

Enrolled
House Bill 3806

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

CHAPTER

AN ACT

Relating to water banks.

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

Whereas today the Deschutes River also supports a thriving economy based on agriculture, recreation and strong communities; and

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

Whereas meeting all water needs in the Deschutes River basin is challenging due to overallocation, ongoing drought, climate change and other factors; and

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

Whereas a pilot program is necessary to ascertain if the goals of the water bank will be met; and

Whereas a pilot program is in addition to and does not replace the use of the Allocation of Conserved Water statute, the alternative pathway for conserved water or the In-stream Leasing and Deschutes Groundwater Mitigation Programs; now, therefore,

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

SECTION 1. (1) The Water Resources Commission, after providing opportunity for public notice and comment, may approve a charter to establish a Deschutes River water bank pilot program for surface water. Before approving the charter, the commission must find that the charter:

(a) Is approved by the Confederated Tribes of the Warm Springs; and

(b) Adheres to the requirements for a water bank charter described in subsection (3) of this section.

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

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

(b) The Confederated Tribes of the Warm Springs.

(c) Cities in central Oregon.

(d) Public utilities, as defined in ORS 757.005, and domestic water supply districts organized under ORS chapter 264 that:

- (A) Supply water to cities in central Oregon; and
- (B) Provide water to at least 2,000 water service connections.
- (e) The Deschutes River Conservancy.
- (3) A water bank charter must include:
 - (a) A description of the geographic area for water bank operations, which must be limited to the Deschutes River above Lake Billy Chinook and areas that may be served by the water bank by points of diversion from the Deschutes River.
 - (b) Identification of, and signatures from authorized representatives of, the participants.
 - (c) An agreement that the Deschutes River Conservancy will manage the operations of the water bank, in coordination with the participants.
 - (d) A requirement that water described in subsection (4) of this section be dedicated to legally protected in-stream flows as provided in subsection (4) of this section.
 - (e) A requirement that the participants depositing water into or receiving water from the water bank have measured water use and reported the measurements to the Water Resources Department for the past five years.
 - (f) A requirement that the operations of the water bank may not:
 - (A) Injure existing water rights, unless the holder of the right has signed a forbearance agreement.
 - (B) Reduce the surface flow of state scenic waterways.
 - (C) Except as provided in section 4 of this 2025 Act, enlarge existing water rights.
 - (D) Result in a total number of irrigated acres that is greater than the acreage authorized under a person's or entity's existing water rights for irrigation.
 - (E) Deposit water from or provide water to existing water rights that:
 - (i) Are not a water use subject to transfer, as defined in ORS 540.505; and
 - (ii) Have not been beneficially used in the past five years or are otherwise subject to forfeiture.
 - (g) A description of how the water bank will ensure that uses are consistent with basin plans or rules of the commission.
 - (h) A description of how water rights will be vetted for inclusion in the water bank, including how the water rights will satisfy the requirements of paragraph (f) of this subsection.
 - (i) A description of how the participants depositing water into or receiving water from the water bank will manage water in coordination with the department.
- (4) For purposes of subsection (3)(d) of this section, the following shall be dedicated to legally protected in-stream flows:
 - (a) Twenty-five percent of the volume of water loaned to the water bank as a result of the fallowing of acres during all or part of an irrigation season, which must be protected by an in-stream lease during the irrigation season.
 - (b) Water withdrawn by the North Unit Irrigation District as a result of water loaned to the water bank from on-farm activities, other than the fallowing of acres during the irrigation season, which shall be protected in an amount equal to 100 percent of the withdrawn value. The protection in-stream shall be by an in-stream lease or a limited license for flow augmentation for winter release from Wickiup Reservoir into the Deschutes River.
 - (c) Any surface water loaned to the water bank that is more than the surface water transacted for out-of-stream use, which must be protected by an in-stream lease during the irrigation season.
 - (d) Water deposited into the water bank solely for in-stream purposes and protected by an in-stream lease during the irrigation season.
- (5) Operational water and water from district conveyance losses are not eligible for deposit into the water bank.
- (6) A water bank approved under this section must be operated in accordance with sections 1 to 7 of this 2025 Act.

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

(2) A water bank described in section 1 of this 2025 Act may operate only under an annual operating plan that is approved in writing by the Water Resources Department on or before March 1 of each year in which the water bank operates.

(3) Before approving a proposed annual operating plan, the Water Resources Department shall make the proposed plan available for public comment on whether the proposed plan meets the standards described in subsection (5) of this section.

