation, reuse*  
24 *and alternatives and the extent to which long-term water supply needs may be met using those alter-*  
25 *natives; and]*

26 [(c) *Evaluation of the need for and feasibility of using project-derived water to augment in-stream*  
27 *flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.]*

28 (4) If the applicant is an agricultural water supplier, the applicant must have an approved ag-  
29 riculture water management and conservation plan, have submitted a completed agricultural water  
30 management and conservation plan to the Water Resources Department for approval or be in the  
31 process of completing or updating a water management and conservation plan.

32 (5) The commission may establish fees for filing applications for a grant under this section.  
33 Moneys from the application fees established by the commission shall be deposited to the Water  
34 Investment Grant Fund.

35 (6) An analysis and evaluation conducted as part of a study performed pursuant to ORS 541.561  
36 to 541.581 and sections 5 and 6, chapter 13, Oregon Laws 2008, is deemed to satisfy the requirements  
37 of subsection (3) of this section.

38 **SECTION 3.** ORS 541.621 is amended to read:

39 541.621. (1) The Water Resources Commission shall adopt rules establishing guidelines for the  
40 Water Resources Department's review of applications for a grant filed under ORS 541.611 and for  
41 the assessment of projects for which grants are sought. The guidelines shall include:

42 (a) Evaluation of the awarding of grants as a financial incentive to accomplish the goals of the  
43 grant program;

44 (b) Consideration of the financial needs of applicants and other special circumstances; and

45 (c) Consideration of the economic public benefit, social and cultural public benefit and net en-

1 vironmental public benefit of the project.

2 (2) The guidelines shall give priority to projects that:

3 (a) Recharge aquifers in limited and critical ground water areas;

4 (b) Are designed to deliver the greatest net environmental public benefit; **or**

5 *[(c) Include in-stream flow restoration components;]*

6 *[(d)] (c) Conserve water.[: or]*

7 *[(e) Are water storage projects that provide for stored water to be used for restoring or augmenting*  
 8 *streamflows in a manner that conserves, maintains and enhances water quality, aquatic life, fish life*  
 9 *or other ecological values.]*

10 (3) The guidelines shall require that the department consider the following:

11 (a) Local support for the project;

12 (b) Oregon's in-stream and out-of-stream water needs as influenced by existing and anticipated  
 13 climate change;

14 (c) The project's potential to facilitate economic development;

15 (d) The projected impact of the project on public health matters relating to water; and

16 (e) Statewide water needs.

17 (4) The commission shall adopt rules for use by the Water Resources Department in assessing  
 18 the net environmental public benefits of a project under ORS 541.616. The commission must consult  
 19 with, and provide a 60-day period for the receipt of comment from, the State Department of Fish and  
 20 Wildlife, the State Parks and Recreation Department, the State Department of Agriculture and the  
 21 Department of Environmental Quality before the commission adopts a rule described in this sub-  
 22 section.

23 **SECTION 4.** ORS 541.631 is amended to read:

24 541.631. (1) Subject to any additional qualifications or restrictions under ORS 541.616, 541.621  
 25 or 541.636 or Water Resources Commission rules, the Water Resources Department may approve a  
 26 grant application filed under ORS 541.611 if the department finds that:

27 (a) The plan for the construction of the proposed project complies with all applicable provisions  
 28 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
 29 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

30 (b) Planned diversions of surface water include provision for fish screens and, if applicable,  
 31 volitional fish passage;

32 (c) The use of surface water or ground water from the project will be measured and reported;

33 **and**

34 (d) The applicant or beneficiaries of water from the project measure and report, or have sched-  
 35 uled and financed the measurement of, all existing water use at the point of diversion.[:]

36 *[(e) There is a reasonable certainty that the project, considered in total, will deliver a measurable*  
 37 *net environmental public benefit; and]*

38 *[(f) To the extent applicable, the project complies with subsection (2) or (3) of this section.]*

39 *[(2) A water storage project must be designed:]*

40 *[(a) To provide for no more than 75 percent of new stored water in the aquifer or above-ground*  
 41 *storage location of the project to be withdrawn for agricultural purposes and for not less than 25 per-*  
 42 *cent of the new water to be dedicated for the purpose of providing net environmental public benefits*  
 43 *or in-stream benefits; and]*

44 *[(b) To the extent practicable, to return dedicated new stored water for stream augmentation at a*  
 45 *time of year that the Water Resources Department, in consultation with the State Department of Fish*

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

3 [(3) If more than 25 percent of the funding for a water storage project is from grants of state  
4 moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of  
5 providing net environmental public benefit or in-stream benefit a percentage of the new stored water  
6 created by the project that equals or exceeds the percentage of funding for the project that is from  
7 grants of state moneys. The Water Resources Department shall manage the dedicated increment of new  
8 stored water for net environmental public benefit or in-stream benefit.]

