



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### MEMORANDUM

TO: The Oregon Water Resources Commission

FROM: Brenda Bateman, Acting Administrator, Technical Services Division and  
Racquel Rancier, Senior Policy Coordinator

SUBJECT: Agenda Item N, November 15, 2013  
Water Resources Commission Meeting

#### **Legislative Update: Senate Bill 839 Implementation**

#### **I. Introduction**

The 2013 Oregon Legislature approved Senate Bill 839 and related funding of \$10.2 million, representing an important step in the implementation of Oregon's Integrated Water Resources Strategy. The Strategy, adopted by the Water Resources Commission in August 2012, contains a number of recommended actions aimed at: authorizing and funding a water supply development program (Recommended Action #10e), improving access to built storage (Recommended Action #10b), and determining and protecting flows needed to support instream needs (Recommended Actions #3a and #11b). Senate Bill 839 incorporates all of these concepts.

#### **II. Background**

In 1992, the Water Resources Commission adopted the state's water storage policy, identifying water storage options as an integral part of Oregon's strategy to enhance public and private benefits from use of the state's water resources. The policy acknowledges that both structural and nonstructural methods should be used in Oregon to store water, with preferences for storage that optimizes instream and out-of-stream public benefits and beneficial uses. In 1993, the Oregon Legislature codified the state's policy storage facilities, declaring it a high priority to develop environmentally acceptable and financially feasible multipurpose storage projects, and to enhance watershed storage capacity through natural processes using non-structural means.

Senate Bill 839 creates a task force that shall, by consensus, develop a recommended methodology for determining seasonally varying flow requirements for certain publicly funded water storage projects. The bill notes the importance of developing new water storage projects that are financially feasible, and that new water storage will not be appropriate or feasible in many locations.

Two sub-task forces will be responsible for: #1) determining the functional needs for seasonally varying flows, given the biological, ecological, and physical functions in watersheds during periods of water storage; and #2) considering the financial feasibility of new water storage projects, given the practical aspects of developing and operating such projects.

The two sub-task forces shall report their findings and recommendations to the full task force no later than February 1, 2014. The findings and recommendations of each subgroup must have a consensus of the subgroup. Any member of a subgroup who objects to the findings and recommendations of the subgroup may provide separate findings and recommendations to the task force.

The full task force shall submit a report in the manner provided in ORS 192.245, including any recommendations for legislation, to the Governor, to an interim committee of the Legislative Assembly related to natural resources, and to the Water Resources Commission no later than July 1, 2014.

The Water Resources Commission shall adopt rules to establish a methodology for use in determining the seasonally varying flows for a stream of interest. In adopting the rules, the Commission shall give consideration to adoption of the methodology described in the task force report. The Commission shall complete adoption of the rule in time for the rule to take effect on January 1, 2015.

The bill in its entirety is included here as Attachment 1. The task forces and their assignments are described in the bill on pages 9-10.

### **III. Discussion**

**Science Sub-Task Force:** This group is the scientific sub-task force designed to look at the hydrologic realities of building water storage projects. This technical effort will involve a small group of scientists with expertise in streamflow, particularly “seasonally varying flows” (formally known in Oregon as “peak and ecological flows”). Although the terminology has changed in the law, the science has not and we expect to draw heavily upon the robust work conducted in Oregon and other states during the past several years.

*Outcome:* This group will produce a report by February 1, 2014, containing recommendations to the Senate Bill 839 task force, describing those methodologies that would be sanctioned, or approved, by the State of Oregon to determine “seasonally varying flow” requirements in the development of water storage projects. This determination includes: 1) whether water is available for storage and 2) how ultimately to shape / store the water that is deemed available.

*Participants:* This science task force involves experts from the Oregon Department of Fish and Wildlife, U.S. Geological Survey, U.S. Fish and Wildlife Service, The Nature Conservancy, and the Oregon Water Resource Department. Brett Brownscombe from the Governor’s Office will be the convener of this group and Dr. Brenda Bateman from the Oregon Water Resources Department will staff these efforts.

**Economic Sub-Task Force:** This group is the sub-task force designed to examine the economic realities of building water storage projects. Participants include a small group of economic, policy, and engineering professionals with on-the-ground expertise in making projects pencil out, while also meeting instream and out-of-stream needs.

*Outcome:* This group will produce a report by February 1, 2014, describing: 1) the potential benefits of developing additional storage capacity to meet instream needs (including both ecological and economic benefits), 2) the potential cost of this additional capacity, 3) the viability of building such additional capacity, and 4) the potential logistics / costs associated with leaving key elevated flows instream.

*Participants:* This sub-group will be comprised of economists, policy, professionals and engineers from the Bureau of Reclamation, Oregon Department of Agriculture, Oregon Environmental Quality Commission, Oregon State University, a consulting firm, and a municipal water provider. Richard Whitman from the Governor's Office will be the convener of this group and Dr. Brenda Bateman from the Oregon Water Resources Department will staff these efforts.

#### **IV. Conclusion**

**Umbrella Task Force:** Eventually a few members of both of these sub-task forces will be asked to carry their resulting reports into a full task force, which will reconcile these findings and use the results to develop recommended rules. Proposed rules will be presented to the Oregon Water Resources Commission during 2014 for potential rule-making.

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**Enrolled**  
**Senate Bill 839**

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

CHAPTER .....

