

HOUSE AMENDMENTS TO HOUSE BILL 3806

By COMMITTEE ON AGRICULTURE, LAND USE, NATURAL RESOURCES, AND
WATER

April 10

On page 1 of the printed bill, line 13, delete “now,” and insert “and”.

Delete line 14 and insert:

“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,”.

Delete lines 16 through 28 and delete pages 2 through 4 and insert:

**“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 or-
ganized 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 lim-
ited 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.**

1 “(e) A requirement that the participants depositing water into or receiving water from
2 the water bank have measured water use and reported the measurements to the Water Re-
3 sources Department for the past five years.

4 “(f) A requirement that the operations of the water bank may not:

5 “(A) Injure existing water rights, unless the holder of the right has signed a forbearance
6 agreement.

7 “(B) Reduce the surface flow of state scenic waterways.

8 “(C) Except as provided in section 4 of this 2025 Act, enlarge existing water rights.

9 “(D) Result in a total number of irrigated acres that is greater than the acreage au-
10 thorized under a person’s or entity’s existing water rights for irrigation.

11 “(E) Deposit water from or provide water to existing water rights that:

12 “(i) Are not a water use subject to transfer, as defined in ORS 540.505; and

13 “(ii) Have not been beneficially used in the past five years or are otherwise subject to
14 forfeiture.

15 “(g) A description of how the water bank will ensure that uses are consistent with basin
16 plans or rules of the commission.

17 “(h) A description of how water rights will be vetted for inclusion in the water bank, in-
18 cluding how the water rights will satisfy the requirements of paragraph (f) of this subsection.

19 “(i) A description of how the participants depositing water into or receiving water from
20 the water bank will manage water in coordination with the department.

21 “(4) For purposes of subsection (3)(d) of this section, the following shall be dedicated to
22 legally protected in-stream flows:

23 “(a) Twenty-five percent of the volume of water loaned to the water bank as a result of
24 the fallowing of acres during all or part of an irrigation season, which must be protected by
25 an in-stream lease during the irrigation season.

26 “(b) Water withdrawn by the North Unit Irrigation District as a result of water loaned
27 to the water bank from on-farm activities, other than the fallowing of acres during the irri-
28 gation season, which shall be protected in an amount equal to 100 percent of the withdrawn
29 value. The protection in-stream shall be by an in-stream lease or a limited license for flow
30 augmentation for winter release from Wickiup Reservoir into the Deschutes River.

31 “(c) Any surface water loaned to the water bank that is more than the surface water
32 transacted for out-of-stream use, which must be protected by an in-stream lease during the
33 irrigation season.

34 “(d) Water deposited into the water bank solely for in-stream purposes and protected by
35 an in-stream lease during the irrigation season.

36 “(5) Operational water and water from district conveyance losses are not eligible for de-
37 posit into the water bank.

38 “(6) A water bank approved under this section must be operated in accordance with
39 sections 1 to 7 of this 2025 Act.

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

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

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

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

10 “(5) A proposed annual operating plan must:

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

12 “(b) Describe the following activities:

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

15 “(B) How surface water deposited in the water bank that is subject to the annual oper-
16 ating plan may be withdrawn from the water bank and used.

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

19 “(7) The department may not approve a proposed annual operating plan under this sec-
20 tion if the department determines that, for the year to which the proposed plan applies, there
21 are not sufficient resources available to the department, from any source, to allow the de-
22 partment to carry out the department’s duties under sections 1 to 7 of this 2025 Act.

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

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

31 “(b) The water bank may submit a single application for the North Unit Irrigation Dis-
32 trict to receive water at two points of diversion. However, the department may require sep-
33 arate applications for separate priority dates.

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

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

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

45 “(c) The amount of water, measured in acre-feet and cubic feet per second, to be dedi-

1 cated to in-stream use as an in-stream lease, the months of use and the location of the ap-
2 plicable water gage.

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

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

6 “(f) Any other information required by the department.

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

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

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

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

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

15 “(a) ‘District’ has the meaning given that term in ORS 545.002.

16 “(b) ‘Water use subject to transfer’ has the meaning given that term in ORS 540.505.

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

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

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

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

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

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

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

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

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

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

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

43 “(a) The districts:

44 “(A) May not increase the number of acres that are irrigated within the depositing dis-
45 trict or the receiving district;

1 “(B) May not increase the districts’ use of supplemental water rights or storage water
2 rights;

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

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

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

9 “(i) A secondary water right to release water from storage outside of the irrigation sea-
10 son; or

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

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

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

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

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

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

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

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

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

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

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

1 to cease.

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

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

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

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

7 “(8) A water bank shall submit to the department any transactions to be protected or
8 implemented by the department, including any transactions described in section 3 or 4 of this
9 2025 Act.

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

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

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

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

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

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

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

29 “SECTION 7. The Water Resources Department may enter into agreements and accept
30 moneys from any public or private source to carry out the purposes of sections 1 to 7 of this
31 2025 Act.

32 “SECTION 8. Sections 1 to 7 of this 2025 Act are repealed on January 2, 2034.”.
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