

**Enrolled**  
**House Bill 2400**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D.)

CHAPTER .....

AN ACT

Relating to water policies; creating new provisions; amending ORS 541.689 and sections 20, 22 and 23, chapter 784, Oregon Laws 2013; and declaring an emergency.

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

**SECTION 1.** (1) Notwithstanding section 18, chapter 784, Oregon Laws 2013, any report that the task force established by section 18, chapter 784, Oregon Laws 2013, submits as provided in ORS 192.245 to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Water Resources Commission prior to April 1, 2015, is deemed to have satisfied the reporting requirement imposed on the task force under section 18, chapter 784, Oregon Laws 2013.

(2) Notwithstanding section 19, chapter 784, Oregon Laws 2013, any report that the task force established by section 19, chapter 784, Oregon Laws 2013, submits as provided in ORS 192.245 to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Water Resources Commission prior to January 31, 2015, is deemed to have satisfied the reporting requirement imposed on the task force under section 19, chapter 784, Oregon Laws 2013.

**SECTION 2.** Section 20, chapter 784, Oregon Laws 2013, is amended to read:

**Sec. 20.** (1) On or after the date that the Water Resources Commission receives a copy of the task force report required under section 19 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, the commission shall adopt rules to establish a methodology for use in determining the seasonally varying flows for a stream of interest. In adopting the rules, the commission shall give consideration to adoption of the methodology described in the task force report. The commission shall complete adoption of the rule in time for the rule to take effect on January 1, [2015] **2016**. As used in this subsection, "seasonally varying flow" has the meaning given that term in [section 1 of this 2013 Act] **ORS 541.651**.

(2) The commission shall appoint the task force established in section 19 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, as provided in ORS 183.333 to act as an advisory committee to the commission for the consideration of rule adoption under this section.

**SECTION 3.** Section 22, chapter 784, Oregon Laws 2013, is amended to read:

**Sec. 22.** Section 18 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, is repealed on [the date of the convening of the 2015 regular session of the Legislative Assembly as specified in ORS 171.010] **July 1, 2015**.

**SECTION 4.** The Legislative Assembly intends that the amendments to section 22, chapter 784, Oregon Laws 2013, by section 3 of this 2015 Act operate retroactively to February

**2, 2015, and that the operation and effect of section 18, chapter 784, Oregon Laws 2013, continue unaffected from February 2, 2015, to June 30, 2015. Any otherwise lawful action of the task force established under section 18, chapter 784, Oregon Laws 2013, taken on or after February 2, 2015, and on or before the earlier of June 30, 2015, or the effective date of this 2015 Act is ratified and approved.**

**SECTION 5.** Section 23, chapter 784, Oregon Laws 2013, is amended to read:

**Sec. 23.** Section 19 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, is repealed on [the date of the convening of the 2016 regular session of the Legislative Assembly as specified in ORS 171.010] **January 1, 2016.**

**SECTION 6.** ORS 541.689 is amended to read:

541.689. (1) The Water Resources Department shall make a determination as provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a [new] water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:

(a) Impounds surface water on a perennial stream;

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

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

(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not **previously** been established, the department shall establish the seasonally varying flows before issuing a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.

(3) The **Water Resources** Department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The **Water Resources** Department may rely upon existing scientific data and analysis or may fund new data and analysis. The **Water Resources** Department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules. [If seasonally varying flows are established for a stream,]

**(4) If the department establishes applicable seasonally varying flows for the stream of interest, the department shall make the seasonally varying flows a condition of:**

**(a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (1) of this section that receives a loan or grant from the account; and**

**(b) [A subsequent] The new or existing water storage or aquifer recharge permit or limited license for the storage of water [must be conditioned in accordance with the applicable seasonally varying flows if the license or permit] issued for any subsequent project that:**

[a] **(A) [Is for a project receiving] Receives** a loan or grant from the account;

[b] **(B)** Is for the storage of water outside of the official irrigation season; and

[c] **(C)** Has a diversion point that is subject to seasonally varying flows.

[4] **(5)** The applicant for **or holder of** a permit or license described in subsection [(3)] **(4)(b)** of this section may request that **the applicable** seasonally varying flows **established under subsection (2) of this section for the stream of interest** be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.

[(5)] **(6)** The department shall condition [the new] a water storage permit and resulting certificate, [new] aquifer recharge permit and resulting certificate or [new] limited license [associated with] **for** a project that receives a grant or loan from the account **and meets the other conditions**

**described in subsection (4) of this section** to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

[(6)] (7) For purposes of any project that receives a loan or grant from the account and [*has the characteristics described in subsection (1) of this section, or any project*] **meets the other conditions** described in subsection [(3)] (4) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.

[(7)] (8) Subsections (1) to [(6)] (7) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.

**SECTION 7. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

**Passed by House April 1, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 18, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State