

House Bill 4049

Sponsored by Representatives OWENS, HELM, Senator MCLANE; Representatives BOICE, LEVY B, MCDONALD, Senators GOLDEN, 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 **as introduced**. 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 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

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

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

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

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

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

(b) "Minor amendment" means a change to an existing voluntary agreement that would not result in the voluntary agreement being a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(c) "Subarea" means a portion of the Greater Harney Valley Groundwater Area of Concern established and defined by the commission.

(d) "Voluntary agreement" means an agreement entered into and approved in accordance with this section.

(2) In the administration of ORS 537.505 to 537.795 and 537.992, the commission shall encourage, promote and approve voluntary agreements between ground water users from the same subarea of the Greater Harney Valley Groundwater Area of Concern to allow ground water users to determine how to achieve reasonably stable ground water levels over time in ways that best serve local communities and the long-term sustainability of the resource.

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

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies;

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

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

(D) A federally recognized Indian tribe; and

(E) Subject to paragraph (b) of this subsection, an agency of state government, as defined

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 in ORS 174.111.

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

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

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

9 (B) A ground water right or point of appropriation subject to regulation following the
10 contested case associated with the designation of Harney Valley as a Critical Groundwater
11 Area by the commission.

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

15 (5) A voluntary agreement must:

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

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

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

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

26 (A) A description of sources of data that the parties will use to measure ground water
27 levels, water level trends, water use and the effect of conservation and water efficiencies
28 implemented as part of the voluntary agreement; and

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

33 (6)(a) Parties seeking approval of a voluntary agreement must submit the voluntary
34 agreement and any supporting documents to the commission.

35 (b) The commission shall place a voluntary agreement submitted to the commission on
36 the agenda of the regularly scheduled meeting of the commission next following the 90th day
37 after the date on which the commission received the voluntary agreement.

38 (7)(a) No later than 30 days after the commission receives a voluntary agreement, the
39 Water Resources Department shall:

40 (A) Review the voluntary agreement; and

41 (B) Meet with the parties to the voluntary agreement to provide feedback based on the
42 department's review.

43 (b) No later than 30 days after meeting with the department under paragraph (a) of this
44 subsection, the parties to the agreement shall:

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

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

(c) The department shall prepare a recommendation to the commission, based on applicable law, for approval or rejection of the voluntary agreement, including any updates to the voluntary agreement made pursuant to this subsection.

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

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

(b) Is likely to achieve reasonably stable ground water levels over time;

(c) Is likely to minimize and mitigate economic impacts to the region; and

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

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

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

(11) Notwithstanding ORS 536.025, the commission may not delegate to the department or the Water Resources Director the commission's authority to approve or reject a voluntary agreement.

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

(13) After approval of a voluntary agreement the parties shall:

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

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

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

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

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

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

(15) Notwithstanding ORS 540.520 and 540.523, the parties to a voluntary agreement may change the place of use, type of use, point of diversion or point of appropriation of water covered under the voluntary agreement without making an application required by ORS 540.520 or 540.523.

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

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

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

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

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

5 **(ii) Changed conditions have made the continuance of the voluntary agreement a detri-**
6 **ment to the public welfare, safety and health or contrary in any particular to the intent,**
7 **purposes and requirements of ORS 537.505 to 537.795 and 537.992.**

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

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