(4) The Water Resources Department shall seek comments on the proposed annual operating plan from the State Department of Fish and Wildlife and the Confederated Tribes of the Warm Springs. If the State Department of Fish and Wildlife or the Confederated Tribes of the Warm Springs raise any objections to the proposed plan, the Deschutes River Conservancy shall amend the proposed plan to resolve the objections. The Water Resources Department may not approve the proposed plan unless the objections are resolved.

(5) A proposed annual operating plan must:

(a) Include the report described in section 6 of this 2025 Act.

(b) Describe the following activities:

(A) How surface water supply will be made available to loan to the water bank that is subject to the annual operating plan.

(B) How surface water deposited in the water bank that is subject to the annual operating plan may be withdrawn from the water bank and used.

(6) The participants in a water bank may loan or withdraw surface water during an irrigation season only as described under to subsection (5)(b) of this section.

(7) The department may not approve a proposed annual operating plan under this section if the department determines that, for the year to which the proposed plan applies, there are not sufficient resources available to the department, from any source, to allow the department to carry out the department's duties under sections 1 to 7 of this 2025 Act.

SECTION 3. (1) In lieu of submitting individual leases and temporary transfer or forbearance agreements, not less than 30 days before the start of an irrigation season, a water bank approved under section 1 of this 2025 Act may submit a consolidated lease and temporary forbearance transfer of water application to the Water Resources Department.

(2)(a) Each application may not contain more than one irrigation water right, which must have a priority date before January 1, 1906. Except as provided in paragraph (b) of this subsection, each application shall identify no more than one stream reach and one point of diversion to which the deposited water may be distributed.

(b) The water bank may submit a single application for the North Unit Irrigation District to receive water at two points of diversion. However, the department may require separate applications for separate priority dates.

(3) The water bank shall submit the application in the form and manner prescribed by the department. The application must include:

(a) The location and number of acres fallowed for the full irrigation season from which surface water irrigation will be removed to be deposited into the water bank, the associated point of diversion, the amount of water associated with the acres and point of diversion measured in acre-feet and cubic feet per second, and the total amount of water to be reduced at the point of diversion.

(b) The point of diversion, or if the recipient is the North Unit Irrigation District, the points of diversion, from which water deposited into the water bank will be withdrawn and the quantity of water, measured in acre-feet and cubic feet per second, needed to fulfill a supply shortage of an existing irrigation water right within a district.

(c) The amount of water, measured in acre-feet and cubic feet per second, to be dedicated to in-stream use as an in-stream lease, the months of use and the location of the applicable water gage.

(d) A forbearance agreement for all water rights with points of diversion that consent to potential injury and to bypass water.

(e) A map that meets the requirements established by the department.

(f) Any other information required by the department.

(4) A watermaster shall integrate transactions of a water bank described in this section into management operations for the irrigation season if the department finds that:

(a) Acres deposited into the water bank are fallowed.

(b) The transaction meets the requirements for water bank operations described in section 1 of this 2025 Act.

(5) The water bank shall post the application described in this section on a publicly available website of the water bank.

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

(a) "District" has the meaning given that term in ORS 545.002.

(b) "Water use subject to transfer" has the meaning given that term in ORS 540.505.

(2) Notwithstanding ORS 537.348, the Water Resources Department may approve an application by a water bank approved under section 1 of this 2025 Act for a district that is withdrawing water from the Deschutes River above Lake Billy Chinook to engage in splitting the rate and duty of the water right between a district's existing irrigation water right and another district's existing irrigation water right or an in-stream water right or in-stream lease, if the application demonstrates that:

(a) Regardless of the duty on the water right, the duty to be split will not exceed 4.2 acre-feet per acre;

(b) The water bank has measurements of the on-farm water delivered, as measured by a totalizing flow meter and reported to the water bank, and has agreed to submit information to the watermaster upon request;

(c) The application includes a forbearance agreement for all water rights with points of diversion that consent to potential injury and to bypass water; and

(d) The transactions meet the requirements for water bank operations described in section 1 of this 2025 Act.

(3) In reviewing an application under subsection (2) of this section, the department:

(a) Shall publish notice of the application in the weekly public notice published by the department and accept any allegations of injury for at least 21 days after publication of the notice.

(b) When evaluating enlargement, may not consider whether the lease will:

(A) Fail to keep the existing place of use from receiving water; or

(B) Increase the acres irrigated under the water right, so long as there is no increase in water use and no expansion of irrigated acres under the depositing district's water rights or the receiving district's water rights.