AN ACT

Relating to water; creating new provisions; amending ORS 541.700, 541.710, 541.720, 541.730, 541.740 and 541.830 and sections 17, 33, 34 and 46, chapter 907, Oregon Laws 2009; repealing ORS 541.600, 541.606, 541.611, 541.616, 541.621, 541.631, 541.636, 541.641, 541.646 and 541.725; appropriating money; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 15 of this 2013 Act:**

**(1) “Newly developed water” means the new increment of water:**

**(a) Stored for a project providing new or expanded storage;**

**(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or**

**(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.**

**(2) “Seasonally varying flows” means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes.**

**SECTION 2. (1) The purpose of sections 1 to 15 of this 2013 Act is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits.**

**(2) The Legislative Assembly intends that any conditions or requirements described in sections 1 to 15 of this 2013 Act apply only to projects that receive loans or grants from the Water Supply Development Account established in section 3 of this 2013 Act.**

**SECTION 3. (1) The Water Supply Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply Development Account shall be credited to the account. Moneys in the account are continuously appropriated to the Water Resources Department for use in carrying out sections 1 to 15 of this 2013 Act.**

**(2) The department may expend moneys from the account for:**

**(a) Subject to subsection (4) of this section, making loans and grants to evaluate, plan and develop in-stream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:**

- (A) Repair or replace infrastructure to increase the efficiency of water use;
  - (B) Provide new or expanded water storage;
  - (C) Improve or alter operations of existing water storage facilities in connection with newly developed water;
  - (D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;
  - (E) Allocate federally stored water;
  - (F) Promote water reuse;
  - (G) Promote water conservation;
  - (H) Provide streamflow protection or restoration;
  - (I) Provide for water management or measurement in connection with newly developed water; and
  - (J) Determine seasonally varying flows in connection with newly developed water.
- (b) Paying the necessary administrative and technical costs of the department in carrying out sections 1 to 15 of this 2013 Act.
- (3)(a) In addition to any other permissible uses of moneys in the account, the department may expend moneys from the account to support:
- (A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and
  - (B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.
- (b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under sections 1 to 15 of this 2013 Act.
- (4) The department may expend account moneys under subsection (2) of this section for loans and grants to develop in-stream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.

**SECTION 4.** Loans and grants may be made from the Water Supply Development Account to persons as defined in ORS 536.007, Indian tribes as defined in ORS 391.802 and nonprofit organizations. If an applicant is required to have a water management and conservation plan, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account.

**SECTION 5.** (1) A prospective applicant for a loan or grant from the Water Supply Development Account may participate in a preapplication conference with the Water Resources Department.

(2) At the preapplication conference, the department shall inform the prospective applicant of the procedural and substantive requirements of a loan or grant application and of the scoring system used to evaluate loan and grant requests. The department shall assist the prospective applicant by identifying known issues that may affect project eligibility for a loan or grant from the account.

(3) Not less than 14 days before the preapplication conference, the prospective applicant must provide the department with adequate project information to prepare for the preapplication conference.

(4) The prospective applicant may request additional preapplication consultation with the department.

**SECTION 6.** Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:

(1) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed.

(2) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project.

(3) Current contact information for the principal contact, fiscal officer and involved landowners.

(4) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record.

(5) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate.

(6) An itemized budget for the project, including fiscal and administrative costs.

(7) A description of funds, services or materials available to the project.

(8) A project schedule, including beginning and completion dates.

(9) Any conditions that may affect the completion of the project.

(10) A completed feasibility analysis if appropriate.

(11) Suggestions for interim and long-term project performance benchmarks.

(12) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account.

(13) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral.

(14) Letters of support for the proposed project.

(15) If required by the department, a description of consultations with affected Indian tribes regarding the project.

(16) Any other information required by the department.

**SECTION 7.** (1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking projects to determine which projects are to be awarded loans and grants from the Water Supply Development Account, including but not limited to the application of minimum criteria designed to achieve the outcomes described in section 9 of this 2013 Act. The criteria shall be based on the public benefit categories described in section 8 of this 2013 Act. The commission shall make the loan and grant funding decisions once each year. Applications must be filed with the Water Resources Department. The department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.

(2) The department shall conduct a preliminary review of applications to check for completeness, eligibility and minimum requirements upon receipt of each application. The department shall return incomplete applications to the applicant. The department shall provide public notice by posting new funding applications on the department's website for a 60-day period prior to reviewing the applications. The department shall provide for the receipt of public comment on the applications during the 60-day period that applications are posted on the department's website.

(3) The department shall forward applications that have passed preliminary review, along with any comments received from applicants or the public, to a technical review team consisting of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, the Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department. The technical review team shall conduct the initial scoring and ranking for the projects described in the applications, consider comments from applicants and the public and make loan and grant funding recommendations to the commission. The commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account. Before the

commission makes a final decision on an application, the commission shall offer one additional opportunity for public comment.

(4) The commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

(5) The department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the commission have been published.

**SECTION 8.** (1) Projects applying under section 7 of this 2013 Act for funding from the Water Supply Development Account shall be evaluated based upon the public benefits of the project. The evaluation must consider both positive and negative effects of a project. The three categories of public benefit to be considered in the project evaluation are economic benefits, environmental benefits and social or cultural benefits. Each category of benefits shall be given equal importance in the evaluation of a project. The technical review team described in section 7 of this 2013 Act shall use the evaluation system to assign initial scores and rankings to projects. The Water Resources Commission shall use the evaluation system to assign final scorings and rankings to the projects. The commission shall award loan and grant funding from the account to the projects that have the greatest public benefit and will best achieve the outcomes described in section 9 of this 2013 Act.

