

HB 3806 -5 STAFF MEASURE SUMMARY

House Committee On Agriculture, Land Use, Natural Resources, and Water

Prepared By: Anna Glueder, LPRO Analyst

Meeting Dates: 3/12, 4/7

WHAT THE MEASURE DOES:

The measure authorizes the Oregon Water Resources Commission to approve a Deschutes River water bank pilot program.

Detailed Summary

Authorizes the Oregon Water Resources Commission to approve a Deschutes River water bank pilot program that is approved by the Confederated Tribes of the Warm Springs and has a water bank charter.

Authorizes the **following persons and entities to participate in a water bank:**

- Water right holders, including irrigation districts, that divert surface water from the Deschutes River
- The Confederated Tribes of Warm Springs
- Cities in central Oregon and franchises and domestic water supply districts that supply water to those cities
- The Deschutes River Conservancy (DRC)

Water bank restrictions and provisions:

- Prohibits water banks from operating during calendar years during which less than 1,500 acre feet of water from any of the participants' water rights are protected through an in-stream lease or a permanent conversion to in-stream use and authorizes water bank users to increase the minimum acre feet requirement by March 1.
- Specifies water bank deposit constitutes beneficial use if deposited because of following acres.
- Requires OWRD to regulate off operations and instruct the water bank to pause operations for the remainder of the irrigation season if OWRD determines, alone, or in consultation with participants, the Confederated Tribes of the warm Springs, or ODFW that water bank operations cause injury to, or enlarging an existing water right.
- Prohibits water bank operations from resulting in the an increase of used water. The diversion of surface water, or the number of acres within the geographic area of the water bank
- Authorizes OWRD to deactivate the water bank if participants fail to adhere to all applicable requirements
- Specifies that deactivated water banks must submit, and receive approval for, a new water bank charter.

Requires a **water bank charter** to include:

- **Description of the geographic area for water bank operations:** Limited to the Deschutes River above Lake Billy Chinook.
- Identification and signatures from authorized representatives of the participants
- Forbearance agreement that allows for out-of-priority water use by the participants
- **Agreement for DRC** to manage water bank operations in coordination with the participants.
- Requirement for specified volumes of water loaned to the water bank to be dedicated to in-stream flow
- Measurement and reporting requirement for participants
- Requirement that water bank operations may not injure existing water rights, diminish flows of state scenic waterways, or enlarge existing water rights
- Description of how water rights will be vetted prior to inclusion in the water bank
- Description of how participants will manage water use during the irrigation season

Specifies the following approval procedure for proposed water bank operating plans:

- **Requires DRC to submit a proposed annual operating plan** (operating plan) to OWRD by January 1 and prohibits water bank operations if the plan is not approved by March 1 of the same year.
- **Requires the operating plan to include** a summary report of water bank activities from the previous irrigation season, and describe how water is made available for loan to the bank and how deposited water may be withdrawn and used. **Specifies that the operating plan must include sufficient information** for OWRD to assess whether the proposed activities will harm or enlarge any existing water rights.
- **Requires OWRD to seek comments from the Oregon Department of Fish and Wildlife (ODFW) and the Confederated Tribes of Warm Springs** and allow 30 days of public comment on the proposed annual operating plan before approval.

Requires an approved water bank to submit, and publicly post, a **report** identifying the following to OWRD at least **30 days prior to the start of an irrigation season**:

- Acres from which surface water irrigation will be removed and banked, the associated point of diversion, and the amount of water associated.
- Primary Divisions from which water will be withdrawn to be banked
- Water amount to be dedicated to in-stream use as part of water bank operations and the location of the applicable water gage
- Beneficial uses to which water rights in the water bank are put
- Anticipated water bank transactions

Requires an approved water bank to **annually submit a report to OWRD** prior to January 1 that:

- Contains the water bank's pre-season report
- Summarizes water bank activities during the previous irrigation season
- Describes in-stream flow benefits

Requires the water bank to make all water rights records and monitoring information associated with its operation available to OWRD.

Sunsets the water bank pilot program on January 2, 2024.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-5 The amendment replaces the measure and authorizes the Oregon Water Resources Commission to approve a Deschutes River water bank pilot program if the charter is approved by the Confederated Tribes of the Warm Springs and adheres to all requirements. Sunsets the pilot program on January 2, 2034.

Detailed Summary

- Replaces the measure.
- Makes legislative findings and authorizes the Oregon Water Resources Commission to approve a Deschutes River water bank pilot program after public notice and comment opportunity, if the charter is approved by the Confederated Tribes of the Warm Springs and adheres to all requirements.
- Establishes which persons and entities are authorized to participate in a water bank and which waters can be deposited into a water bank.
- Establishes approval procedures for proposed water bank operating plans and content requirements for a proposed annual operating plan.
- Establishes content requirements for water bank charters.
- Establishes specific requirements regarding volumes dedicated to legally protected in-stream flows.

- Establishes operation requirements for water banks and authorizes OWRD to deactivate a water bank if requirements are not adhered to.
- Establishes reporting requirements for water banks.
- Specifies that OWRD may not approve a proposed annual operating plan if insufficient resources are available for OWRD to carry out its duties.
- Authorizes approved water banks to submit a consolidated, instead of individual, lease and temporary forbearance water transfer application to OWRD at least 30 days prior to an irrigation season start.
- Specifies application requirements and directs a water bank to publish their application on a publicly available website.
- Requires a water master to integrate water bank transactions into management operations for the irrigation season under certain conditions.
- Establishes under which conditions OWRD may approve a water bank to split the rate and duty of a water right and establishes public notice requirements for such applications.
- Establishes under which condition an approved water bank is not allowed to operate during a calendar year.
- Authorizes OWRD, either alone, or in consultation with specified entities, to require water bank operations that cause injury to existing water rights, or that reduce the surface water flow of a scenic water way to cease.
- Authorizes OWRD to enter into agreements and accept moneys from any public or private source to implement the measure.
- Sunsets the water bank pilot program on January 2, 2034.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

BACKGROUND:

Water banking as a framework is a structured system that allows for the management of water resources through deposits and withdrawals, aimed at enabling the transfer of water between various users or to maintain emergency water supplies during times of drought. Its primary objective is to shift water from uses with lower value to those with higher value.