

HB 2244 B STAFF MEASURE SUMMARY

Carrier: Sen. Linthicum

Senate Committee On Natural Resources and Wildfire Recovery**Minority Report****Action Date:** 05/24/21**Action:** Do pass with different amendments to the A-Eng bill. (Printed B-Eng.) Minority**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Report Signers:** Sen. Dallas Heard, Sen. Bill Kenemer**Prepared By:** Beth Patrino, LPRO Analyst**Meeting Dates:** 5/12, 5/24**WHAT THE MEASURE DOES:**

Provides that if the Water Resources Commission (Commission) or Water Resources Department (Department) deny a stay of a final order based on a determination that substantial public harm will result from the stay, and a petitioner requests a hearing on the denial, the court must hold the hearing not more than 21 days after the request and the denial of the stay remains in effect until the hearing has been held and the court has issued a decision. Provides that enforcement of a final order that regulated off a diversion, appropriation or other use of water in favor of a senior water right of record or senior determined claim may only be stayed on appeal if the petition is mailed to the Commission or Department, not more than three days after the petition is filed with the court. Directs Commission or Department, not more than five business days after receiving the petition for review of a denial of a stay, to send petition to the holder of the senior existing water right of record or senior determined claim, or federally recognized Indian tribe, that made the call for water that resulted in the final order. Adds reference to definition of "existing water right of record" and deletes definition of "instream water right." Applies to petitions filed on or after effective date of this Act.

ISSUES DISCUSSED:

- Existing process that may result in the stay of a water use enforcement order
- Water right enforcement actions in the Klamath Basin
- Tribal water rights that are held in trust by federal Bureau of Indian Affairs
- Who should be notified that a petition has been filed to stay an enforcement order; notice process
- Other states' water use enforcement processes

EFFECT OF AMENDMENT:

Provides that enforcement of a final order that regulated off a diversion, appropriation or other use of water in favor of a senior water right of record or senior determined claim may only be stayed on appeal if the petition is mailed to the Commission or Department, not more than three days after the petition is filed with the court. Directs Commission or Department, not more than five business days after receiving the petition for review of a denial of a stay, to send petition to the holder of the senior existing water right of record or senior determined claim, or federally recognized Indian tribe, that made the call for water that resulted in the final order. Adds reference to definition of "existing water right of record" and deletes definition of "instream water right."

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 do not receive water until senior water rights are satisfied. The regulation of junior water rights to meet the needs of senior users and the enforcement of orders addressing the use of water without a water right are accomplished through the issuance of final orders in other than contested cases.

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ORS 536.075 (5) specifies that the filing in either circuit court or the Court of Appeals of a petition for review of a final order by the Water Resources Commission (Commission) or Water Resources Department (Department) stays the enforcement of the order unless the Commission or Department determine that substantial public harm will result from a stay.

House Bill 2244 MRB would require a court to hold a hearing not more than 21 days after a request is made for a hearing on the denial of a stay of a final order by the Commission or Department and would establish that the denial of the stay remains in effect until the hearing has been held and the court has issued a decision. The measure would also provide that the enforcement of a final order that regulated off a diversion, appropriation or other use of water in favor of a senior water right of record or senior determined claim may only be stayed on appeal if the petition is mailed to the Commission or Department, not more than three days after the petition is filed with the court. The Commission or Department would be directed, not more than five business days after receiving the petition for review of a denial of a stay, to send petition to the holder of the senior existing water right of record or senior determined claim, or federally recognized Indian tribe, that made the call for water that resulted in the final order.