(2) The evaluation of economic benefits for a project shall be based on the changes in economic conditions expected to result from the project, including but not limited to conditions related to:

- (a) Job creation or retention;
- (b) Increases in economic activity;
- (c) Increases in efficiency or innovation;
- (d) Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses;
- (e) Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and
- (f) Increases in irrigated land for agriculture.

(3) The evaluation of environmental benefits for a project shall be based on the changes in environmental conditions expected to result from the project, including but not limited to conditions related to:

- (a) A measurable improvement in protected streamflows that:
  - (A) Supports the natural hydrograph;
  - (B) Improves floodplain function;
  - (C) Supports state or federally listed sensitive, threatened or endangered fish species;
  - (D) Supports native fish species of cultural importance to Indian tribes; or
  - (E) Supports riparian habitat important for wildlife;
- (b) A measurable improvement in ground water levels that enhances environmental conditions in ground water restricted areas or other areas;
- (c) A measurable improvement in the quality of surface water or ground water;
- (d) Water conservation;
- (e) Increased ecosystem resiliency to climate change impacts; and
- (f) Improvements that address one or more limiting ecological factors in the project watershed.

(4) The evaluation of the social or cultural benefits for a project shall be based on the changes in social or cultural conditions expected to result from the project, including but not limited to conditions related to:

- (a) The promotion of public health and safety and of local food systems;

(b) A measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes;

(c) The promotion of recreation and scenic values;

(d) Contribution to the body of scientific data publicly available in this state;

(e) The promotion of state or local priorities, including but not limited to the restoration and protection of native fish species of cultural significance to Indian tribes; and

(f) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state integrated water resources strategy.

**SECTION 9.** (1) The Water Resources Commission shall design the minimum criteria for the project scoring and ranking system described in section 7 of this 2013 Act to achieve the following outcomes:

(a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in section 8 of this 2013 Act.

(b) Preference for partnerships and collaborative projects.

(c) The funding of projects of diverse sizes, types and geographic locations.

(d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows.

(e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use.

(2) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in subsection (1) of this section are being achieved, and shall report the review findings to the Water Resources Commission. The commission shall modify the project selection process as necessary to better achieve the outcomes described in subsection (1) of this section.

**SECTION 10.** (1) The recipient of a grant from the Water Supply Development Account must agree to the condition set forth in subsection (2) of this section if the grant is for the development of a new or expanded above-ground storage facility that:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of water annually.

(2) Twenty-five percent of the newly developed water from a project described in subsection (1) of this section must be dedicated to in-stream use.

(3) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project.

**SECTION 11.** (1) A project that receives a loan or grant from the Water Supply Development Account must:

(a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in section 7 of this 2013 Act; and

(b) Except as otherwise provided in section 10 of this 2013 Act, demonstrate environmental benefits:

(A) By dedicating 25 percent of conserved water or newly developed water to in-stream use; or

(B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in section 7 of this 2013 Act.

(2) The description of public benefit requirements in subsection (1) of this section does not exempt any project from meeting the minimum criteria designed by the Water Resources Commission under section 9 of this 2013 Act.



(3) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project.

**SECTION 12.** If a project dedicates water to in-stream use under the requirements described in section 10 of this 2013 Act or as allowed under section 11 of this 2013 Act, the Water Resources Department shall protect the dedicated water in-stream consistent with the priority of the dedicated water source. Dedicated water from projects may come from newly developed water or from other sources and may be put in-stream at other locations in the tributary if the department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize in-stream benefits in a manner consistent with public health and safety.

**SECTION 13.** (1) The Water Resources Department shall make a determination as provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a new water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:

- (a) Impounds surface water on a perennial stream;
- (b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or
- (c) Diverts more than 500 acre-feet of surface water annually.

(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not been established, the department shall establish the seasonally varying flows before issuing a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.

(3) The department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The department may rely upon existing scientific data and analysis or may fund new data and analysis. The department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules. If seasonally varying flows are established for a stream, a subsequent water storage or aquifer recharge permit or limited license for the storage of water must be conditioned in accordance with the applicable seasonally varying flows if the license or permit:

- (a) Is for a project receiving a loan or grant from the account;
- (b) Is for the storage of water outside of the official irrigation season; and
- (c) Has a diversion point that is subject to seasonally varying flows.

(4) The applicant for a permit or license described in subsection (3) of this section may request that seasonally varying flows be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.

(5) The department shall condition the new water storage permit and resulting certificate, new aquifer recharge permit and resulting certificate or new limited license associated with a project that receives a grant or loan from the account to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

(6) For purposes of any project that receives a loan or grant from the account and has the characteristics described in subsection (1) of this section, or any project described in

subsection (3) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.

(7) Subsections (1) to (6) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.

**SECTION 14.** (1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits. Project materials must include a notation indicating that Water Resources Department funding was used for the project.

(2) The loans or grants may be conditioned to require that the recipient complete and operate the funded project as described in the loan or grant application. The department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.

(3) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the department that describe the completed work, the public benefits achieved and project expenditures. The recipient must regularly measure and report the water diverted and used from the project. The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the department. The department may impose other project-specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.

(4) The department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (3) of this section.