(4) The terms of a transfer under this section must provide that, during the term of the transfer:

(a) The districts:

(A) May not increase the number of acres that are irrigated within the depositing district or the receiving district;

(B) May not increase the districts' use of supplemental water rights or storage water rights;

(C) Shall continue to provide access to the watermaster to measure the districts' water use, as needed above, below and at the point of diversion or points of rediversion and provide the measurements to the department in real time, to the satisfaction of the watermaster;

(D) Shall measure water use at the point of delivery and report the measurements to the Deschutes River Conservancy; and

(E) Shall, in coordination with the Deschutes River Conservancy, arrange for:

(i) A secondary water right to release water from storage outside of the irrigation season; or

(ii) A limited license for flow augmentation or an in-stream lease in the amount of water subject to the forbearance agreement.

(b) The Deschutes River Conservancy shall provide the measurements reported to the conservancy under paragraph (a)(D) of this subsection to the watermaster, upon request.

(5) The parties to a transfer under this section may establish additional requirements for a transfer under this section, which must be set forth in the water bank's operating plan under section 2 of this 2025 Act.

SECTION 5. (1) A water bank approved under section 1 of this 2025 Act may not operate during a calendar year if, prior to March 1 of the calendar year, participants in the water bank have not committed to a minimum of 1,800 acres of water rights to be leased under ORS 537.348.

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

(3) At the time that a proposed annual operating plan is submitted under section 2 of this 2025 Act, the participants may agree to increase the acres protected by a lease under ORS 537.348 to a number of acres that is higher than the minimum described in subsection (1) of this section.

(4) A deposit of water into the water bank as a result of transactions approved under section 3 or 4 of this 2025 Act shall constitute beneficial use for purposes of ORS 540.610 for the duration of the deposit.

(5) If the Water Resources Department determines that a transaction approved under section 3 or 4 of this 2025 Act would result in an injury to an existing water right, and a forbearance agreement applicable to the water right that was required under section 3 or 4 of this 2025 Act has not been entered into, the department may, after consultation with the water bank:

(a) Allow the injured party to take water made available to the water bank to satisfy the injured party's water right and debit those amounts from water bank transactions; or

(b) Terminate the transaction and prohibit use of the previously transferred water right during the irrigation season in which the transaction was terminated.

(6) If the Water Resources Department determines, alone or in consultation with the participants, the Confederated Tribes of the Warm Springs or the State Department of Fish and Wildlife, that operations of the water bank are causing injury to an existing water right or reducing the surface water flow of a scenic waterway, the Water Resources Department shall require the operations that are causing the injury or reduction in surface water flow to cease.

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

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

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

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

(8) A water bank shall submit to the department any transactions to be protected or implemented by the department, including any transactions described in section 3 or 4 of this 2025 Act.

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

(10) A water bank that is deactivated as described in subsection (9) of this section must submit a new charter as described in section 1 of this 2025 Act and receive approval for the new charter before resuming operations.

SECTION 6. (1) On or before January 1 of each year, a water bank approved under section 1 of this 2025 Act shall submit a report to the Water Resources Department that summarizes the activities of the water bank during the previous irrigation season.

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

(a) A description of how 25 percent of the volume of water loaned to the water bank due to the fallowing of acres during all or part of an irrigation season was legally protected through an in-stream lease.

(b) A description of how all water loaned to the water bank that was available for reasons other than the fallowing of acres was associated with an equal amount of water released from the Wickiup Reservoir and legally protected by an in-stream lease or limited license for flow augmentation in the Deschutes River during the winter following the loan of the water.

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

SECTION 7. The Water Resources Department may enter into agreements and accept moneys from any public or private source to carry out the purposes of sections 1 to 7 of this 2025 Act.

SECTION 8. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter _____, Oregon Laws 2025 (Enrolled Senate Bill 5543), for the biennium beginning July 1, 2025, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received from charges, but excluding lottery funds and federal funds not described in section 3, chapter _____, Oregon Laws 2025 (Enrolled Senate Bill 5543), collected or received by the Water Resources Department for field services, is increased by \$216,394, for the Deschutes River water bank program.

SECTION 9. Sections 1 to 7 of this 2025 Act are repealed on January 2, 2034.

Passed by House June 13, 2025

Received by Governor:

.....M.,....., 2025

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Timothy G. Sekerak, Chief Clerk of House

Approved:

.....M.,....., 2025

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Julie Fahey, Speaker of House

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Tina Kotek, Governor

Passed by Senate June 19, 2025

Filed in Office of Secretary of State:

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Rob Wagner, President of Senate

.....M.,....., 2025

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Tobias Read, Secretary of State