9 [(4) On or before the earlier of six years after the issuance of the ground water recharge permit  
10 or the date the water right certificate is issued, the department shall quantify and legally protect the  
11 increment of new water returned in stream from a project described in this section.]

12 [(5) The department shall require as a contractual condition for issuing the grant, and as a con-  
13 dition of any new water permit or water right certificate, that if the project receives grants or loans  
14 from state moneys other than a grant issued under this section, the project must be operated in a  
15 manner that actually dedicates the percentage of new stored water for net environmental public benefit  
16 or in-stream benefit that the project was designed to dedicate for those purposes.]

17 [(6) The department shall require that a project protect peak and ecological flows to the extent de-  
18 termined by the State Department of Fish and Wildlife to be necessary.]

19 [(7)] (2) The commission, by rule, may allow the Water Resources Department to waive any re-  
20 quirement of this section for the issuance of a grant[, other than the requirement of a measurable net  
21 environmental public benefit,] if:

22 (a) The grant application requests less than \$20,000; or

23 (b) The project is a conservation, efficiency, restoration or reuse project that can be shown to  
24 the satisfaction of the department to cause no harm to the source, any receiving stream, fish or  
25 wildlife or existing water rights.

26 [(8)] (3) This section and ORS 541.611, 541.616, 541.621, 541.636 and 541.641 do not limit the au-  
27 thority granted the Environmental Quality Commission or the Department of Environmental Quality  
28 under ORS chapter 468B.

29 **SECTION 5.** ORS 541.636 is amended to read:

30 541.636. (1) The Water Resources Department shall ensure that any necessary federal and state  
31 environmental impact approval processes have been completed, and that agencies have issued any  
32 relevant approvals and permits, before the advancement of any grant moneys for a project described  
33 in ORS 541.631. The department shall determine the amount of a grant from the Water Investment  
34 Grant Fund on a case-by-case basis. The department may not issue a grant under ORS 541.631 to  
35 provide assistance for operational or maintenance expenses of a water development project other  
36 than project startup costs.

37 (2) The department may issue a grant from the fund only if the applicant agrees to periodic re-  
38 view of the project, including but not limited to:

39 (a) Review of interim and long-term performance benchmarks set by the department; and

40 (b) Program and fiscal audits to ensure that performance benchmarks are achieved on project  
41 development, project benefits and return on investment.

42 (3) The department may issue a grant from the fund only if the applicant agrees to report to the  
43 department no later than two years after receiving the grant moneys regarding the progress of the  
44 project and [the] **any** economic public benefit, social and cultural public benefit and net environ-  
45 mental public benefit realized from the project. The department shall provide copies of the applicant

1 reports received by the department during the biennium to an interim committee of the Legislative  
2 Assembly dealing with natural resources.

3 (4) The Water Resources Commission may establish reasonable fees for management, oversight  
4 or review services that the department provides for a water development project. The fees shall be  
5 deposited to the Water Investment Grant Fund.

6 *[(5) For a project described in ORS 541.631 (2), the commission may require compliance with the  
7 conditions described in ORS 541.631 (2) as a condition of any new water permits issued for the project  
8 and may monitor operation of the project to ensure compliance.]*

9 **SECTION 6.** ORS 541.700 is amended to read:

10 541.700. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

11 (1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

12 (2) "Construction" means the construction, or improvement or rehabilitation, in whole or in part,  
13 of a water development project, including planning and engineering work, purchasing or refinancing  
14 directly related to such construction or improvement or rehabilitation, or any combination of such  
15 construction or improvement or rehabilitation. As used in this subsection:

16 (a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to  
17 complete a water development project.

18 (b) "Refinancing" includes refinancing existing debt of a water developer, as defined in sub-  
19 section (7)(f) to (m) and (o) of this section, in order to complete a water development project or to  
20 provide adequate security for a water development loan, but does not include refinancing existing  
21 debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

22 (3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

23 (4) "Federal water development project" means any water development project that receives  
24 funding from the federal government, or any agency or instrumentality of the United States.

25 (5)(a) "Secondary use" means:

26 (A) Any water-related recreational use.

27 (B) Any flood control use.

28 (C) Any power generation use.

29 (D) Any water supply system utilized as a domestic water system for the benefit of an individual  
30 residence related to the operation of the water development project.

31 (b) "Secondary use" does not include any use that is incompatible with a water development  
32 project.