**SECTION 15.** (1) The Water Resources Commission shall adopt rules establishing standards for borrowers obtaining loans issued from the Water Supply Development Account. The commission shall design the standards to ensure that all loans have a high probability of repayment and that all loans are adequately secured in the event of a default. The commission shall solicit comments from the Oregon Department of Administrative Services and the State Treasurer when designing the standards. The standards may include, but need not be limited to, standards that give preference to entities with ad valorem taxing authority.

(2) If the Water Resources Department approves a loan from the account for the implementation of a water development project, the department may require that the applicant enter into a loan contract, secured by a first lien or by other good and sufficient collateral.

**SECTION 16.** Section 17, chapter 907, Oregon Laws 2009, is amended to read:

**Sec. 17.** (1) As used in this section, "critical ground water storage project" means an underground or below-ground storage of river water in a critical ground water area designated under ORS 537.730 for use in:

(a) Aquifer storage and recovery as described in ORS 537.534 and streamflow augmentation and restoration; or

(b) Recharging ground water basins and reservoirs as described in ORS 537.135 and streamflow augmentation and restoration.

(2) The Water Resources Department may issue a grant under this section only for a critical ground water storage project that is located in the Umatilla Basin and that meets the conditions described in this section.

(3)(a) *[Except as provided in subsection (4) of this section, notwithstanding ORS 537.534,]* If the project uses artificial recharge to recharge an alluvial aquifer that is not confined, the project must be designed:

[(a)] (A) To provide [for no more than 75 percent of new stored water to be withdrawn and for not less than 25 percent of the new water to be dedicated for the purpose of providing] net environmental public benefits [or in-stream benefits] **in an amount equal to at least 25 percent of the water stored by the project;** and

[(b)] (B) To the extent practicable, to [return dedicated new stored water for stream] **deliver any net environmental public benefit water to be provided in the form of in-stream flow** augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(b) **For purposes of determining whether a project described in this subsection produces the required net environmental public benefit, the project shall be considered to be for the development of not more than 25,000 acre-feet of aquifer recharge as described in a final grant report submitted by the grantee to the department.**

(4) If more than 25 percent of the funding for an aquifer storage and recovery project is from grants of state moneys and is not subject to repayment, the project must be designed to [dedicate for the purpose of providing] **provide** net environmental public benefit [or in-stream benefit a percentage of the new stored water created by the project] **in an amount** that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the [dedicated increment of new stored water] **amount of water provided** for net environmental public benefit [and in-stream benefit] **in the form of in-stream flow.**

(5) On or before the earlier of six years after the issuance of the ground water recharge permit or the date the water right certificate is issued, the department shall quantify and legally protect in-stream the increment of new water returned in stream from a project described in this section.

(6) The department shall require as a contractual condition for issuing [the grant] **additional grant moneys for projects established as provided under this section,** and as a condition of any new ground water recharge permit or water right certificate issued for the project, that if the project receives grants or loans from state moneys other than a grant issued under this section **or other state moneys used to complete the feasibility design and pilot phase of project development funded by a grant under this section,** the project must be operated in a manner that actually dedicates the percentage of new stored water for net environmental public benefit or in-stream benefit that the project was designed to dedicate for those purposes.

(7) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

(8) This section is repealed [January 2, 2030] **July 1, 2015.**

**SECTION 17. At the request of the grantee, the terms and conditions of a grant approved by the Water Resources Department under section 17, chapter 907, Oregon Laws 2009, prior to the effective date of this 2013 Act shall be amended to replace the terms and conditions originally imposed for the grant with terms and conditions similar to the terms and conditions imposed for grants issued under section 17, chapter 907, Oregon Laws 2009, as amended by section 16 of this 2013 Act.**

**SECTION 18. (1) The Governor, or a designee of the Governor, shall appoint a nonlegislative task force composed of members the Governor or designee deems to be appropriate and to be sufficiently representative of agricultural, municipal, conservation and tribal interests and of other groups having an interest in water resources development.**

**(2) The task force shall meet at times and places specified by the Governor or the designee of the Governor.**

**(3) The task force shall review the structure established for water development project loans and grants under sections 1 to 15 of this 2013 Act and develop any proposals for changing the structure that the task force determines to be warranted. The review may include but need not be limited to possible changes in the long-term structure of the decision-making process regarding:**

(a) The appropriate role of the state in providing loan and grant funding for multipurpose water resource development under sections 1 to 15 of this 2013 Act; and

(b) The decision-making process for the allocation of newly developed water from projects for which the uses of the water were not specified in the funding application.

(4) The Water Resources Department shall provide staff support to the task force.

(5) The task force shall submit a report in the manner provided in ORS 192.245, including any recommendations for legislation, to the Governor and to an interim committee of the Legislative Assembly related to natural resources no later than July 1, 2014.

(6) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the department for purposes of the task force.

**SECTION 19. (1) As used in this section:**

(a) "Consensus" means that no more than one member of a subgroup or task force objects to the product of the subgroup or task force.

(b) "Seasonally varying flows" has the meaning given that term in section 1 of this 2013 Act.

(2) The Governor shall appoint a task force consisting, subject to subsection (3) of this section, of such members as the Governor deems to be appropriate and sufficient to act as an advisory body on the functional needs of watersheds for seasonally varying flows and the financial feasibility of new water storage projects. The Governor shall consult with the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives and the Water Resources Commission prior to making appointments to the task force under this section.

