

A-Engrossed House Bill 4049

Ordered by the House February 17
Including House Amendments dated February 17

Sponsored by Representatives OWENS, HELM, Senator MCLANE; Representatives ANDERSEN, BOICE, HARTMAN, LEVY B, MCDONALD, Senator NASH (Presession filed.)

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

Digest: This Act lets ground water users in Harney Valley make agreements to limit their water use. (Flesch Readability Score: 63.6).

[*Directs*] **Authorizes** the Water Resources Commission to encourage and approve voluntary agreements between ground water users in the Greater Harney Valley Groundwater Area of Concern to achieve reasonably stable ground water levels.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to Harney Basin water; and prescribing an effective date.

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

4 **SECTION 1. Section 2 of this 2026 Act is added to and made a part of ORS 537.505 to**
5 **537.795.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **“Greater Harney Valley Groundwater Area of Concern” has the meaning given that**
8 **term by the Water Resources Commission pursuant to ORS 537.743.**

9 (b) **“Minor amendment” means a change to an existing voluntary agreement that would**
10 **not result in the voluntary agreement being a detriment to the public welfare, safety and**
11 **health or contrary to the intent, purposes and requirements of ORS 537.505 to 537.795 and**
12 **537.992.**

13 (c) **“Voluntary agreement” means an agreement entered into and approved in accordance**
14 **with this section.**

15 (2) **In the administration of ORS 537.505 to 537.795 and 537.992, the commission may en-**
16 **courage, promote and recognize voluntary agreements between ground water users within**
17 **the Greater Harney Valley Groundwater Area of Concern to allow ground water users to**
18 **determine how to achieve reasonably stable ground water levels within a reasonable time in**
19 **ways that best serve local communities and the long-term sustainability of the resource.**

20 (3)(a) **Parties to a voluntary agreement may include:**

21 (A) **Individuals, corporations, associations, firms, partnerships, limited liability compa-**
22 **nies and joint stock companies;**

23 (B) **Local governments, as defined in ORS 174.116;**

24 (C) **The United States Government, or any federal department or agency;**

25 (D) **A federally recognized Indian tribe; and**

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 (E) Subject to paragraph (b) of this subsection, an agency of state government, as defined
2 in ORS 174.111.

3 (b) The State of Oregon may only exercise the rights of a party to a voluntary agreement
4 in the state's capacity as a landowner.

5 (4)(a) Subject to paragraph (b) of this subsection, any existing ground water right that
6 has not been canceled under ORS 540.610 to 540.650 may be included in a voluntary agree-
7 ment, including:

8 (A) A ground water right or point of appropriation that is subject to and has exceeded a
9 condition that restricts water use based on a decline in ground water levels; or

10 (B) A ground water right or point of appropriation subject to an order establishing one
11 or more corrective control provisions following a contested case associated with the desig-
12 nation of Harney Valley as a Critical Groundwater Area by the commission.

13 (b) A ground water right or point of appropriation may be included in a voluntary
14 agreement, provided that withdrawals do not cause water levels to exceed the limits estab-
15 lished in the voluntary agreement.

16 (5) A voluntary agreement must:

17 (a) Establish the baseline condition from which ground water use reductions will be cal-
18 culated. Baseline conditions may account for whether and how any conservation practices
19 or water use efficiency improvements implemented by a party during the five years imme-
20 diately preceding execution of the voluntary agreement will be recognized.

21 (b) Establish an agreed upon limit on the total volume of water that may be used under
22 the voluntary agreement each year.

23 (c) Establish a schedule for implementing ground water use reductions, which may in-
24 clude phased or adaptive timelines.

25 (d) Describe how the parties will evaluate compliance with the voluntary agreement,
26 which may include but need not be limited to:

27 (A) A description of data sources that the parties will use to measure ground water lev-
28 els, water level trends, water use and the effect of conservation and water efficiencies im-
29 plemented as part of the voluntary agreement; and

30 (B) Whether to credit the implementation of efficiencies that are consistent with appli-
31 cable law and the long-term sustainability of the resource, even if ground water levels are
32 not measurably increasing due to low-recharge geologic formations and hydrogeological
33 conditions.

34 (e) Establish a schedule for periodic review of the voluntary agreement by the commis-
35 sion.

36 (6)(a) Parties seeking approval of a voluntary agreement must submit the voluntary
37 agreement and any supporting documents to the commission and the Water Resources Di-
38 rector.

39 (b) The commission shall place a voluntary agreement on the agenda of the first regu-
40 larly scheduled meeting of the commission that falls at least 90 days after the date on which
41 the commission received the voluntary agreement.

42 (7)(a) Except as provided in paragraph (e) of this subsection, the Water Resources De-
43 partment shall, no later than 30 days after the director receives a voluntary agreement:

44 (A) Review the voluntary agreement; and

45 (B) Meet with the parties to the voluntary agreement to provide feedback based on the

1 department's review.

