

Senate Bill 264

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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**.

Authorizes Water Resources Director to participate in activities related to joint management entity for carrying out Upper Klamath Basin Comprehensive Agreement.

Allows director to request that circuit court sever one or more determined Klamath River Basin tribal water rights claims from other claims to water in Klamath River Basin and enter judgment on severed claims. Allows court to enter general judgment on severed claims that affirms or modifies determination by director.

Allows court to condition general judgment regarding Klamath River Basin off-reservation claims resolved under comprehensive agreement or subsequently resolved, or regarding claims of nonparty filing exception. Provides grounds for entry of supplemental judgment. Provides for vacation of conditional general judgment if condition is not met. Allows court to adjudicate claims or return claims to director for fact-finding and determination following vacation of conditional general judgment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to matters governed under the Upper Klamath Basin Comprehensive Agreement; and de-
3 claring an emergency.

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

5 **SECTION 1. Sections 2 to 4 of this 2015 Act are added to and made a part of ORS chapter**
6 **539.**

7 **SECTION 2. As used in sections 2 to 4 of this 2015 Act:**

8 (1) **“Joint management entity,” “Klamath adjudication,” “off-reservation claims” and**
9 **“tribal water rights claims” have the meanings given those terms in section 15 of the**
10 **settlement agreement.**

11 (2) **“Settlement agreement” means the Upper Klamath Basin Comprehensive Agreement**
12 **that took effect April 18, 2014.**

13 (3) **“Severed claim” means one or more claims or parts of claims that a court severs**
14 **following a request made under section 4 (1)(a) of this 2015 Act.**

15 **SECTION 3. The Water Resources Director may participate in activities related to the**
16 **joint management entity that are consistent with the terms of the settlement agreement.**
17 **The activities may include, but need not be limited to:**

18 (1) **Providing assistance to ensure the formation of an Oregon tax-exempt nonprofit cor-**
19 **poration to function as the joint management entity for the settlement agreement;**

20 (2) **Drafting and giving approval of the articles of incorporation and bylaws of the cor-**
21 **poration;**

22 (3) **Contracting with the corporation;**

23 (4) **Participating as a member of the board of directors for the corporation; and**

24 (5) **Participating as a member of the technical team for the corporation.**

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 **SECTION 4.** (1) Notwithstanding any contrary provision of ORS 539.010 to 539.240, for
2 proceedings that are part of the Klamath adjudication, the Water Resources Director may
3 request that the circuit court:

4 (a) Sever one or more determined tribal water rights claims or parts of claims from the
5 proceedings based upon the findings of fact and orders of determination for other claims to
6 water in the Klamath River Basin; and

7 (b) Proceed separately on the severed claims.

8 (2) Upon request of the director, the circuit court may sever one or more determined
9 tribal water rights claims or parts of claims from other claims to water in the Klamath River
10 Basin and separately proceed to issue a general judgment on the severed claims. The director
11 may make multiple requests under subsection (1) of this section for the severance and ad-
12 judication of determined tribal water rights claims or parts of claims. Determined tribal
13 water rights claims, or parts of claims, that are not severed for the purpose of adjudication
14 under this section shall be adjudicated as provided under ORS 539.150.

15 (3) Notwithstanding ORS 539.150 and except as provided in this subsection, a general
16 judgment described in subsection (2) of this section may affirm or modify the determination
17 by the director of the severed claims. The court may issue a general judgment that makes
18 affirmation or modification of the determination of the severed claims conditional upon fur-
19 ther performance of the settlement agreement if the director requests that the court make
20 the judgment conditional and the severed claims:

21 (a) Are off-reservation claims; or

22 (b) Are claims for which exceptions have been filed by a person that is not a party to the
23 settlement agreement.

24 (4) Notwithstanding ORS 18.031, the court may enter a supplemental judgment, at the
25 request of the director and based upon information provided by the United States Secretary
26 of the Interior, declaring that:

27 (a) The condition of a general judgment described in subsection (3) of this section has
28 been satisfied; or

29 (b) The condition of a general judgment described in subsection (3) of this section has
30 failed and the general judgment is vacated.

31 (5) If the court vacates a conditional general judgment under subsection (4)(b) of this
32 section, the court may:

33 (a) Issue a new judgment adjudicating one or more of the claims that were contained in
34 the vacated judgment. Upon request of the director, the court may join and include in the
35 new judgment other determined claims to water in the Klamath River Basin that are pending
36 adjudication. The court may not issue a new judgment that is less favorable to a person filing
37 an exception described in subsection (3)(b) of this section than the vacated general judgment.

38 (b) Order that one or more of the claims that were contained in the vacated judgment
39 be returned for additional or new findings of fact and determination by the director. How-
40 ever, notwithstanding any authority of the director to make findings of fact under ORS
41 539.010 to 539.240, the court order may include binding findings of fact regarding one or more
42 of the returned claims. The court may order that the returned claims be joined with one or
43 more other claims to water in the Klamath River Basin that are pending findings of fact or
44 determination by the director.

45 (6) A water right established in a conditional general judgment described in subsection

1 (3) of this section is not a water right evidenced by a decree. Unless the court provides oth-
2 erwise, a water right established in a conditional general judgment becomes a water right
3 evidenced by a decree if the court issues a supplemental judgment under subsection (4)(a)
4 of this section that has the effect of affirming or modifying the right.

5 (7) Any judgment issued by a court under this section is subject to the same appeal
6 procedure as provided under ORS 539.150 (4) for judgments under ORS 539.150.

7 SECTION 5. This 2015 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
9 on its passage.

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