

HB 2244 A STAFF MEASURE SUMMARY**Carrier:** Rep. Wilde**House Committee On Water**

Action Date: 04/13/21
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 5-3-0-0
Yeas: 5 - Helm, Reardon, Reynolds, Wilde, Witt
Nays: 3 - Breese-Iverson, Leif, Owens
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Allison Daniel, LPRO Analyst
Meeting Dates: 2/11, 4/13

WHAT THE MEASURE DOES:

Authorizes Water Resources Commission (Commission) or Water Resources Department (Department) to deny an automatic stay of a final order if either determines that substantial public harm will result from staying the final order. Provides that, if petitioner requests a hearing on the denial of the stay, the court shall hold the hearing no later than 21 days following the request and the denial shall remain in effect until the hearing has been held and the court has issued a decision. Allows stay on appeal of the enforcement of a final order that regulated off a diversion, appropriation, or other use of surface or ground water in favor of a determined claim, in-stream water right held by a state agency, or water right or determined claim held by or in trust for a federally recognized Indian tribe if petition for review is served on the Commission or Department and proof of service is filed with the court. Provides that enforcement is not stayed if Commission or Department denies the stay. Directs Commission or Department, not more than five business days after receiving a petition related to a water right or determined claim held by or in trust for a federally recognized Indian tribe, to send petition to the tribe. Applies to petitions filed on or after effective date of this Act.

ISSUES DISCUSSED:

- History of Oregon’s prior appropriation system
- Current law on stays of enforcement of final orders
- Impacts on agriculture in the absence of stay enforcement
- Types of stay provision used in the Klamath Basin

EFFECT OF AMENDMENT:

Replaces the measure.

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 are shut off until senior water rights are satisfied.

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 the Oregon Water Resources Department (Department) 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 the Department'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 the Department issues water right certificates in accordance with the court’s decree.

HB 2244 A STAFF MEASURE SUMMARY

House Bill 2244 A would authorize the Water Resources Department or Commission to deny the automatic stay of the enforcement of a final order if substantial public harm will result from staying the final order. If the petitioner requests a hearing on the denial, the measure would require the court to hold a hearing not more than 21 days after the request is made.