

House Bill 3806

Sponsored by Representatives LEVY E, HELM, OWENS; Representative KROPP, Senator BROADMAN

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act allows an agency to approve a Deschutes water bank pilot program. The Act sunsets the pilot program. (Flesch Readability Score: 63.6).

Authorizes the Water Resources Commission to approve a Deschutes River water bank pilot program.

Establishes certain requirements for the pilot program.

Sunsets the pilot program on January 2, 2034.

A BILL FOR AN ACT

1
2 Relating to water banks.

3 Whereas the Deschutes River supports the cultural, spiritual and economic needs of tribal
4 members whose ancestors have inhabited the watershed since time immemorial; and

5 Whereas today the Deschutes River also supports a thriving economy based on agriculture, re-
6 creation and strong communities; and

7 Whereas the Deschutes River provides habitat for fish and wildlife as well as a range of other
8 environmental benefits and ecosystem services; and

9 Whereas meeting all water needs in the Deschutes River basin is challenging due to overallo-
10 cation, ongoing drought, climate change and other factors; and

11 Whereas a voluntary, market-based tool such as a water bank would allow for management and
12 movement of water to increase water supply reliability for junior irrigation districts, provide cities
13 with access to ground water mitigation and restore in-stream flows in the Deschutes River; now,
14 therefore,

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

16 **SECTION 1. (1) The Water Resources Commission may approve a Deschutes River water**
17 **bank pilot program that:**

18 **(a) Is approved by the Confederated Tribes of the Warm Springs.**

19 **(b) Has a water bank charter described in subsection (3) of this section.**

20 **(2) The persons and entities that are eligible to participate in a water bank described in**
21 **subsection (1) of this section are:**

22 **(a) Water rights holders that divert surface water from the Deschutes River, including**
23 **irrigation districts.**

24 **(b) The Confederated Tribes of the Warm Springs.**

25 **(c) Cities in central Oregon.**

26 **(d) Franchises, and domestic water supply districts organized under ORS chapter 264,**
27 **that supply water to cities in central Oregon.**

28 **(e) The Deschutes River Conservancy.**

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 (3) A water bank charter must include:

2 (a) A description of the geographic area for water bank operations, which must be limited
3 to the Deschutes River above Lake Billy Chinook;

4 (b) Identification of, and signatures from authorized representatives of, the participants.

5 (c) A forbearance agreement that allows for out-of-priority water use by the participants.

6 (d) An agreement that the Deschutes River Conservancy will manage the operations of
7 the water bank, in coordination with the participants.

8 (e) A requirement that the following be dedicated to in-stream flow:

9 (A) Twenty-five percent of the volume of water loaned to the water bank as a result of
10 the fallowing of acres during all or part of an irrigation season, which must be protected by
11 an in-stream lease during the irrigation season.

12 (B) One hundred percent of the volume of water loaned to the water bank as a result of
13 activities other than the fallowing of acres, which must be released from the Wickiup Res-
14 ervoir and protected by an in-stream lease or flow augmentation right in the Deschutes
15 River during the winter following the loan of the water.

16 (C) Any water loaned to the water bank that is more than the water used, which must
17 be protected by an in-stream lease or flow augmentation right.

18 (f) A requirement that the participants measure water use and report the measurements
19 to the Water Resources Department.

20 (g) A requirement that the operations of the water bank may not:

21 (A) Injure existing water rights.

22 (B) Diminish the flows of state scenic waterways.

23 (C) Enlarge existing water rights.

24 (h) A description of how water rights will be vetted for inclusion in the water bank.

25 (i) A description of how the participants will manage water use during the irrigation
26 season, in coordination with department employees.

27 **SECTION 2.** (1) On or before January 1 of each year, for a water bank approved under
28 section 1 of this 2025 Act, the Deschutes River Conservancy shall submit a proposed annual
29 operating plan to the Water Resources Department.

30 (2) A water bank described in section 1 of this 2025 Act may operate only under an annual
31 operating plan that is approved on or before March 1 of the year in which the water bank is
32 operating.

33 (3) Notwithstanding any contrary provision of ORS chapter 183, the department shall
34 make a proposed annual operating plan available for public comment for 30 days.

35 (4) Before approving a proposed annual operating plan, the department shall seek com-
36 ments on the proposed annual operating plan from the State Department of Fish and Wildlife
37 and the Confederated Tribes of the Warm Springs.

38 (5) A proposed annual operating plan must:

39 (a) Include the report described in section 4 (1) of this 2025 Act.

