

House Bill 2010

Sponsored by Representative FREEMAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows water right examiner to intervene as party or limited party representing public interest in certain Water Resources Department contested case proceedings without payment of fee.

Limits period for nonparty executive department entity to comment regarding proposed order in certain Water Resources Department contested case proceedings.

Requires that Water Resources Department proposed and final orders address evidence presented by water right examiner participating in certain contested case proceedings. Requires Water Resources Department to afford opportunity for water right examiner participating in certain contested case proceedings to present, without payment of fee, rebuttal evidence in response to comments submitted by nonparty executive department entity.

A BILL FOR AN ACT

1
2 Relating to Water Resources Department contested case proceedings.

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

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

5 (a) **"Executive department" has the meaning given that term in ORS 174.112, but does**
6 **not include the Water Resources Department or the Water Resources Commission.**

7 (b) **"Water right examiner" means a person certified under ORS 537.798.**

8 (2) **If the Water Resources Department conducts a contested case proceeding regarding**
9 **a new or existing appropriation of water, or regarding a change in an appropriation of water,**
10 **a water right examiner may intervene as a party or limited party to the proceeding for the**
11 **purpose of representing the public interest by presenting direct or rebuttal evidence regard-**
12 **ing issues of fact within the professional expertise of the water right examiner. There is a**
13 **conclusive presumption that a water right examiner is qualified to represent the public in-**
14 **terest in a proceeding described in this subsection in a manner that could reasonably affect**
15 **the outcome. The ability of a water right examiner to intervene as a party or limited party**
16 **under this subsection is in addition to any other ability of a water right examiner to partic-**
17 **ipate in a matter before the Water Resources Department as provided by law.**

18 (3) **If the Water Resources Department allows a nonparty executive department entity**
19 **to comment on a proposed order in a contested case proceeding regarding a new or existing**
20 **appropriation of water, or regarding a change in an appropriation of water, the Water Re-**
21 **sources Department shall limit the comment period for the nonparty executive department**
22 **entity to 90 days.**

23 (4) **If a water right examiner has participated in any capacity, including but not limited**
24 **to as a witness, party, limited party or protestant, in a contested case proceeding regarding**
25 **a new or existing appropriation of water, or regarding a change in an appropriation of water:**

26 (a) **Any evidence presented by the water right examiner must be specifically addressed**
27 **and evaluated in the written findings and conclusions of the proposed order and the final**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 order. If the proposed or final order is inconsistent with the evidence presented by the water
2 right examiner, the evaluation contained in the written findings and conclusions must specify
3 the reason the evidence was not persuasive; and

4 (b) The Water Resources Department shall treat any comments submitted by a nonparty
5 executive department entity regarding a proposed order, including but not limited to any
6 comments suggesting conditions, requirements or limitations for an appropriation, as an ex
7 parte communication and allow the water right examiner the opportunity to present rebuttal
8 evidence in response to the comments in the same manner as a party at a limited hearing
9 or in writing prior to the issuance of a final order. The opportunity for a water right exam-
10 iner to present rebuttal evidence under this paragraph is independent of any opportunity to
11 comment or present rebuttal evidence afforded to parties or others.

12 (5) Notwithstanding ORS 536.050, the Water Resources Department may not charge a
13 water right examiner a fee:

14 (a) To intervene as a party or limited party in a pending proceeding as provided under
15 subsection (2) of this section; or

16 (b) To present rebuttal evidence under subsection (4)(b) of this section.

17 **SECTION 2.** Section 1 of this 2013 Act applies to Water Resources Department contested
18 case proceedings commenced on or after the effective date of this 2013 Act.

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