

HB 2244 -3, -6, -10, -11 STAFF MEASURE SUMMARY

House Committee On Water

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Meeting Dates: 2/11, 4/13

WHAT THE MEASURE DOES:

Establishes that filing of a petition in circuit court or Court of Appeals may not stay enforcement of final order of the Oregon Water Resources Commission (OWRC) or Oregon Water Resources Department (OWRD) when regulated off diversion, appropriation or other use of water in favor of: a determined claim, in-stream water right held by state agency, or determined claim or water right held by or held in trust for a federally recognized Indian tribe. Applies to petitions for judicial review filed on or after effective date of this Act. Repeals Section 2, chapter 445 of 2015 Oregon Laws, removing sunset date of January 2, 2026.

ISSUES DISCUSSED:

- History of Oregon's prior appropriation system
- Current law on stays of enforcement of final orders
- Impacts on agriculture in the absence of stay enforcement
- Types of stay provision used in the Klamath Basin

EFFECT OF AMENDMENT:

-3 Replaces measure. Makes technical corrections. Requires that final order includes, on the first page of the order, names of all parties named in the order. Directs party that files a petition to mail a copy of the petition to any other party named in the final order.

FISCAL: May have fiscal impact, but statement not yet issued.

REVENUE: No revenue impact.

-6 Replaces measure. Directs Water Resources Commission (Commission) to review final orders of the Commission or Water Resources Department (WRD) that were appealed between January 1, 2001 and the effective date of this Act. Directs Commission, on or before December 31, 2021, to report to committee of the Legislative Assembly on results of the review. Declares emergency, effective on passage.

FISCAL: May have fiscal impact, but statement not yet issued.

REVENUE: May have revenue impact, but statement not yet issued.

-10 Replaces measure. Authorizes Water Resources Commission (Commission) or Water Resources Department (WRD) to deny stay if the Commission or WRD determine substantial public harm to result from staying the final order. Provides that, if petitioner requests a hearing on the denial, the court shall hold the hearing no later than 21 days following the request and the denial shall remain in effect until the hearing has been held and the court issued a decision. For enforcement of a final order that regulated off a diversion, appropriation, or other use of surface or ground water in favor of a determined claim, in-stream water right held by a state agency, or water right or determined claim held by or in trust for a federally recognized Indian tribe: enforcement may only be stayed on appeal if petition for review is served on the Commission or WRD and proof of service is filed with the court; enforcement is not stayed if Commission or WRD denies the stay. Directs Commission or WRD, not more than five business days after receiving service of a petition related to a water right or determined claim held by or in trust for a federally recognized Indian tribe, to send petition to the tribe. Applies to petitions filed on or after effective date of this Act. Defines terms. Makes technical corrections.

FISCAL: May have fiscal impact, but statement not yet issued.

REVENUE: No revenue impact.

-11 Adds requirement that party filing a petition in either circuit court or Court of Appeals must file a bond of \$1,000 if petition appeals a final order of the Water Resources Commission of Water Resources Department (WRD) that regulated off diversion, appropriation, other use of water in favor of the following: a determined claim, an in-stream water right held by a state agency, or a water right or determined claim held by or in trust for a federally recognized Indian tribe. Requires bond to be refunded to the party if the court vacates or remands the order or the appeal is settled. Requires that bond be forfeited and credited to WRD if the court upholds the order.

FISCAL: May have fiscal impact, but statement not yet issued.

REVENUE: May have revenue impact, but statement not yet issued.

BACKGROUND:

Oregon follows a prior appropriation doctrine of water use, often referred to as “first in time, first in right.” This means when there is insufficient water to satisfy all water rights, water users with senior priority dates may make a “call” to receive water and users with junior water rights are shut off until senior water rights are satisfied.

Adjudication is the process by which pre-1909 vested water rights are quantified and documented through an administrative and judicial procedure. Approximately two-thirds of the state has been adjudicated. The administrative phase of adjudication concludes with the presentation of the Adjudicator’s findings of fact and a final order of determination filed by the Oregon Water Resources Department (OWRD) with the applicable court. The judicial phase of the process is the review of the final order by the courts. Adjudication claimants or contestants who dispute OWRD’s determination have an opportunity to file exceptions to be reviewed by the court. The court ultimately issues a water rights decree affirming or modifying the final order of determination, and OWRD issues water right certificates in accordance with the court’s decree.

House Bill 2244 would remove the routine stay of enforcement by filing a petition with the court to contest a final order when the final order favors a determined claim, an in-stream water right held by a state agency, or either a determined claim or water right held by or in trust for a federally recognized Indian tribe.