33 (6) "Water development project" means:

34 (a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including  
35 structures for the application of water for agricultural harvest activities, dams, storage reservoirs,  
36 wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems  
37 used for the purpose of agricultural temperature control and any other structure, facility and prop-  
38 erty necessary or convenient for supplying lands with water for irrigation purposes.

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

42 (c) An undertaking, in whole or in part, in this state for the purpose of providing water for  
43 municipal use, which may include safe drinking water for communities with population less than  
44 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facili-  
45 ties, pipelines, canals, ditches, revetments and all other structures and facilities necessary or con-

1 venient for supplying water. An undertaking may provide water to two or more communities with  
 2 a combined population of more than 30,000. An undertaking may be part of a project that provides  
 3 water to a community with a population of more than 30,000, but loans of moneys from the Water  
 4 Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served  
 5 by the project that have a population of less than 30,000.

6 (d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including  
 7 fish screening or by-pass devices, fishways and all other structures and facilities necessary or con-  
 8 venient for providing fish protection.

9 (e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed  
 10 health or improving fish habitat, including methods and materials to restore, maintain and enhance  
 11 water quality[, *streamflows*] and the biological, chemical and physical integrity of the riparian zones  
 12 and associated uplands of the state's rivers, lakes and estuaries systems and recommended by the  
 13 Oregon Watershed Enhancement Board established under ORS 541.900.

14 (f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this sub-  
 15 section.

16 (7) "Water developer" means:

17 (a) Any individual resident of this state;

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

20 (c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal in-  
 21 come is from farming in Oregon;

22 (d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal in-  
 23 come is from farming in Oregon;

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

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

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

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

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

30 (j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS  
 31 chapter 545;

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

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

35 (m) Any city or county;

36 (n) Any organization formed for the purpose of distributing water for community water supply;

37 or

38 (o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and  
 39 568.900 to 568.933.

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

41 **Sec. 17.** (1) As used in this section, "critical ground water storage project" means an under-  
 42 ground or below-ground storage of river water in a critical ground water area designated under ORS  
 43 537.730 for use in:

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

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

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

6 [(3) *Except as provided in subsection (4) of this section, notwithstanding ORS 537.534, if the project*  
7 *uses artificial recharge to recharge an alluvial aquifer that is not confined, the project must be de-*  
8 *signed:]*

9 [(a) *To provide for no more than 75 percent of new stored water to be withdrawn and for not less*  
10 *than 25 percent of the new water to be dedicated for the purpose of providing net environmental public*  
11 *benefits or in-stream benefits; and]*

12 [(b) *To the extent practicable, to return dedicated new stored water for stream augmentation at a*  
13 *time of year that the Water Resources Department, in consultation with the State Department of Fish*  
14 *and Wildlife and relevant tribal governments, determines will provide the maximum net environmental*  
15 *public benefit or in-stream benefit.]*

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

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

25 [(6) *The department shall require as a contractual condition for issuing the grant, and as a con-*  
26 *dition of any new groundwater recharge permit or water right certificate issued for the project, that if*  
27 *the project receives grants or loans from state moneys other than a grant issued under this section, the*  
28 *project must be operated in a manner that actually dedicates the percentage of new stored water for*  
29 *net environmental public benefit or in-stream benefit that the project was designed to dedicate for those*  
30 *purposes.]*

31 [(7)] (3) This section does not limit the authority granted the Environmental Quality Commission  
32 or the Department of Environmental Quality under ORS chapter 468B.

33 [(8)] (4) This section is repealed January 2, 2030.

34 **SECTION 8.** Section 20, chapter 907, Oregon Laws 2009, is amended to read:

35 **Sec. 20.** (1) A water developer, as defined in ORS 541.700, shall file an application for a loan  
36 from the Water Development Fund as provided in this section instead of under ORS 541.705 if:

37 (a) The applicant is not a municipality or a provider of water for municipal purposes;

38 (b) The loan is for the purpose of enabling the construction of a water development project in  
39 the Columbia River Basin; and

40 (c) The moneys from which the loan is to be funded were provided under an appropriation that  
41 dedicates the moneys for use under this section or for loans of a type described in this subsection  
42 made to applicants of a type described in this subsection.

43 (2) An application filed under this section must be in a form prescribed by the Water Resources  
44 Commission and include the following:

45 (a) A description of the nature and the primary and secondary purposes of the project.



1 (b) An analysis of the need for the project and for the water that the project is intended to de-  
2 liver.

3 (c) Identification and description of the project components sufficient to meet the conditions for  
4 project funding approval under section 25 *[of this 2009 Act]*, **chapter 907, Oregon Laws 2009**.

