



Oregon Cattlemen's Association
Tammy Dennee, Executive Director
1320 Capitol Street NE, Suite 150
Salem, OR 97301
Phone – (503) 361-8941
www.orcattle.com

Senate Committee on Natural Resources and Wildfire Recovery

Testimony – Wednesday, May 12, 2021

HB 2244 A

Chair Golden, Committee Members:

My name is Sarah Liljefelt and I am a water rights attorney in Oregon. I serve as the Water Resources Committee Chair for the Oregon Cattlemen's Association, and I am here today to provide testimony on OCA's behalf in opposition to HB 2244A.

OCA's members are ranchers who are dependent on their water rights for their livelihood and way of life. They depend on Oregon's water rights system to ensure their water rights are protected, including the ability to challenge orders affecting their water rights when they believe such orders are in error.

HB 2244A changes the procedures for water right holders to challenge orders affecting water rights. The current version of the bill in front of the Committee is a much-improved version. Prior versions raised constitutional issues about due process and equal protection under the laws. However, further improvements could still be made to HB 2244A to help the proposed procedure run more smoothly.

The current procedure under ORS 536.075 provides that after the State through the Oregon Water Resources Department issues "orders in other than contested cases" regulating water use under existing water rights, interested parties may challenge such orders by filing Petitions for Judicial Review, or PJRs, in state court. Once the PJR is filed, the Department's order is stayed pending resolution of the case. However, ORS 12.020(2) provides that service of process does not need to be completed until 60 days after the PJR is filed with the court. Service of process involves official, in person service on the State agency of the complaint and the summons to appear and defend against the allegations.

Proponents of HB 2244A raised concerns that this process could allow water right holders to take advantage of the automatic stay during the 60-day period, and then voluntarily dismiss their complaints, thereby taking advantage of the system. During testimony in the House Water Committee, it was evident that no such examples exist, and adequate safeguards are in place to prevent that from happening, such as Oregon Rule of Civil Procedure 17 that requires parties and attorneys to have factual and legal support for all filings and imposes sanctions if not. Additionally, parties cannot litigate the same case year after year to avoid regulation due to the principle of res judicata and Oregon Rule of Civil Procedure 54.

The current version of HB 2244A proposes to change the timeline for service of process on the State if the challenging water user would like to take advantage of the automatic stay. Rather than 60 days to serve process after the automatic stay goes into effect, the water right holder must complete service of process and file proof of service with the court before the automatic stay goes into effect.

OCA does not object to sooner notice of PJR filings in general. The Oregon Water Resources Department has the authority to deny stays in circumstances where the stay would result in public harm but can only do so if it has notice of the PJR. However, service of process is not always a quick endeavor. If using a public agency to serve process, such as a county Sheriff's office, as is often the case, service of process is according to the Sheriff's schedule and priorities and can take weeks. This is time that water users do not always have to prevent their crops from dying. The Legislature enacted ORS 12.020 giving persons 60 days to serve process, and HB 2244A proposes to modify that timeline only for petitions for PJRs in water right cases. OCA does not believe that such a differentiation is needed for this small subset of cases in the State.

Instead, OCA would propose that persons or entities filing PJRs mail copies of the PJRs to the Department at the same time as filing. Providing a copy would put the Department on notice of the PJR but allow official service of process to be completed during the normal timeline already set forth in ORS 12.020. This would allow the Department to move forward to deny the stay if appropriate under ORS 536.075(5).

Proponents of HB 2244A also raised concerns about Tribes having notice when their water rights may be potentially affected by a PJR. Thus, the Bill proposes that OWRD give notice to Tribes in such instances. Oregon's current system treats all water right holders equally, and OCA has concerns about treating certain water right holders differently than all others. We believe a better way to address Proponents' concern would be for the Department to give notice to **any** person or entity, **including Tribes**, whose call for water resulted in the orders that are being challenged. This way, any party who made a call for water would receive notice, including Tribes.

Stakeholders have also considered an alternate proposal for the Department to alert **all senior water right holders**, whether or not they made a call for water, when a PJR is filed. OCA does not believe this proposal is feasible because ownership updates on water rights are not required in Oregon, so ownership is oftentimes unknown or uncertain. If the Department needs to research numerous senior water right holders every time a PJR is filed, the delay will be substantial, the cost will be great, and the results may not be accurate. From discussion with the Department, we believe that notice to persons or entities making calls for water is feasible but notice to all potential senior water right holders is not.

In conclusion, OCA would like to thank you for your time and consideration, and to thank everyone who worked on amendments to HB 2244 to improve the bill. We believe that two minor changes would further improve the bill, and if those changes were made OCA would not oppose the bill. Those changes are: 1) requiring notice of the PJR to the Department by mail, rather than official service of process, for the stay to go into effect, and 2) requiring the Department to notify any person or entity, including Tribes, who made a call for water if a PJR is filed in response to the Department's order.

Thank You,



Sarah Liljefelt
OCA Water Resources Committee Chair