(3) The task force membership shall include, but need not be limited to, a subgroup for addressing the functional needs of watersheds for seasonally varying flows and a subgroup to address the financial feasibility of new water storage projects. Each subgroup must have at least three members. Subgroup members must be persons with expertise in subjects relevant to the work of the subgroup. Task force members who are not subgroup members must be persons representing the interests of irrigated agriculture, municipal water suppliers, counties, the conservation community, Indian tribes, irrigation districts and industrial water users.

(4) When carrying out its functions, the subgroup on functional needs for seasonally varying flows shall consider the biological, ecological and physical functions in watersheds during periods that are outside of the official irrigation season, including but not limited to:

(a) Stream channel development and maintenance;

(b) Connectivity to floodplains;

(c) Sediment transport and deposition;

(d) Migration triggers for upstream movement of adult fish and downstream movement of fry and juvenile fish;

(e) Fish spawning and incubation;

(f) Juvenile fish rearing; and

(g) Adult fish passage.

(5) When carrying out its functions, the subgroup on the financial feasibility of new water storage projects shall consider the practical aspects of developing and operating new water development projects, including but not limited to:

(a) Practical engineering methods and applications;

(b) The costs and benefits of the methodology and alternatives;

(c) The economic feasibility of water storage development; and

(d) The cost of complying with environmental benefit standards.

(6)(a) The subgroups shall report their findings and recommendations to the full task force no later than February 1, 2014. The findings and recommendations of a subgroup must have a consensus of the subgroup. Any member of a subgroup who objects to the findings and recommendations of the subgroup may provide separate findings and recommendations to the task force.

(b) The task force shall meet at times and places specified by the Governor or a designee of the Governor. The task force shall consider the subgroup reports and by consensus develop a recommended methodology for determining seasonally varying flows that optimizes the functional benefits to watersheds while also recognizing that:

(A) Many of the functional benefits will not occur unless a new water storage project is financially feasible; and

(B) New water storage will not be appropriate or feasible in many locations.

(c) The recommended methodology developed by the task force must utilize the best available scientific knowledge. Any member of the task force who objects to the recommended methodology developed by the task force may provide a separate recommendation for a methodology to the parties receiving the report under subsection (7) of this section.

(7) The task force shall submit a report in the manner provided in ORS 192.245, including any recommendations for legislation, to the Governor, to an interim committee of the Legislative Assembly related to natural resources and to the Water Resources Commission no later than July 1, 2014.

(8) The Water Resources Department shall provide staff support to the task force.

(9) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the department for purposes of the task force.

**SECTION 20.** (1) On or after the date that the Water Resources Commission receives a copy of the task force report required under section 19 of this 2013 Act, the commission shall adopt rules to establish a methodology for use in determining the seasonally varying flows for a stream of interest. In adopting the rules, the commission shall give consideration to adoption of the methodology described in the task force report. The commission shall complete adoption of the rule in time for the rule to take effect on January 1, 2015. As used in this subsection, "seasonally varying flow" has the meaning given that term in section 1 of this 2013 Act.

(2) The commission shall appoint the task force established in section 19 of this 2013 Act as provided in ORS 183.333 to act as an advisory committee to the commission for the consideration of rule adoption under this section.

**SECTION 21.** Section 13 of this 2013 Act becomes operative January 1, 2015.

**SECTION 22.** Section 18 of this 2013 Act is repealed on the date of the convening of the 2015 regular session of the Legislative Assembly as specified in ORS 171.010.

**SECTION 23.** Section 19 of this 2013 Act is repealed on the date of the convening of the 2016 regular session of the Legislative Assembly as specified in ORS 171.010.

**SECTION 24.** In addition to and not in lieu of any other appropriation, there is appropriated to the Water Resources Department, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$30,000, which may be expended for providing services to the task forces created in sections 18 and 19 of this 2013 Act and for paying the expenses of the task forces.

**SECTION 25.** Notwithstanding section 3 of this 2013 Act, moneys may not be expended from the Water Supply Development Account for the construction of projects that:

(1) Impound surface water on a perennial stream;

(2) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

**(3) Diverts more than 500 acre-feet of water annually.**

**SECTION 26.** Section 25 of this 2013 Act is repealed January 2, 2015.

**SECTION 27.** Notwithstanding section 3 of this 2013 Act, the Water Resources Department may expend moneys from the Water Supply Development Account for the purposes of paying the necessary administrative and technical costs of the department in carrying out sections 17 to 20 of this 2013 Act.

**SECTION 28.** Section 27 of this 2013 Act is repealed July 1, 2017.

**SECTION 29.** Section 33, chapter 907, Oregon Laws 2009, is amended to read:

**Sec. 33.** (1) Notwithstanding [sections 19 and 21 to 23 of this 2009 Act] **ORS 541.611, 541.616, 541.621 and 541.631**, but subject to [section 24 of this 2009 Act] **ORS 541.636**, the Water Resources Department shall waive the grant application process described in [sections 19 and 21 to 23 of this 2009 Act] **ORS 541.611, 541.616, 541.621 and 541.631** when issuing a grant for water development projects that:

(a) Are located in an area of the Umatilla Basin for which an assessment has been performed under chapter 13, Oregon Laws 2008; and

(b) Except as provided in subsection (2) of this section, are designed:

(A) To provide for no more than 75 percent of new stored water to be withdrawn and for not less than 25 percent of the new water to be dedicated for the purpose of providing net environmental public benefits or in-stream benefits; and

(B) To the extent practicable, to return dedicated new stored water for stream augmentation at a time of year that the Water Resources Department, in consultation with the State Department of Fish and Wildlife and relevant tribal governments, determines will provide the maximum net environmental public benefit or in-stream benefit.