5 (d) A description of the economic feasibility of the project, including but not limited to:

6 (A) The costs of the project; and

7 (B) Information about the financial and other aspects of the operation and maintenance plans  
8 for the project.

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

10 (f) An analysis of the project impacts including, but not limited to, the:

11 (A) Expected economic public benefits.

12 (B) Expected social and cultural public benefits.

13 (C) Expected net environmental public benefits.

14 (g) An evaluation of the potential impact on water quality, based upon water quality standards.

15 (h) Proof that the applicant has acquired at least a final order or limited license for necessary  
16 water permits from the department.

17 (i) Letters of support for the proposed water resource development project.

18 (j) If the project has not previously received state funding, a statement regarding whether other  
19 moneys are available or have been sought or received for the implementation of the water resource  
20 development project.

21 (k) A description of a loan repayment plan.

22 (L) Any other information required by the department.

23 (3) Any relevant information described in ORS 541.705 (2)(c) or (e) or (3).

24 (4) If the project will receive surface water impounded from a perennial stream, water diverted  
25 from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of  
26 diverted surface water annually, in addition to the other information required under this section the  
27 application shall include **an independent comparative analysis of alternative means of supply-**  
28 **ing the water intended to be generated by the project, including but not limited to the costs**  
29 **and benefits of conservation, reuse and alternatives and the extent to which long-term water**  
30 **supply needs may be met using those alternatives.** *[the following completed studies:]*

31 *[(a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected*  
32 *stream and of the impact of the project on those flows, that conforms to standards set by the department*  
33 *in consultation with the State Department of Fish and Wildlife and other relevant agencies;]*

34 *[(b) An independent comparative analysis of alternative means of supplying the water intended to*  
35 *be generated by the project, including but not limited to the costs and benefits of conservation, reuse*  
36 *and alternatives and the extent to which long-term water supply needs may be met using those alter-*  
37 *natives; and]*

38 *[(c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream*  
39 *flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.]*

40 (5) If the applicant is an agricultural water supplier, the applicant must have an approved ag-  
41 riculture water management and conservation plan, have submitted a completed agricultural water  
42 management and conservation plan to the Water Resources Department for approval or be in the  
43 process of completing or updating a water management and conservation plan.

44 (6) An application under this section is subject to application fees and additional processing  
45 costs as described in ORS 541.710 and loan processing fees under ORS 541.730.

1 (7) An analysis and evaluation conducted as part of a study performed pursuant to [*chapter 13,*  
2 *Oregon Laws 2008*] **ORS 541.561 to 541.581 and sections 5 and 6, chapter 13, Oregon Laws**  
3 **2008**, is deemed to satisfy the requirements of subsection (4) of this section.

4 **SECTION 9.** Section 25, chapter 907, Oregon Laws 2009, as amended by section 31, chapter 907,  
5 Oregon Laws 2009, is amended to read:

6 **Sec. 25.** (1) The Water Resources Department, acting as agent for the Water Resources Com-  
7 mission, may approve a loan for which an application is filed under section 20 [*of this 2009 Act*],  
8 **chapter 907, Oregon Laws 2009**, if the department finds that:

9 (a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the  
10 Oregon Constitution, ORS 541.700 to 541.855, section 26 [*of this 2009 Act*], **chapter 907, Oregon**  
11 **Laws 2009**, Water Resources Commission rules and bondholder agreements;

12 (b) The plan for the construction of the proposed project complies with all applicable provisions  
13 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
14 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

15 (c) Planned diversions of surface water include provision for fish screens and, if applicable,  
16 volitional fish passage;

17 (d) The use of surface water or ground water from the project will be measured and reported;  
18 **and**

19 (e) The applicant or beneficiaries of water from the project measure and report, or have sched-  
20 uled and financed the measurement of, all existing water use at the point of diversion.[;]

21 [*f) There is a reasonable certainty that the project will deliver a measurable net environmental*  
22 *public benefit; and]*

23 [*g) The project is designed to deliver in-stream benefits.]*

24 [(2) *The department shall require that a project protect peak and ecological flows to the extent de-*  
25 *termined by the State Department of Fish and Wildlife to be necessary.]*

26 [(3)] (2) This section and sections 20 and 26 [*of this 2009 Act*], **chapter 907, Oregon Laws 2009**,  
27 do not limit the authority granted the Environmental Quality Commission or the Department of  
28 Environmental Quality under ORS chapter 468B.

