

House Bill 2244

Sponsored by Representative WILDE (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that filing of petition appealing final order in other than contested case issued by Water Resources Commission or Water Resources Department in either circuit court or Court of Appeals may not stay enforcement of order of commission or department that regulated off use of water in favor of determined claim, in-stream water right held by state agency or water right held by, or held in trust for, federally recognized Indian tribe.

Repeals sunset of authorization to lease or temporarily transfer water right in Upper Klamath Basin during period that judicial review of water right order of determination is pending, making authorization permanent.

A BILL FOR AN ACT

1
2 Relating to orders issued by the Water Resources Commission or Water Resources Department for
3 which judicial review is pending; creating new provisions; amending ORS 536.075; and repealing
4 section 2, chapter 445, Oregon Laws 2015.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 536.075 is amended to read:

7 536.075. (1) Any party affected by a final order other than contested case issued by the Water
8 Resources Commission or Water Resources Department may appeal the order to the Circuit Court
9 of Marion County or to the circuit court of the county in which all or part of the property affected
10 by the order is situated. The review shall be conducted according to the provisions of ORS 183.484,
11 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources
12 Commission or the Water Resources Department must state on the first page of the order that the
13 order is a final order other than contested case, that the order is subject to judicial review under
14 ORS 183.484 and that any petition for judicial review of the order must be filed within the time
15 specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources
16 Commission or by the Water Resources Department that does not comply with the requirements of
17 this section is not a final order.

18 (2) Any party affected by a final order in a contested case issued by the Water Resources
19 Commission or the Water Resources Department may appeal the order to the Court of Appeals.

20 (3) An appeal under subsection (2) of this section shall be conducted as provided in ORS 183.482
21 except as specifically provided in subsections (4), (5) and (6) of this section.

22 (4) The petition shall state the facts showing how the petitioner is adversely affected by the
23 order and the ground or grounds upon which the petitioner contends the order should be reversed
24 or remanded.

25 (5)(a) The filing of a petition in either the circuit court or the Court of Appeals shall stay
26 enforcement of the order of the commission or the department unless the commission or the de-
27 partment determines that substantial public harm will result if the order is stayed. If the commission
28 or the department denies the stay, the denial shall be in writing and shall specifically state the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 substantial public harm that will result from allowing the stay.

2 **(b) Notwithstanding ORS 183.482 (3)(b) and paragraph (a) of this subsection, the filing of**
3 **a petition in either the circuit court or the Court of Appeals may not stay enforcement of**
4 **a final order of the commission or the department that regulated off a diversion, appropri-**
5 **ation or other use of water in favor of:**

6 **(A) A determined claim, as defined in section 1, chapter 445, Oregon Laws 2015;**

7 **(B) An in-stream water right, as defined in ORS 537.332, that is held by a state agency;**
8 **or**

9 **(C) A water right or determined claim, as defined in section 1, chapter 445, Oregon Laws**
10 **2015, that is held by, or held in trust for, a federally recognized Indian tribe.**

11 (6) The review by the Court of Appeals under subsection (2) of this section shall be on the entire
12 record forwarded by the commission or department. The court may remand the case for further ev-
13 idence taking, correction or other necessary action. The court may affirm, reverse, modify or sup-
14 plement the order appealed from, and make such disposition of the case as the court determines to
15 be appropriate.

16 (7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695
17 or ORS chapter 539.

18 (8) For the purposes of this section, “final order” and “contested case” have the meanings given
19 those terms in ORS 183.310.

20 **SECTION 2. The amendments to ORS 536.075 by section 1 of this 2021 Act apply to pe-**
21 **titions filed on or after the effective date of this 2021 Act.**

22 **SECTION 3. Section 2, chapter 445, Oregon Laws 2015, is repealed.**

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