(2) If more than 25 percent of the funding for an aquifer storage and recovery project is from grants of state moneys and is not subject to repayment, the project must be designed to dedicate for the purpose of providing net environmental public benefit or in-stream benefit a percentage of the new stored water created by the project that equals or exceeds the percentage of funding for the project that is from grants of state moneys. The Water Resources Department shall manage the dedicated increment of new stored water for net environmental public benefit and in-stream benefit.

(3) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.

(4) This section is repealed [January 2, 2030] **July 1, 2015**.

**SECTION 30.** Section 34, chapter 907, Oregon Laws 2009, is amended to read:

**Sec. 34.** Sections 20, 25 and 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009**, are repealed [January 2, 2024] **July 1, 2015**. The repeal of sections 20, 25 and 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009**, by this section does not alter the terms of any loan, contract or other agreement issued under section 20, 25 or 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009**, or alter the conditions of any water permit or water right certificate that contains conditions that are based upon sections 20, 25 or 26 [of this 2009 Act], **chapter 907, Oregon Laws 2009**.

**SECTION 31.** Section 46, chapter 907, Oregon Laws 2009, as amended by section 74, chapter 9, Oregon Laws 2011, is amended to read:

**Sec. 46.** (1) ORS 541.600, 541.616 and 541.641 and sections 20, 25 and 26, chapter 907, Oregon Laws 2009, and the amendments to ORS 541.700, 541.705, 541.710, 541.720, 541.730, 541.740, 541.765, 541.770, 541.785, 541.830, 541.845 and 541.850 by sections 3 to 14, chapter 907, Oregon Laws 2009, apply to loans from the Water Development Fund for which an application is filed on or after April 1, 2010.

(2) The repeal of ORS 541.755 by section 15, chapter 907, Oregon Laws 2009, becomes operative April 1, 2010.

(3) The amendments to ORS 541.616, 541.641, 541.705, 541.710, 541.720, 541.765, 541.785, 541.830 and 541.850 by sections 35 to 43, chapter 907, Oregon Laws 2009, become operative [January 2, 2024] **July 1, 2015**.

**SECTION 32.** ORS 541.700 is amended to read:

541.700. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

(1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

(2) "Construction" means the construction, or improvement or rehabilitation, in whole or in part, of a water development project, including planning and engineering work, purchasing or refinancing directly related to such construction or improvement or rehabilitation, or any combination of such construction or improvement or rehabilitation. As used in this subsection:

(a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to complete a water development project.

(b) "Refinancing" includes refinancing existing debt of a water developer, as defined in subsection (7)(f) to (m) and (o) of this section, in order to complete a water development project or to provide adequate security for a water development loan, but does not include refinancing existing debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

(3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

(4) "Federal water development project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

(5)(a) "Secondary use" means:

(A) Any water-related recreational use.

(B) Any flood control use.

(C) Any power generation use.

(D) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.

(b) "Secondary use" does not include any use that is incompatible with a water development project.

(6) "Water development project" means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including structures for the application of water for agricultural harvest activities, dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems used for the purpose of agricultural temperature control and any other structure, facility and property necessary or convenient for supplying lands with water for irrigation purposes.

(b) An undertaking, in whole or in part, in this state for the purpose of drainage, including ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods of land drainage that will increase soil versatility and productivity.

(c) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water. An undertaking may provide water to two or more communities with a combined population of more than 30,000. An undertaking may be part of a project that provides water to a community with a population of more than 30,000, but loans of moneys from the Water Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served by the project that have a population of less than 30,000.

(d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways and all other structures and facilities necessary or convenient for providing fish protection.

(e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed health or improving fish habitat, including methods and materials to restore, maintain and enhance [*water quality, streamflows and*] the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems and recommended by the Oregon Watershed Enhancement Board established under ORS 541.900.

(f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this subsection.

(7) "Water developer" means:

- (a) Any individual resident of this state;
  - (b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal income is from farming in Oregon;
  - (c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal income is from farming in Oregon;
  - (d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal income is from farming in Oregon;
  - (e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from farming in Oregon;
  - (f) Any irrigation district organized under or subject to ORS chapter 545;
  - (g) Any water improvement district organized under ORS chapter 552;
  - (h) Any water control district organized under ORS chapter 553;
  - (i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;
  - (j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS chapter 545;
  - (k) Any corporation, cooperative, company or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;
  - (L) Any port district organized under ORS 777.005 to 777.725, 777.915 to 777.953 and 777.990;
  - (m) Any city or county;
  - (n) Any organization formed for the purpose of distributing water for community water supply;
- or
- (o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

**SECTION 33.** ORS 541.710, as amended by section 36, chapter 907, Oregon Laws 2009, is amended to read:

541.710. (1) Upon receipt of an application filed as provided in ORS 541.705, the Water Resources Commission shall determine whether the feasibility study described in ORS 541.705 for the water development project set forth in or accompanying the application is satisfactory and if the commission determines that it is not satisfactory, the commission may:

- (a) Reject the application;
- (b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or
- (c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

(2) Except as provided in subsection (3) of this section, the commission shall charge and collect from the applicant at the time the application is filed *[an application fee equal to the lesser of 0.10 percent of the loan applied for or \$2,500. In addition, the commission may require the applicant to pay for costs that exceed the application fee if the Water Resources Director determines that the costs are incurred solely in connection with processing the application. Before incurring the additional costs, the commission shall advise the applicant of the additional costs to be paid by the applicant.]* **a fee of \$100. In addition, the commission shall charge the applicant the amount required to reimburse the commission for costs that exceed the application fee incurred in connection with the application.** Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

(3) The commission may establish *[a reduced application fee]* by rule **an application fee of less than \$100** for a water development project that is for fish protection or for watershed enhancement.