29 **SECTION 10.** Section 33, chapter 907, Oregon Laws 2009, is amended to read:

30 **Sec. 33.** [(1) *Notwithstanding sections 19 and 21 to 23 of this 2009 Act, but subject to section 24*  
31 *of this 2009 Act, the Water Resources Department shall waive the grant application process described*  
32 *in sections 19 and 21 to 23 of this 2009 Act when issuing a grant for water development projects*  
33 *that:]*

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

36 [(b) *Except as provided in subsection (2) of this section, are designed:]*

37 [(A) *To provide for no more than 75 percent of new stored water to be withdrawn and for not less*  
38 *than 25 percent of the new water to be dedicated for the purpose of providing net environmental public*  
39 *benefits or in-stream benefits; and]*

40 [(B) *To the extent practicable, to return dedicated new stored water for stream augmentation at a*  
41 *time of year that the Water Resources Department, in consultation with the State Department of Fish*  
42 *and Wildlife and relevant tribal governments, determines will provide the maximum net environmental*  
43 *public benefit or in-stream benefit.]*

44 [(2) *If more than 25 percent of the funding for an aquifer storage and recovery project is from*  
45 *grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the*

1 *purpose of providing net environmental public benefit or in-stream benefit a percentage of the new*  
 2 *stored water created by the project that equals or exceeds the percentage of funding for the project that*  
 3 *is from grants of state moneys. The Water Resources Department shall manage the dedicated increment*  
 4 *of new stored water for net environmental public benefit and in-stream benefit.]*

5 **(1) Notwithstanding ORS 541.611 and 541.616 to 541.631, but subject to ORS 541.636, the**  
 6 **Water Resources Department shall waive the grant application process described in ORS**  
 7 **541.611 and 541.616 to 541.631 when issuing a grant for water development projects that are**  
 8 **located in an area of the Umatilla Basin for which an assessment has been performed under**  
 9 **ORS 541.561 to 541.581 and sections 5 and 6, chapter 13, Oregon Laws 2008.**

10 [(3)] (2) This section does not limit the authority granted the Environmental Quality Commission  
 11 or the Department of Environmental Quality under ORS chapter 468B.

12 [(4)] (3) This section is repealed January 2, 2030.

13 **SECTION 11.** (1) **The amendments to ORS 541.600, 541.611, 541.621, 541.631, 541.636 and**  
 14 **541.700 and sections 17, 20, 25 and 33, chapter 907, Oregon Laws 2009, by sections 1 to 10 of**  
 15 **this 2013 Act apply to water development projects for which the Water Resources Depart-**  
 16 **ment takes final action on a loan or grant application or after the effective date of this 2013**  
 17 **Act.**

18 (2) **Except as provided in this subsection, for any water development project not de-**  
 19 **scribed in subsection (1) of this section that received full or partial funding by the depart-**  
 20 **ment on or after March 5, 2008, no later than 90 days after the effective date of this 2013**  
 21 **Act the Water Resources Department shall present the owner or operator of the water de-**  
 22 **velopment project with an unconditional offer to waive without consideration any contractual**  
 23 **provision and any license, permit or certificate term or condition requiring the dedication**  
 24 **of a percentage of new stored water created by the water development project for stream**  
 25 **augmentation, net environmental public benefit or in-stream benefit. Except as provided in**  
 26 **this subsection, no later than 90 days after the effective date of this 2013 Act, the depart-**  
 27 **ment shall waive any legal protection of an increment of water that a water development**  
 28 **project returns to a stream that was obtained by the department under ORS 541.631 or sec-**  
 29 **tion 17, chapter 907, Oregon Laws 2009, both as set forth in the 2011 Edition of the Oregon**  
 30 **Revised Statutes and make the water described in the surrendered water right available for**  
 31 **appropriation for any beneficial use. This subsection does not apply if the waiver of a con-**  
 32 **tractual provision or license, permit or certificate term or condition or the surrender of a**  
 33 **perfected water right would impair a contractual right of any person or governmental unit**  
 34 **other than the department that was created prior to the effective date of this 2013 Act or**  
 35 **would violate a treaty right created prior to the effective date of this 2013 Act. This sub-**  
 36 **section does not cancel any certificate for an in-stream water right issued under ORS 537.341**  
 37 **prior to the effective date of this 2013 Act.**

38 (3) **A water development project owner or operator that receives a written offer under**  
 39 **subsection (2) of this section to waive a contractual provision or license, permit or certificate**  
 40 **term or condition must deliver any acceptance of the offer to the Water Resources Depart-**  
 41 **ment no later than 180 days after the offer is sent by the department. Failure to deliver a**  
 42 **written acceptance shall result in lapse of the offer of waiver.**