

HB 3430 STAFF MEASURE SUMMARY

House Committee On Energy and Environment

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Meeting Dates: 5/21

WHAT THE MEASURE DOES:

Removes provision in ORS 536.075 that the filing of a petition in the circuit court or the Court of Appeals shall stay enforcement of a final order unless the Water Resources Commission or Water Resources Department determines that substantial public harm would result from the stay. Applies to petitions for judicial review filed on or after the effective date of the Act.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Like most western states, Oregon follows the “prior appropriation” doctrine of water use, often referred to as “first in time, first in right.” This means that when there is insufficient water to satisfy all water rights, water users with senior priority dates make a “call” to receive water, and users with junior water rights are shut off until the rights of the senior users making the call are satisfied. When the Oregon Water Resources Department (OWRD) receives a call for water to protect senior instream determined claims, the call initiates a validation process, which involves the measurement of instream flow at key determined claim reaches. If flow measurements confirm insufficient flows to meet determined claims, and forecasted hydrologic conditions indicate no likely improvement, then the regulation process begins.

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 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 3430 would remove the routine stay of enforcement by OWRD prompted by the filing of a petition with the court to contest a final order. Provisions would apply to petitions for judicial review filed on or after the effective date of this Act.