

**HB 2099 A STAFF MEASURE SUMMARY**  
**House Committee On Agriculture and Natural Resources**

**Carrier:** Rep. Clem

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**Action Date:** 04/18/17  
**Action:** Do pass with amendments. (Printed A-Eng.)  
**Vote:** 7-1-1-0  
**Yeas:** 7 - Barreto, Clem, Esquivel, McKeown, McLain, Smith DB, Witt  
**Nays:** 1 - Power  
**Exc:** 1 - Sprenger  
**Fiscal:** Has minimal fiscal impact  
**Revenue:** No revenue impact  
**Prepared By:** Misty Freeman, LPRO Analyst

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**WHAT THE MEASURE DOES:**

Changes time extension conditions related to municipal water management and conservation plan approvals. Applies to extensions approved by Oregon Water Resources Department (OWRD) on or after effective date of Act to authorize construction or perfection that began before, on or after the effective date of Act. 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 extension of time for municipal water right holder to perfect water right may be granted upon certain conditions, including submission to 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. Requires holders of municipal water right permit issued before November 2, 1998, who have been granted extension of time to develop water permit, 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, develop voluntary strategies to avoid or minimize such effects and provide OWRD 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. 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.

**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:**

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. Requires holders of municipal water right permit issued before November 2, 1998, who have been granted extension of time to develop water permit, 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, develop voluntary strategies to avoid or minimize such effects and provide OWRD

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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. Specifies that compliance with these regulations does not exempt permit holder from any obligation under federal Endangered Species Act. 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 the water right 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 2099A clarifies the conditions under which a municipal water right permit holder may be granted an extension of time to perfect the water right and specifies that the undeveloped portion, for the purposes of determining the date from which fish persistence conditions should apply, is the later of December 11, 2013 or the time specified in the municipality's permit or last approved extension to perfect the water right. The measure requires municipalities to submit and obtain approval from OWRD of a water management and conservation plan and requires holders of a municipal water right permit issued before November 2, 1998 to confer with the Oregon Department of Fish and Wildlife regarding impacts to fish resulting from the use of the water and voluntary measures to avoid or minimize such effects. HB 2099A requires holders of municipal water right permits issued before November 2, 1998 to provide evidence of implementation of voluntary strategies or make monthly payments of \$5,000 to the State Wildlife Fund, if such strategies are not implemented within one year after the date of the final order approving the extension. The measure allows an exception to provisions for extensions of time and fish persistence conditions for a city in Hood River County.