

Requested by Representative OWENS

**PROPOSED AMENDMENTS TO
HOUSE BILL 4049**

1 On page 1 of the printed bill, delete lines 6 through 28 and delete pages
2 2 and 3.

3 On page 4, delete lines 1 through 10 and insert:

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

5 **“(a) ‘Greater Harney Valley Groundwater Area of Concern’ has the**
6 **meaning given that term by the Water Resources Commission pursu-**
7 **ant to ORS 537.743.**

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

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

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

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

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

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

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

6 “(D) A federally recognized Indian tribe; and

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

9 “(b) The State of Oregon may only exercise the rights of a party to
10 a voluntary agreement in the state’s capacity as a landowner.

11 “(4)(a) Subject to paragraph (b) of this subsection, any existing
12 ground water right that has not been canceled under ORS 540.610 to
13 540.650 may be included in a voluntary agreement, including:

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

17 “(B) A ground water right or point of appropriation subject to an
18 order establishing one or more corrective control provisions following
19 a contested case associated with the designation of Harney Valley as
20 a Critical Groundwater Area by the commission.

21 “(b) A ground water right or point of appropriation may be included
22 in a voluntary agreement, provided that withdrawals do not cause
23 water levels to exceed the limits established in the voluntary agree-
24 ment.

25 “(5) A voluntary agreement must:

26 “(a) Establish the baseline condition from which ground water use
27 reductions will be calculated. Baseline conditions may account for
28 whether and how any conservation practices or water use efficiency
29 improvements implemented by a party during the five years imme-
30 diately preceding execution of the voluntary agreement will be recog-

1 nized.

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

4 “(c) Establish a schedule for implementing ground water use re-
5 ductions, which may include phased or adaptive timelines.

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

8 “(A) A description of data sources that the parties will use to
9 measure ground water levels, water level trends, water use and the
10 effect of conservation and water efficiencies implemented as part of
11 the voluntary agreement; and

12 “(B) Whether to credit the implementation of efficiencies that are
13 consistent with applicable law and the long-term sustainability of the
14 resource, even if ground water levels are not measurably increasing
15 due to low-recharge geologic formations and hydrogeological condi-
16 tions.

17 “(e) Establish a schedule for periodic review of the voluntary
18 agreement by the commission.

19 “(6)(a) Parties seeking approval of a voluntary agreement must
20 submit the voluntary agreement and any supporting documents to the
21 commission and the Water Resources Director.

22 “(b) The commission shall place a voluntary agreement on the
23 agenda of the first regularly scheduled meeting of the commission that
24 falls at least 90 days after the date on which the commission received
25 the voluntary agreement.

26 “(7)(a) Except as provided in paragraph (e) of this subsection, the
27 Water Resources Department shall, no later than 30 days after the
28 director receives a voluntary agreement:

29 “(A) Review the voluntary agreement; and

30 “(B) Meet with the parties to the voluntary agreement to provide

1 feedback based on the department's review.

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

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

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

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

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

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

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

27 “(B) If the commission delays consideration of a voluntary agree-
28 ment as provided in paragraph (d) of this subsection, the commission
29 may extend either deadline described in paragraph (a) or (b) of this
30 subsection, provided that the extension does not delay the consider-

1 **ation of the voluntary agreement longer than reasonably necessary for**
2 **the department to satisfy the requirements of this subsection.**

3 **“(8) The commission shall approve a voluntary agreement if the**
4 **commission finds that the voluntary agreement:**

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

7 **“(b) Is likely to achieve reasonably stable ground water levels**
8 **within a reasonable time;**

9 **“(c) Demonstrates how and to what extent the voluntary agreement**
10 **will minimize and mitigate economic impacts to the region; and**

11 **“(d) Satisfies the requirements of subsections (3) to (5) of this sec-**
12 **tion.**

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

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

19 **“(11) Notwithstanding ORS 536.025, the commission may not dele-**
20 **gate to the department or the Water Resources Director the**
21 **commission’s authority to approve or reject a voluntary agreement.**

22 **“(12) A voluntary agreement shall control in lieu of a formal order**
23 **of the commission or rule adopted under ORS 537.505 to 537.795 and**
24 **537.992 until the agreement is terminated.**

25 **“(13) Before the implementation of an approved voluntary agree-**
26 **ment, the parties shall:**

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

30 **“(b) Prior to each irrigation season, and no later than March 1 of**

1 each year, develop and submit to the department an irrigation plan for
2 total annual use of ground water under the terms of the voluntary
3 agreement, including the rate, duty and acres to which water will be
4 applied for irrigation and the wells from which water will be appro-
5 priated;

6 “(c) No later than November 15 of each year, report to the depart-
7 ment the parties’ use of ground water under the voluntary agreement;
8 and

9 “(d) Comply with the terms and conditions of the voluntary agree-
10 ment.

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

18 “(b) Proposed minor amendments submitted to the department un-
19 der this subsection do not require the approval of the commission.

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

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

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

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

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

30 “(i) The voluntary agreement is not being substantially complied

with by the parties; or

“(ii) Changed conditions have made the continuance of the voluntary agreement a detriment to the public welfare, safety and health or contrary to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

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