

HB 2099 -1, -2, -3, -4 STAFF MEASURE SUMMARY

House Committee On Agriculture and Natural Resources

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Meeting Dates: 3/9, 4/13, 4/18

WHAT THE MEASURE DOES:

Changes time extension conditions related to municipal water management and conservation plan approvals. Defines undeveloped portion of permit as the difference between maximum rate or duty of water authorized by permit and maximum rate or duty of water diverted for beneficial use as of the later of: December 11, 2013; time specified in permit to perfect water right; or last approved extension of time to perfect water right. Clarifies that Oregon Water Resources Department (OWRD) may grant municipal water right holder extension of time to complete construction or to perfect water right only upon approval by OWRD of water management and conservation plan. Measure applies to extensions approved by OWRD on or after effective date of Act to authorize construction or perfection that began before, on or after the effective date of Act. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- History of municipal water rights extension process
- Fish persistence conditioning, House Bill 3038 (2005)
- Cottage Grove decision, December 2013
- Water rights development in progress

EFFECT OF AMENDMENT:

-1 Clarifies that extension of time for municipal water right holder to perfect water right may be granted upon certain conditions, including submission to Oregon Water Resources Department (OWRD) of water management and conservation plan (plan). Stipulates that municipal water right holder may not divert undeveloped portion of water permit until OWRD has approved the plan.

-2 Allows exception for Oregon Water Resources Department (OWRD) to grant municipal water right permit holder exception where requirements for granting exceptions are not met if holder began construction on water development project before December 11, 2013; holder completed construction prior to effective date of this Act; OWRD has approved a water management and conservation plan for holder; and holder applies for extension no later than one year after effective date of Act.

-3 Requires holders of municipal water right permit issued before November 2, 1998 who have been granted extension of time to develop water permit to confer with Oregon Department of Fish and Wildlife (ODFW) no more than one year after final order granting extension regarding potential effects on fish from use of water under permit, to develop voluntary strategies to avoid or minimize such effects and to provide Oregon Water Resources Department with evidence that strategies have been implemented. Requires monthly payments to ODFW of \$5,000 if municipal water right permit holders do not comply. Offers priority processing of applications for extension for municipal water right permits issued before November 2, 1998 at request of holder. Stipulates that compliance with these regulations does not exempt permit holder from any obligation under federal Endangered Species Act.

-4 Allows holder of water right permit issued prior to November 2, 1998 in city in Hood River County to deem as diverted, for purposes of calculating undeveloped portion of water right permit, capacity of water works constructed prior to effective date of Act if construction commenced prior to December 11, 2013.

BACKGROUND:

A municipality must obtain a water right permit from the Oregon Water Resources Department (OWRD) before it can divert and use surface or ground water.

In 2005, House Bill 3038 specified that unlike other water rights holders who have up to five years, municipalities have up to 20 years to develop water under their permits. The measure detailed that OWRD could grant extensions of time to develop a municipal water right if the holder showed good cause; the municipality obtained approval of a water management and conservation plan for any water diverted beyond the maximum rate diverted before the extension; and that the undeveloped portion of the permit would be conditioned to maintain the persistence of fish species listed as sensitive, threatened or endangered under state or federal law.

House Bill 2099 would define the term "undeveloped portion" of a water rights permit for the purposes of determining the date from which fish persistence conditions to water rights should apply as the later of December 11, 2013 or the time specified in the municipality's permit or last approved extension to perfect the water right.