

Testimony on HB 2244

February 11, 2021

To: House Committee on Water, Chair Ken Helms, Vice-Chair Mark Owens, Vice-Chair Jeff Reardon, and Members of the Committee

I own property in the Upper Klamath Basin in the Fort Klamath area that has 1883 water rights and has been in my family for generations. I also own and farm land in the Tulelake Irrigation District in the Lower Klamath Basin. Our water rights in the Wood River Valley have been completely shut off in the recent years, and the adjudication is being vigorously contested in court.

I write today in opposition to HB 2244.

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. It ensures that the impacted party is not negatively impacted by the Department's decision before they have had the opportunity for due process.

The supporters of this bill would have you believe that the stay provision unduly harms them and prevents them from exercising their rights. They also appear to want exceptions for classes of irrigators and instream users. What they really object to is the requirement to make sure that in exercising their rights, the rights of others are not infringed.

The due process clause of the Fourteenth Amendment to the United States Constitution provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." Eliminating the stay provision denies an irrigator the ability to prevent immediate and potentially severe economic damage to their operation. The stay provision exists to ensure that the rights of **ALL** water rights holders are maintained, not one chosen class or type of water right holder. It is an important right of all water right holders that should not be eliminated or revised.

If enacted, this change would drastically alter the process for water rights appeals statewide. HB 2244 would negatively affect water users who need this provision to avoid the potentially severe damages and maintain the status quo while it is confirmed, through due process, that the decision of the Oregon Water Resources Department is consistent with applicable law and based upon substantial evidence.

It is very frustrating to see how much time is being spent examining how to reduce irrigators' due process rights instead of holding hearings to evaluate why OWRD's actions are precipitating so many lawsuits, several of which the agency has lost.

I respectfully urge the Committee to reject HB 2244 and leave ORS 536.075 unchanged.

Sincerely,



Martin T. Nicholson