40 (b) Describe the following activities:

41 (A) How water supply is made available to loan to the water bank that is subject to the
42 annual operating plan.

43 (B) How water deposited in the water bank may be withdrawn from the water bank and
44 used.

45 (6) In describing activities pursuant to subsection (5)(b) of this section, an annual oper-

1 ating plan must include information sufficient for the department to determine whether the
 2 proposed activities will cause injury to, or enlargement of, any existing water rights.

3 (7) The participants in a water bank may loan or withdraw water during an irrigation
 4 season only as described pursuant to subsection (5)(b) of this section.

5 **SECTION 3.** (1) Not less than 30 days before the start of an irrigation season, a water
 6 bank approved under section 1 of this 2025 Act shall submit a report to the relevant
 7 watermaster of the Water Resources Department that identifies:

8 (a) Acres from which surface water irrigation will be removed to be deposited into the
 9 water bank, the associated point of diversion and the amount of water associated with the
 10 acres and point of diversion, measured in acre feet and cubic feet per second.

11 (b) The primary diversions from which water deposited into the water bank will be
 12 withdrawn, measured in acre feet and cubic feet per second.

13 (c) The amount of water, measured in acre feet and cubic feet per second, to be dedicated
 14 to in-stream use as part of the operations of the water bank during the calendar year and
 15 the location of the applicable water gage.

16 (d) The beneficial uses to which water rights in the water bank are put.

17 (e) The anticipated transactions of the water bank.

18 (2) The watermaster shall integrate transactions of a water bank described in subsection
 19 (1)(e) of this section into management operations for the irrigation season.

20 (3) The water bank shall post the report described in subsection (1) of this section on a
 21 publicly available website of the water bank.

22 **SECTION 4.** (1) On or before January 1 of each year, a water bank approved under sec-
 23 tion 1 of this 2025 Act shall submit a report to the Water Resources Department that sum-
 24 marizes the activities of the water bank during the previous irrigation season and includes
 25 the report described in section 3 of this 2025 Act.

26 (2) The report must describe in-stream flow benefits, including, at a minimum:

27 (a) Whether 25 percent of the volume of water loaned to the water bank was available
 28 due to the fallowing of acres during all or part of an irrigation season.

29 (b) Whether all water loaned to the water bank was available for reasons other than the
 30 fallowing of acres.

31 (3) After submitting the report, the water bank shall make all records of water rights
 32 and monitoring information associated with operations of the water bank available to the
 33 department for an assessment, upon the request of the department.

34 **SECTION 5.** (1) A water bank approved under section 1 of this 2025 Act may operate only
 35 if, during a calendar year, a minimum of 1,500 acre feet of water, from water rights from
 36 any participants in the water bank, are protected by a lease under ORS 537.348.

37 (2) Acre feet of water that are permanently converted to an in-stream water right under
 38 ORS 537.348, on or after the effective date of this 2025 Act, by a participant in the water bank
 39 may count toward the minimum acre feet described in subsection (1) of this section.

40 (3) On or before March 1, the participants may agree to increase the acre feet protected
 41 by a lease under ORS 537.348 to an amount of acre feet that is higher than the minimum
 42 described in subsection (1) of this section.

43 (4) A deposit of water into a water bank approved under this section as a result of
 44 fallowing acres shall constitute beneficial use for purposes of ORS 540.610.

45 (5) If, during an irrigation season, the Water Resources Department determines, alone

1 or in consultation with the participants, the Confederated Tribes of the Warm Springs or the
2 State Department of Fish and Wildlife, that operations of the water bank are causing injury
3 to or enlarging an existing water right, the department shall:

4 (a) Regulate off the operations that are causing the injury or enlargement; and

5 (b) Instruct the water bank to pause operations for the remainder of the irrigation sea-
6 son.

7 (6) The operations of the water bank may not result in an increase in:

8 (a) The use of water within the geographic area of the water bank during a calendar year.

9 (b) The diversion of surface water within the geographic area of the water bank.

10 (c) The number of acres within the geographic area of the water bank that are irrigated.

11 (7) If the participants in a water bank do not adhere to all applicable requirements, the
12 department shall deactivate the water bank.

13 (8) A water bank that is deactivated as described in subsection (7) of this section must
14 submit a new charter as described in section 1 of this 2025 Act and receive approval for the
15 new charter before resuming operations.

16 SECTION 6. Sections 1 to 5 of this 2025 Act are repealed on January 2, 2034.
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