

HOUSE AMENDMENTS TO HOUSE BILL 4049

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

February 17

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

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

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

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

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

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

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

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

18 **“(A) Individuals, corporations, associations, firms, partnerships, limited liability compa-**
19 **nies and joint stock companies;**

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

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

22 **“(D) A federally recognized Indian tribe; and**

23 **“(E) Subject to paragraph (b) of this subsection, an agency of state government, as de-**
24 **defined in ORS 174.111.**

25 **“(b) The State of Oregon may only exercise the rights of a party to a voluntary agree-**
26 **ment in the state’s capacity as a landowner.**

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

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

32 **“(B) A ground water right or point of appropriation subject to an order establishing one**
33 **or more corrective control provisions following a contested case associated with the desig-**
34 **nation of Harney Valley as a Critical Groundwater Area by the commission.**

35 **“(b) A ground water right or point of appropriation may be included in a voluntary**

1 agreement, provided that withdrawals do not cause water levels to exceed the limits estab-
2 lished in the voluntary agreement.

3 “(5) A voluntary agreement must:

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

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

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

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

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

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

21 “(e) Establish a schedule for periodic review of the voluntary agreement by the commis-
22 sion.

23 “(6)(a) Parties seeking approval of a voluntary agreement must submit the voluntary
24 agreement and any supporting documents to the commission and the Water Resources Di-
25 rector.

26 “(b) The commission shall place a voluntary agreement on the agenda of the first regu-
27 larly scheduled meeting of the commission that falls at least 90 days after the date on which
28 the commission received the voluntary agreement.

29 “(7)(a) Except as provided in paragraph (e) of this subsection, the Water Resources De-
30 partment shall, no later than 30 days after the director receives a voluntary agreement:

31 “(A) Review the voluntary agreement; and

32 “(B) Meet with the parties to the voluntary agreement to provide feedback based on the
33 department’s review.

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

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

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

40 “(c) The department shall prepare a recommendation to the commission, based on appli-
41 cable law, for approval or rejection of the voluntary agreement, including any updates to the
42 voluntary agreement made pursuant to this subsection. When preparing the recommen-
43 dation, the department shall consider the benefit of voluntary groundwater use reductions
44 under the agreement and the point in time at which those reductions will begin to be
45 achieved.

1 “(d) Notwithstanding subsection (6)(b) of this section, if the commission determines that
2 the commission or the department lacks the staff capacity to simultaneously evaluate two
3 or more voluntary agreements placed on the agenda of a regularly scheduled meeting, the
4 commission may delay consideration of the second agreement placed on the agenda, and any
5 other agreements subsequently placed on the agenda, until the commission has approved or
6 rejected the first agreement placed on the agenda.

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

8 “(A) The parties to a voluntary agreement and the department may agree to extend ei-
9 ther deadline described in paragraph (a) or (b) of this subsection.

10 “(B) If the commission delays consideration of a voluntary agreement as provided in
11 paragraph (d) of this subsection, the commission may extend either deadline described in
12 paragraph (a) or (b) of this subsection, provided that the extension does not delay the con-
13 sideration of the voluntary agreement longer than reasonably necessary for the department
14 to satisfy the requirements of this subsection.

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

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

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

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

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

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

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

28 “(11) Notwithstanding ORS 536.025, the commission may not delegate to the department
29 or the Water Resources Director the commission’s authority to approve or reject a volun-
30 tary agreement.

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

33 “(13) Before the implementation of an approved voluntary agreement, the parties shall:

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

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

41 “(c) No later than November 15 of each year, report to the department the parties’ use
42 of ground water under the voluntary agreement; and

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

44 “(14)(a) The parties to a voluntary agreement may make minor amendments to the vol-
45 untary agreement after providing the proposed minor amendments to the department. The

1 parties may not implement the proposed minor amendments until the department responds
2 to the proposed minor amendments or 30 days has passed since the parties provided the
3 proposed minor amendments to the department, whichever occurs first.

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

6 “(15) Notwithstanding ORS 540.520 and 540.523, the parties to a voluntary agreement may
7 temporarily change the place of use or point of appropriation of a water right covered by the
8 voluntary agreement without making an application required by ORS 540.520 or 540.523. The
9 parties shall track and annually report to the department any temporary changes made
10 pursuant to this subsection.

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

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

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

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

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

16 “(ii) Changed conditions have made the continuance of the voluntary agreement a detri-
17 ment to the public welfare, safety and health or contrary to the intent, purposes and re-
18 quirements of ORS 537.505 to 537.795 and 537.992.

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

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