**SECTION 34.** ORS 541.720, as amended by section 37, chapter 907, Oregon Laws 2009, is amended to read:

541.720. *[(1)]* The Water Resources Commission may approve the financing for the construction of a water development project described in an application filed *[under]* **as provided in** ORS 541.705*[,]* using moneys in the Water Development Fund, secured by a first, **parity or second** lien



[or by other good and sufficient collateral] in the manner provided in ORS 541.740, if, after investigation, the commission finds that:

[(a)] (1) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

[(b)] (2) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

[(c)] (3) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

[(d)] (4) The applicant is a qualified, credit-worthy and responsible water developer [*that meets the standards established by commission rule*] and is willing and able to enter into a contract with the commission for construction and repayment as provided in ORS 541.730;

[(e)] (5) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

[(f)] (6) There is a need for the proposed water development project, the proposed project is in the public interest and the applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project; and

[(g)] (7) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project.

[(2) ORS 541.700 to 541.855 do not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B.]

**SECTION 35.** ORS 541.730 is amended to read:

541.730. [(1)] If the Water Resources Commission approves the financing for the construction of a water development project, the commission, on behalf of the state, and the applicant may enter into a loan contract, secured by a first, **parity or second** lien [*or by other good and sufficient collateral*] in the manner provided in ORS 541.740[. *The loan contract*], **that** shall set forth, among other matters:

[(a)] (1) That the commission, on behalf of the state, must approve the arrangements made by the applicant for the construction, operation and maintenance of the water development project, using moneys in the Water Development Fund for the construction.

[(b) A plan for the repayment of moneys borrowed from the Water Development Fund and interest on those moneys as described in subsection (3) of this section.]

**(2) A plan for repayment by the applicant to the Water Development Administration and Bond Sinking Fund of moneys borrowed from the Water Development Fund used for the construction, operation and maintenance of the water development project and interest on such moneys used at such rate of interest as the commission determines is necessary to provide adequate funds to recover administrative expenses incurred under ORS 541.700 to 541.855. The repayment plan, among other matters:**

**(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the commission may provide;**

**(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission;**

**(c) Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission; and**

**(d) Shall set forth a schedule of payments and the period of loan, which may not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest, which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of such accrued interest.**

[(c)] (3) Provisions satisfactory to the commission for field engineering and inspection, the commission to be the final judge of completion of the contract.

[(d)] (4) That the liability of the state under the contract is contingent upon the availability of moneys in the Water Development Fund for use in the construction, operation and maintenance of the water development project.

[(e)] (5) Such further provisions as the commission considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

[(f)] (6) That the commission may institute an appropriate action or suit to prevent use of the facilities of a water development project financed by the Water Development Fund by any person who is delinquent in the repayment of any moneys due the Water Development Administration and Bond Sinking Fund.

[(g)] *That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission.*

[(2)] (7) **That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission.** The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state.

[(3)] *The commission, in consultation with the State Treasurer, shall set the interest rate in an amount the commission determines to be sufficient to cover, to the extent practicable:]*

[(a)] *The interest rate to be paid to bondholders on the underlying bonds;]*

[(b)] *The administrative expenses incurred by the commission, the Water Resources Department and the State Treasurer in connection with the loan program;]*

[(c)] *All bond-related costs;]*

[(d)] *The establishment of Water Development Administration and Bond Sinking Fund reserves; and]*

[(e)] *An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.]*

[(4)] *In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.]*

[(5)] *The repayment plan:]*

[(a)] *Shall provide for commencement of repayment by the water developer of moneys used for project construction and interest on those moneys not later than two years after the date of the loan contract or at such other time as the commission may provide.]*

[(b)] *May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission.]*

[(c)] *Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission.]*

[(d)] *Shall set forth a schedule of payments and the period of loan. The period of the loan may not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less.]*

[(e)] *Shall set forth the manner of determining when loan payments are delinquent.]*

[(f)] *Shall include repayment of interest that accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and may require payments of varying amounts for collection of that accrued interest.]*

[(g)] *May include provisions in addition to the provisions described in paragraphs (a) to (f) of this subsection.]*

**SECTION 36.** ORS 541.740 is amended to read:

541.740. (1)(a) *[Except as provided in paragraph (b) of this subsection,]* When a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection at-

taches to the real property held in fee simple of the water developer or to the user charges, including interest, owed to or received by the water developer. The lien created by this subsection does not attach to a leasehold. At the discretion of the Water Resources Commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the affected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges. [*The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.*] **However, the commission may elect to accept a second or parity lien position against the real property or user charges encumbered by this section, if the commission determines the lien position would provide adequate security for the water development loan, as set forth in rules adopted by the commission.**

(c) The existence or foreclosure of the lien created by this subsection shall not cause the acceleration of payment of user charges or other payments on affected real property. Such payments shall continue to be made as they become due.

