

Senate Bill 839

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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**.

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

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to water; creating new provisions; amending section 17, chapter 907, Oregon Laws 2009;
3 appropriating money; and declaring an emergency.

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

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

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

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

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

10 (b) **Enhanced economic value of infrastructure, farmlands, public resource lands, indus-**
11 **trial lands, commercial lands or other land uses;**

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

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

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

16 (f) **Other improvements in economic conditions identified by the Water Resources De-**
17 **partment.**

18 (3) **"Environmental benefit" means:**

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

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

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

22 (C) **Supports state or federally listed sensitive, threatened or endangered fish species;**

23 (b) **A measurable improvement in ground water levels that enhances environmental**
24 **conditions in ground water restricted areas or other areas;**

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

26 (d) **Water conservation;**

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

28 (f) **Improvements that address one or more limiting ecological factors in the project**

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 watershed; and

2 (g) Other improvements in environmental conditions identified by the department.

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

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

5 (b) Allocated under a secondary water right by a project that allocates water stored un-
6 der an existing water right.

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

9 (a) Stream channel development and maintenance;

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

11 (c) Sediment transport and deposition;

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

14 (e) Fish spawning and incubation;

15 (f) Juvenile fish rearing; and

16 (g) Adult fish passage.

17 (6) “Social or cultural benefit” means:

18 (a) The promotion of public health and safety and local food systems;

19 (b) A measurable improvement in conditions for members of minority or low-income
20 communities, tribal communities and other communities traditionally underrepresented in
21 public processes;

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

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

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

25 (f) The promotion of place-based integrated water resources planning under the inte-
26 grated state water resources strategy or of other collaborative basin planning efforts; and

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

28 **SECTION 2.** (1) The Water Supply Development Account is established in the State
29 Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply
30 Development Account shall be credited to the account. Moneys in the account are contin-
31 uously appropriated to the Water Resources Department for use in carrying out sections 1
32 to 16 of this 2013 Act.

33 (2) The department may expend moneys from the account for activities supporting the
34 assessment, planning and development of in-stream and out-of-stream water development
35 projects, including but not limited to:

36 (a) Loans and grants to:

37 (A) Repair or replace infrastructure;

38 (B) Provide new or expanded water storage;

39 (C) Improve or alter operations of existing water storage facilities;

40 (D) Create new, expanded, improved or altered water distribution, conveyance or deliv-
41 ery;

42 (E) Allocate stored water;

43 (F) Promote water reuse;

44 (G) Promote water conservation;

45 (H) Provide streamflow protection or restoration;

1 (I) Provide for water management or measurement; and

2 (J) Determine seasonally varying flow requirements; and

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

5 **SECTION 3.** Loans and grants may be issued from the Water Supply Development Ac-
6 count to persons as defined in ORS 536.007, Indian tribes as defined in ORS 391.802 and
7 nonprofit organizations. The Water Resources Department may require an applicant that is
8 a municipal or agricultural water supplier to have water management and conservation plans
9 submitted to or approved by the department prior to department acceptance of an application
10 for a loan or grant from the account.

11 **SECTION 4.** (1) A potential applicant for a loan or grant from the Water Supply Devel-
12 opment Account may participate in a preapplication conference with the Water Resources
13 Department.

14 (2) At the preapplication conference, the department shall inform the potential applicant
15 of the procedural and substantive requirements of a loan or grant application and of the
16 scoring system used by the department to evaluate loan and grant requests. The department
17 shall help the potential applicant to identify issues that may affect project eligibility for a
18 loan or grant from the account.

19 (3) Not less than 14 days before the preapplication conference, the applicant must provide
20 the department with adequate project information to prepare for the preapplication confer-
21 ence.

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

23 **SECTION 5.** Applications for a loan or grant from the Water Supply Development Ac-
24 count must be in a form prescribed by the Water Resources Department and must include
25 the following:

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

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

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

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

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

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

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

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

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

41 (10) A completed feasibility analysis if appropriate.

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

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

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

1 provide collateral.

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

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

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

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

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

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

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

34 (6) The department shall document the ranking of all applications and make the applica-
35 tion ranking publicly available after funding decisions have been published.

36 **SECTION 7.** (1) The Water Resources Department shall design criteria for the project
37 scoring and ranking system described in section 6 of this 2013 Act to achieve the following
38 outcomes:

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

41 (b) Preference for partnerships and collaborative projects.

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

43 (2) The department shall review the loan and grant program on a biennial basis to assess
44 to what extent the outcomes described in subsection (1) of this section are being achieved,
45 report the review findings to the Water Resources Commission and modify the project se-

1 lection process as necessary to better achieve the outcomes described in subsection (1) of
2 this section.

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

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

7 (b) Diverts water from a stream that supports state or federally listed sensitive, threat-
8 ened or endangered fish species; or

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

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

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

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

16 (b) Demonstrate environmental benefits:

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

19 (B) If the project is not subject to section 8 of this 2013 Act, sufficient to qualify the
20 project under the scoring and ranking system described in section 6 of this 2013 Act.

