

## EXCERPTS OF SB 839 FOR FUNDING AND PERMITTING TIMELINES AND PROCESS DISCUSSION

### 25% Instream

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.

### Seasonally Varying Flows

SECTION 1(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 (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 (2) The Department may **expend moneys** from the account for: (a) Making **loans and grants...projects approved by the Water Resources Commission** that: (J) Determine seasonally varying flows in connection with newly developed water.

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.