



May 21, 2019

To: Chair Ken Helm, Vice-Chair E. Werner Reschke, Vice-Chair Sheri Schouten, and Members of the House Committee on Energy and Environment

RE: Informational Meeting on HB 3430

Dear Chair Helm, Vice-Chair Reschke, Vice-Chair Schouten, and Members of the Committee:

I am Kirk Maag, a water rights attorney at Stoel Rives LLP and a member of the board of directors for the Oregon Water Resources Congress (OWRC). OWRC currently has no position on HB 3430 and appreciates the opportunity to provide information to this Committee regarding ORS 536.075 and the changes proposed in HB 3430. OWRC welcomes the opportunity to engage in constructive dialogue with other stakeholders to ensure that ORS 536.075 does not preclude the Oregon Water Resources Department (Department) from providing timely and effective relief to senior water right holders in response to a valid call for regulation of junior water users.

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other government entities that deliver agricultural water supplies. The water stewards we represent operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities, and deliver water to roughly one-third of all irrigated land in Oregon. OWRC has been promoting the protection and use of water rights and the wise stewardship of water resources on behalf of agricultural water suppliers for more than 100 years.

In Oregon, water rights are generally administered under a "first in time, first in right" priority system, as codified in the Water Rights Act of 1909 and as amended over time. Under this priority system, during times of shortage, a senior water right holder has the right to obtain regulation in its favor by having the watermaster shut off (i.e., regulate) junior water users. ORS 540.045(1). This type of demand by a senior water right holder is known as a "call." Once a senior water right holder places a call, the watermaster begins an investigation by reviewing relevant records and, if necessary, performing a field inspection. OAR 690-250-0100(1). The watermaster "may begin regulation if investigation reveals a valid complaint of water shortage or unlawful use." OAR 690-250-0100(2). A watermaster's notice to a junior water user to curtail use is a final order in an other than contested case.

OWRC supports efficient administration of the priority system and the ability of senior water right holders to obtain timely and effective relief in response to a valid call for regulation of junior water users. OWRC also recognizes the importance of ensuring that parties that are adversely affected by final orders have an adequate opportunity to seek judicial review of such orders.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

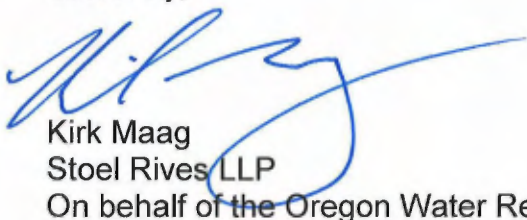
HB 3430 would amend ORS 536.075, which automatically stays the enforcement of certain final orders issued by the Oregon Water Resources Commission (Commission) or the Department. But this automatic stay provision is qualified. Enforcement of a final order is not stayed if the Commission or Department “determines that substantial public harm will result if the order is stayed.” ORS 536.075(5). Such denial “shall be in writing and shall specifically state the substantial public harm that will result from allowing the stay.” *Id.* Director Byler explains in his written testimony that the Department has exercised its authority to deny a stay on six occasions since 2015.

Testimony submitted in support of HB 3430 focuses on the effect of the automatic stay provision in one specific context—final orders to regulate off junior water users in the Klamath Basin. Yet HB 3430 is not narrowly tailored to address this specific issue. Rather, HB 3430 would completely eliminate the automatic stay provision with respect to all final orders in every watershed throughout the state. This would represent a significant change, particularly given that ORS 536.075 has included the automatic stay provision since 1985.

OWRC supports continued dialogue and analysis regarding (1) whether the Commission’s and the Department’s existing authority to deny stays is sufficient to address the concerns raised by the proponents of HB 3430, and (2) if not, whether a narrower amendment to ORS 536.075 would sufficiently address those concerns, without having unintended consequences.

In conclusion, OWRC welcomes the opportunity to collaborate with the legislature and stakeholders to examine whether changes to ORS 536.075 are necessary to protect the rights of senior water right holders.

Sincerely,



Kirk Maag
Stoel Rives LLP
On behalf of the Oregon Water Resources Congress