21 **SECTION 10.** If a project dedicates water to in-stream use under the requirements de-
22 scribed in section 8 of this 2013 Act or as allowed under section 9 of this 2013 Act, the Water
23 Resources Department shall issue in-stream use permits for the dedicated water. Dedicated
24 water may come from other sources and be put in-stream at other locations in the watershed
25 if the department, in consultation with the State Department of Fish and Wildlife, deter-
26 mines that the alternate location would provide greater or equal environmental benefit. The
27 Water Resources Department, in consultation with the State Department of Fish and
28 Wildlife, shall determine the timing of the flows to maximize in-stream benefits in a manner
29 consistent with public health and safety.

30 **SECTION 11.** (1) The Water Resources Department shall make a determination as pro-
31 vided under subsection (2) of this section if an application for a loan or grant from the Water
32 Supply Development Account is for a project that requires a new water storage or aquifer
33 recharge permit, certificate or limited license outside of the official irrigation season and:

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

35 (b) Diverts water from a stream that supports state or federally listed sensitive, threat-
36 ened or endangered fish species; or

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

38 (2) The department shall review a completed application for a project described in sub-
39 section (1) of this section to determine whether seasonally varying flow requirements have
40 been established for the stream of interest. If the department determines that the require-
41 ments have not been established, the department shall establish seasonally varying flow re-
42 quirements before issuing a loan or grant from the account. For purposes of establishing the
43 requirements, the department may rely upon existing scientific data and analysis or may
44 fund new data and analysis. The department may use account moneys to pay the cost of es-
45 tablishing seasonally varying flow requirements.

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

4 (4) The Water Resources Department shall provide the applicant and the public an op-
5 portunity for comment prior to establishing seasonally varying flow requirements under
6 subsection (2) of this section. The burden of rebutting the accuracy of a seasonally varying
7 flow requirement proposed by the department is on the applicant or member of the public.

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

11 **SECTION 12.** (1) Before loan or grant moneys are expended from the Water Supply De-
12 velopment Account for any construction project, the recipient must obtain all applicable lo-
13 cal, state, tribal and federal permits and show that the project complies with local land use
14 laws. Project materials must include a notation indicating that Water Resources Department
15 funding was used for the project.

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

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

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

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

33 **SECTION 13.** (1) The Water Resources Commission shall adopt rules establishing stan-
34 dards for borrowers obtaining loans issued from the Water Supply Development Account.
35 The commission shall design the standards to ensure that all loans have a high probability
36 of repayment and that all loans are adequately secured in the event of a default. The com-
37 mission shall solicit comments from the Oregon Department of Administrative Services and
38 the State Treasurer when designing the standards. The standards may include, but need not
39 be limited to, standards that give preference to entities with ad valorem taxing authority.

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

44 **SECTION 14.** The Water Resources Department may enter into water service contracts
45 to recover all or a portion of moneys loaned from the Water Supply Development Account.

1 **Moneys received through the water service contracts, or as repayment of account loans,**
 2 **must be deposited in the account.**

3 **SECTION 15. The Water Resources Commission shall adopt rules to implement sections**
 4 **1 to 16 of this 2013 Act.**

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

6 (1) **Invest in water development projects;**

7 (2) **Assess the feasibility of water development projects; and**

8 (3) **Enter into and issue contracts to put water to beneficial use.**

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

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

12 **Sec. 17.** (1) As used in this section, “critical ground water storage project” means an under-
 13 ground or below-ground storage of river water in a critical ground water area designated under ORS
 14 537.730 for use in:

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

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

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

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

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

29 *[(b)]* **(B)** To the extent practicable, to *[return dedicated new stored water for stream]* **deliver any**
 30 **net environmental public benefit water to be provided in the form of in-stream flow** augmen-
 31 tation at a time of year that the Water Resources Department, in consultation with the State De-
 32 partment of Fish and Wildlife and relevant tribal governments, determines will provide the maximum
 33 net environmental public benefit or in-stream benefit.

34 **(b) Net environmental public benefit shall be determined under paragraph (a) of this**
 35 **subsection based upon the lesser of the water development amount described in a final grant**
 36 **report submitted by the grantee to the department or 25,000 acre-feet of aquifer recharge.**

37 (4) If more than 25 percent of the funding for an aquifer storage and recovery project is from
 38 grants of state moneys and is not subject to repayment, the project must be designed to *[dedicate for*
 39 *the purpose of providing]* **provide** net environmental public benefit *[or in-stream benefit a percentage*
 40 *of the new stored water created by the project]* **in an amount** that equals or exceeds the percentage
 41 of funding for the project that is from grants of state moneys. The Water Resources Department
 42 shall manage the *[dedicated increment of new stored water]* **amount of water provided** for net en-
 43 vironmental public benefit *[and in-stream benefit]* **in the form of in-stream flow.**

44 (5) On or before the earlier of six years after the issuance of the ground water recharge permit
 45 or the date the water right certificate is issued, the department shall quantify and legally protect

1 in-stream the increment of new water returned in stream from a project described in this section.

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

9 (7) **At the request of the grantee, the terms and conditions of a grant approved by the**
10 **department under this section may be amended to replace the terms and conditions ori-**
11 **ginally imposed for the grant with terms and conditions similar to the terms and conditions**
12 **imposed for grants issued from the Water Supply Development Account established under**
13 **section 2 of this 2013 Act.**

14 [(7)] (8) This section does not limit the authority granted the Environmental Quality Commission
15 or the Department of Environmental Quality under ORS chapter 468B.

16 [(8)] (9) This section is repealed January 2, 2030.

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

20 _____