

*Relating to the Deschutes Basin ground water study area.*

**SECTION 1.** Section 5, chapter 669, Oregon Laws 2005, as amended by chapter 694, Oregon Laws 2011 is amended to read: (1) The Water Resources Commission shall repeal the rules referred to in section 2, chapter 669, Oregon Laws 2005, on January 2, **2039** [2029].

(2) Ground water permits and mitigation projects approved before the repeal remain valid and effective.

**SECTION 2. As used in this act:**

(a) The “Confederated Tribes of the Warm Springs Water Rights Settlement Agreement” means the settlement agreement, including any amendments, executed by the United States, the State of Oregon, and the Confederated Tribes of the Warm Springs Reservation of Oregon, and as incorporated into the final judgment and decree of the Deschutes County Circuit Court, dated January 7, 2003, in case number 99CV038ST.

(b) The “Confederated Tribes of Warm Springs” means the Confederated Tribes of the Warm Springs Reservation of Oregon, a federally-recognized Indian tribe, a legal successor-in-interest to the Indian signatories of the Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat. 963, and a sovereign cooperative manager of the water resources of the Deschutes Basin.

(c) “Consultation” means formal communication between the Water Resources Department with respect to the Department’s administration of the Deschutes Groundwater Mitigation Program, including, but not limited to how, the program may affect the Confederated Tribes of the Warm Springs Water Rights Settlement or the Confederated Tribes of Warm Springs’ other sovereign rights, privileges and interests in the waters of this state, including but not limited to treaty-protected rights.

**SECTION 3.** (1) Prior to adoption, repeal, or amendments of any rules related to the Deschutes Groundwater Mitigation Program, the Department shall request consultation with the Confederated Tribes of the Warm Springs. Any rules adopted, repealed, or amended related to the Deschutes Groundwater Mitigation Program shall be consistent with the Confederated Tribes of the Warm Springs Water Rights Settlement Agreement.

**SECTION 4. ORS 537.746 is amended to read:** (1) The Water Resources Commission may by rule establish a system of credits that may be used to offset the potential interference with hydraulically connected surface waters caused by ground water withdrawals within

the Deschutes River Basin to account for projects performed in the basin that make water available for mitigation.

(2) A person proposing a project that makes water available for mitigation may apply to the Water Resources Department for approval of the project and a preliminary finding as to the amount of mitigation credits available, based on the amount of water made available by the project. Projects approved by the department shall comply with all other applicable provisions of law, including relevant portions of ORS 390.835, and may not result in injury to existing water rights, **including the Tribal Reserved Water Right as defined in the Confederated Tribes of the Warm Springs Water Rights Settlement Agreement.**

(3)(a) The amount of mitigation credits awarded for a completed project, or any completed phase of the project, shall be equal to the amount of water made available by the project as determined and approved by the department.

(b) A final award of mitigation credits by the department shall be made upon completion of the approved project by the applicant and verification by the department that the project is complete. The department may provide for a partial award of mitigation credits to correspond with completion of approved phases of project implementation.

(c) Mitigation credits shall remain valid until exercised by the holder.

(4) The commission may by rule provide for the recognition or establishment of mitigation banks to facilitate transactions among the holders of mitigation credits and persons who desire to acquire mitigation credits. The mitigation credits may be assigned by the person creating the project to another person or a mitigation bank.

(5) The Water Resources Department shall prepare an annual report on the implementation and management of the system of mitigation credits established by subsections (1) to (4) of this section.

SECTION 5. ORS 540.155 is amended to read: (1) As used in this section, "Deschutes Basin ground water study area" has the meaning given that term in ORS 540.531.

(2) The Water Resources Department shall periodically review the department program for the Deschutes Basin ground water study area. The review shall include, but need not be limited to, the identification of regulatory and statutory changes that may improve the program in order to address and mitigate injury to existing water rights, **including the Tribal Reserved Water Right as defined in the Confederated Tribes of the Warm Springs Water Rights Settlement Agreement** and spring systems and to offset measurable reductions of scenic waterway flows.

(3) The department shall report to the Legislative Assembly every five years on outcomes of the department program for the Deschutes Basin ground water study area. The report shall include, but need not be limited to, **program impacts to the Tribal Reserved Water Right as defined in the Confederated Tribes of the Warm Springs Water Rights Settlement Agreement**, program impacts on other users of the Deschutes River Basin, the potential timing of mitigation, identification of zones of impact, a review of impacts on the headwaters of the Metolius River and other key reaches of the Metolius River system, the potential timing of federal, state and local storage improvements, and other issues identified by stakeholders.

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