2 (b) Except as provided in paragraph (e) of this subsection, no later than 30 days after
3 meeting with the department under paragraph (a) of this subsection, the parties to the
4 agreement shall:

5 (A) Submit an updated agreement to the commission; or

6 (B) Notify the commission and the department that the parties have declined to make
7 updates to the voluntary agreement.

8 (c) The department shall prepare a recommendation to the commission, based on appli-
9 cable law, for approval or rejection of the voluntary agreement, including any updates to the
10 voluntary agreement made pursuant to this subsection. When preparing the recommen-
11 dation, the department shall consider the benefit of voluntary groundwater use reductions
12 under the agreement and the point in time at which those reductions will begin to be
13 achieved.

14 (d) Notwithstanding subsection (6)(b) of this section, if the commission determines that
15 the commission or the department lacks the staff capacity to simultaneously evaluate two
16 or more voluntary agreements placed on the agenda of a regularly scheduled meeting, the
17 commission may delay consideration of the second agreement placed on the agenda, and any
18 other agreements subsequently placed on the agenda, until the commission has approved or
19 rejected the first agreement placed on the agenda.

20 (e) Notwithstanding paragraphs (a) and (b) of this subsection:

21 (A) The parties to a voluntary agreement and the department may agree to extend either
22 deadline described in paragraph (a) or (b) of this subsection.

23 (B) If the commission delays consideration of a voluntary agreement as provided in par-
24 agraph (d) of this subsection, the commission may extend either deadline described in para-
25 graph (a) or (b) of this subsection, provided that the extension does not delay the
26 consideration of the voluntary agreement longer than reasonably necessary for the depart-
27 ment to satisfy the requirements of this subsection.

28 (8) The commission shall approve a voluntary agreement if the commission finds that the
29 voluntary agreement:

30 (a) Is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and
31 537.992;

32 (b) Is likely to achieve reasonably stable ground water levels within a reasonable time;

33 (c) Demonstrates how and to what extent the voluntary agreement will minimize and
34 mitigate economic impacts to the region; and

35 (d) Satisfies the requirements of subsections (3) to (5) of this section.

36 (9) Notwithstanding any other provision of law, the commission may not require a mini-
37 mum level of participation in a voluntary agreement as a condition of approval.

38 (10) Approval or rejection by the commission of a voluntary agreement described in this
39 section shall constitute an order other than a contested case subject to review as provided
40 in ORS 183.484.

41 (11) Notwithstanding ORS 536.025, the commission may not delegate to the department
42 or the Water Resources Director the commission's authority to approve or reject a volun-
43 tary agreement.

44 (12) A voluntary agreement shall control in lieu of a formal order of the commission or
45 rule adopted under ORS 537.505 to 537.795 and 537.992 until the agreement is terminated.

1 (13) Before the implementation of an approved voluntary agreement, the parties shall:

2 (a) Install a totalizing flow meter on any well used to appropriate ground water under
3 the voluntary agreement and maintain and repair flow meters as needed prior to and during
4 the irrigation season;

5 (b) Prior to each irrigation season, and no later than March 1 of each year, develop and
6 submit to the department an irrigation plan for total annual use of ground water under the
7 terms of the voluntary agreement, including the rate, duty and acres to which water will be
8 applied for irrigation and the wells from which water will be appropriated;

9 (c) No later than November 15 of each year, report to the department the parties' use
10 of ground water under the voluntary agreement; and

11 (d) Comply with the terms and conditions of the voluntary agreement.

12 (14)(a) The parties to a voluntary agreement may make minor amendments to the vol-
13 untary agreement after providing the proposed minor amendments to the department. The
14 parties may not implement the proposed minor amendments until the department responds
15 to the proposed minor amendments or 30 days has passed since the parties provided the
16 proposed minor amendments to the department, whichever occurs first.

17 (b) Proposed minor amendments submitted to the department under this subsection do
18 not require the approval of the commission.

19 (15) Notwithstanding ORS 540.520 and 540.523, the parties to a voluntary agreement may
20 temporarily change the place of use or point of appropriation of a water right covered by the
21 voluntary agreement without making an application required by ORS 540.520 or 540.523. The
22 parties shall track and annually report to the department any temporary changes made
23 pursuant to this subsection.

24 (16)(a) A voluntary agreement may only be terminated by:

25 (A) The lapse of time as provided in the voluntary agreement;

26 (B) The consent of the parties to the voluntary agreement; or

27 (C) Order of the commission, if the commission finds that:

28 (i) The voluntary agreement is not being substantially complied with by the parties; or

29 (ii) Changed conditions have made the continuance of the voluntary agreement a detri-
30 ment to the public welfare, safety and health or contrary to the intent, purposes and re-
31 quirements of ORS 537.505 to 537.795 and 537.992.

32 (b) The commission shall hold a public hearing, for which adequate notice was provided
33 to the parties and the public, before making a finding described in paragraph (a)(C) of this
34 subsection.

35 **SECTION 3.** This 2026 Act takes effect on the 91st day after the date on which the 2026
36 regular session of the Eighty-third Legislative Assembly adjourns sine die.

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