



TESTIMONY

House Committee on Water

February 6, 2020

Oregon Farm Bureau Opposes HB 4086

Chair Helm and Members of the Committee:

Oregon Farm Bureau (OFB) opposes HB 4086 and its amendments, which would eliminate the automatic stay provision when a water user or third party seeks judicial review of a final order of the Oregon Water Resources Department.

By way of background, the Oregon Farm Bureau (OFB) is the state's largest agricultural trade association, representing nearly 7,000 farm and ranch families across the state, many of whom are active contributors to rural fire protection districts and rangeland fire protection associations.

The stay provision in current Oregon law exists to ensure that the status quo is maintained while an impacted party seeks judicial review of the Department's decision and ensures that the impacted party is not negatively impacted by the Department's decision before they have had the opportunity for due process. If enacted, this change would drastically alter the process for water rights appeals statewide, affecting water users, environmental groups, and others who have used this provision to maintain the status quo if they believe a decision of the Oregon Water Resources Department is contrary to applicable law or was not based upon substantial evidence. A statutory change this significant requires significant work and discussion, none of which are possible in a short session. A proposal that represents such a significant change in law – and that would cut both ways for all parties involved – deserves much more pre-session conversation and investigation. This bill is being advanced as the result of an issue that touches one water basin in Oregon, but the bill has significant statewide implications and likely has broader and deeper consequences than can be fully recognized and considered during a short session. This warrants more background and information, including what other parties have utilized this stay provision, how often it has been used, and what the implications of this change would be to water policy on a statewide basis. Those questions cannot be properly vetted in the midst of a very busy legislative session.

At any rate, OFB believes that maintaining the status quo in the event of an appeal is appropriate and opposes removing the automatic stay provision. Under current law, if the Oregon Water Resources Department believes that substantial public harm will result

from the stay, they may lift the automatic stay and enforce their final order. Our understanding is that the Department has done this when it believes that its final order is legally solid and a senior water right holder will be negatively affected if the Department does not enforce its final order. In the Klamath, there has been significant dispute about the modelling used by the Department to enforce against groundwater users, and that uncertainty is likely why the Department has not lifted the stay. This decision is appropriate in light of the significant disputes regarding the Department's modelling and does not warrant the legislature changing a provision that has been helping maintain the status quo in water appeals for the last several decades. If the Department believes that a stay is inappropriate, they can and have decided to lift the stay in favor of enforcing their final order. Their decision not to do so in one basin does not warrant changing the law for the entire state, particularly given that the final orders in that basin are hotly contested.

Maintenance of the status quo in water rights appeals ensures that water users and other appellants are able to exercise their right to due process. In cases where the Department's final order is on legally shaky ground or is contested enough to move to judicial review, it is appropriate to ensure the Department's decision is legally solid prior to allowing enforcement, especially where enforcement could put a water user out of business before they've exercised their right to judicial review. In other cases, enforcement could allow a water user to start using their water right in a new manner that could impact other users if the stay is not in place. We urge the Committee not to move forward with HB 4086.

Please contact Mary Anne Cooper at maryanne@oregonfb.org if you have any questions.