(2) [*Except as provided in this subsection,*] When a loan is made under ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (7)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien, **or a parity or second lien if the commission determines it would provide adequate security**, upon such real property of the water developer as the commission shall require for adequate security. [*The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.*]

(3) When a lien created by subsection (1) of this section is foreclosed, a person whose real property is subject to the lien solely because that real property is irrigated or drained by reason of a water development project or because the real property is served by a water source improved by a water development project for watershed enhancement, shall only have that portion of real property subjected to foreclosure that represents that person's pro rata share of the indebtedness.

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission shall file notice of the loan with the recording officer of each county in which is situated real property of the water developer or real property to which the lien created by subsection (1) or (2) of this section may attach. The notice shall contain a description of the real property of the water developer, a description of any other real property that will be served by the water development project and to which the lien is to attach, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

(5) Upon payment of all amounts loaned to a water developer pursuant to ORS 541.700 to 541.855, the commission shall file with each recording officer referred to in subsection (4) of this section a satisfaction notice that indicates repayment of the loan.

(6) The commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred in foreclosing, into the Water Development Administration and Bond Sinking Fund. In a foreclosure proceeding, the commission may bid on property offered for sale in the proceeding and may acquire title to the property on behalf of the state.

(7) The commission may take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state's interest.

(8) Notwithstanding ORS 293.240, the commission may compromise, release, discharge, waive, cancel or settle a claim against a water developer if such action:

(a) Is consistent with the purposes of ORS 541.700 to 541.855;

(b) Does not impair the ability to pay the administrative expenses of the commission or the obligations of any bonds outstanding; and

(c) Is, under the circumstances, the means most likely to preserve the claim or to recover the greatest part of the amount claimed.

(9) The commission, by rule, may set out procedures to be used when a water developer is unable to make required loan payments because of illness, injury, death, involuntary job loss or economic stress due to factors beyond individual control. The rules shall be effective to the extent permitted by the terms of the contracts associated with affected loans. The rules:

(a) May provide for a temporary reduction of loan payment;

(b) May provide for any other solution jointly agreed to by the water developer and the commission;

(c) Shall provide for repayment of the amount of any loan payments reduced under the rules in accordance with terms and conditions agreed upon by the borrower and the commission; and

(d) Shall require the commission to consider the effect of any payment reduction or delay on the solvency of the program as a whole, on estimates of the most probable financial position of the program in the future and on other borrowers in the program.

(10)(a) Upon application by a water developer, the commission may grant a partial release of security when the commission determines that granting the requested release will not jeopardize the water development loan program's security position.

(b) The remaining property must qualify as security for the loan balance under the applicable law.

(c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may require that the loan balance be reduced as consideration for granting the requested release.

**SECTION 37.** ORS 541.830, as amended by section 40, chapter 907, Oregon Laws 2009, is amended to read:

541.830. (1) There hereby is created the Water Development Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the Water Resources Commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, including principal and interest due on bonds outstanding. These administrative expenses also may include all costs associated with the issuance of bonds and the funding of any credit enhancements or reserves determined to be necessary or advantageous in connection with the bonds.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to 541.815.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees [*and additional processing costs paid under ORS 541.710 and loan processing fees under ORS 541.730.*] **required under ORS 541.710.**

(b) Repayments of moneys loaned to water developers from the Water Development Fund, including interest on such moneys.

(c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal water development projects, including interest on such moneys.

(d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including appropriations dedicated to the partial payment for or repayment of projects affording public benefits.

(e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(g) Interest earned on cash balances invested by the State Treasurer.

(h) Any revenues received by the commission under the provisions of ORS 541.745.

(i) Moneys transferred from the Water Development Fund.

(3) The moneys referred to in subsection (2) of this section are continuously appropriated to the commission for the purposes provided in subsection (1) of this section.

(4) The commission, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 that offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

(5) The commission, with the approval of the State Treasurer, may transfer moneys from the fund created under subsection (1) of this section to the Water Development Fund if:

(a) A cash flow projection shows that the transfer will not have any negative impact on the commission's ability to pay bond principal, interest and administration costs;

(b) The transfer will not create the need for issuance of any bonds; and

(c) The transfer, together with loans outstanding from prior transfers and not refinanced by funds derived directly from a bond sale, does not exceed \$1.

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board.

**SECTION 38. Section 39 of this 2013 Act is added to and made a part of ORS 541.700 to 541.855.**

**SECTION 39. Except as provided in ORS 541.760:**

**(1) If any water development project investigated under ORS 541.700 to 541.855, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, is constructed with funds other than those loaned under ORS 541.700 to 541.855, the amount expended by the state shall immediately become due and payable, together with interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due.**

**(2) If any water development project is refinanced or financial assistance is obtained from other sources, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, after the execution of the loan from the state, all such funds shall be first used to repay the state.**

**SECTION 40. ORS 541.600, 541.606, 541.611, 541.616, 541.621, 541.631, 541.636, 541.641, 541.646 and 541.725 are repealed July 1, 2015.**

**SECTION 41. Section 39 of this 2013 Act and the amendments to ORS 541.700, 541.710, 541.720, 541.730, 541.740 and 541.830 by sections 32 to 37 of this 2013 Act become operative July 1, 2015.**

**SECTION 42. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

**Passed by Senate July 6, 2013**

.....  
Robert Taylor, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House July 7, 2013**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State