

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Environment and Natural Resources

REVENUE: No revenue impact**FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Beth Reiley, Administrator**Meeting Dates:** 3/23

WHAT THE MEASURE DOES: Authorizes temporary lease or temporary transfer of upper Klamath Basin water right established by Water Resources Director in order of determination during period while judicial review of order is pending. Applies to leases and transfers under agreements entered into before January 2, 2020. Declares emergency, effective on passage.

ISSUES DISCUSSED:**EFFECT OF COMMITTEE AMENDMENT:**

(Proposed -1Amendment) Replaces measure. Defines “determined claim” as water right in upper Klamath Basin and established by order of determination. Establishes during period judicial review is pending determined claim is primary water right subject to temporary transfer. Stipulates determined water right established in order of determination that has been stayed or water right transfer that changes point of diversion upstream is not subject to temporary transfer. Requires Water Resources Department to deny, modify or revoke temporary transfer of determined claim if it has or is likely to result in injury to another determined claim or water right or enlargement of determined claim. Sunsets Act January 2, 2020. Declares emergency, effective on passage.

(Proposed -2Amendment) Replaces measure. Defines “determined claim” as water right in upper Klamath Basin and established by order of determination. Establishes during period judicial review is pending determined claim is existing water right that may be leased and primary water right subject to temporary transfer. Stipulates lease and temporary transfer authority does not apply to water right that has been determined and established in order of determination that has been stayed, water right transfer that changes point of diversion upstream, and use of determined claim as in-stream water right. Requires Water Resources Department to deny, modify or revoke lease or temporary transfer of determined claim if it has or is likely to result in injury to another determined claim or water right or enlargement of determined claim. Sunsets Act January 2, 2020. Declares emergency, effective on passage.

BACKGROUND: Passage of the Water Code in 1909 established, for the first time in Oregon, a system for acquiring, certifying and documenting rights to the use of water. Water rights that began before 1909 and federal water rights are determined through a process called an “adjudication.” There are two phases to an adjudication. In the first phase, the Water Resources Department (Department) determines federal and pre-1909 rights and then provisionally recognizes those determined rights; the second phase involves a court review of the agency’s decision. The court then issues a decree that identifies a priority date and other aspects of each water right. After the Department has delivered its determination to the court, a watermaster can regulate in favor of determined claims but these claims may not be transferred or leased until a final court decree is issued.

In the Klamath Basin, the second phase of the adjudication has begun. Senate Bill 206 would allow the temporary transfer or lease for instream use of determined water rights in the Klamath Basin.

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This summary has not been adopted or officially endorsed by action of the committee.