



Oregon

Tina Kotek, Governor

Water Resources Department

725 Summer Street NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

Testimony for House Bill 2801

House Committee on Agriculture, Land Use, Natural Resources and Water

Co-Chair Ken Helm

Co-Chair Mark Owens

Submitted by: Bryn Hudson, Legislative Coordinator

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Thank you for the opportunity to testify in support of House Bill 2801, which seeks to retain the Oregon Water Resources authority to process temporary transfers and leases of determined claims in the Upper Klamath Basin.

Background

The Upper Klamath Basin has been undergoing a water right general stream adjudication since 1975. Adjudication is a statutory process designed to determine the water rights for claimed uses of surface water that began before adoption of the Oregon Water Code on February 24, 1909, and Federally Reserved Water Rights.

Adjudication determines the validity of a water right claim, the beneficial use, date of priority, source of water, location of where the water may be diverted and used, and the maximum instantaneous rate and annual amount of water that may be diverted for use beneficially without waste. It is essential to resolving and preventing conflicts in an era of increasing water demands, water scarcity and changing climate. By creating a record of enforceable water rights through the adjudication process, water users have greater predictability and flexibility in meeting their water needs.

The first phase of the Upper Klamath Basin surface water right adjudication was the review and determination of these claims by the Department, including the hearing of contests to claims and the issuance of proposed orders by administrative law judges from the State's Office of Administrative Hearings. This phase of the process was completed with the Department's issuance of the Adjudicator's Findings of Fact and Final Order of Determination on March 7, 2013.

"Determined claims" are water rights determined in the Klamath Basin Adjudication Amended and Corrected Finding of Fact and Order of Determination (ACFFOD). Because water use under determined claims in the Upper Klamath Basin will not be memorialized with water right certificates until the final court decree is issued, the Department needs specific authority to approve temporary transfers and instream leases for those determined claims (Section 1, chapter 445, Oregon Laws 2015). Senate Bill 206 (2015) granted the Department authority to approve temporary transfers and instream leases for determined claims in the Upper Klamath Basin.

An application for a temporary transfer or instream lease under this authority cannot not be approved if the ACFFOD has been stayed, if the application proposes to move the point of diversion upstream, or if its approval would cause enlargement or injury to another claim or existing water right. Temporary transfers and instream leases cannot exceed five years but can be renewed. The Department has received about a dozen applications for temporary transfers or instream leases since program inception.

This authority sunsets January 2, 2026. If the authority is not extended, the Department will not be able to approve instream leases or temporary transfers of the determined claims until the adjudication is completed, limiting water users' ability to temporarily modify use of their water.

What the Bill Does

HB 2801 would remove the sunset date for the current authority, allowing the Department to accept and process temporary transfers and leases for determined surface water claims in the Upper Klamath Basin. The bill would then repeal the authority on the date when the Klamath County Circuit Court (Court) issues a water rights decree affirming or modifying the ACFFOD for the Klamath River Basin Adjudication. After the court enters a final Judgment, the Department will then be able to use existing authorities to process transfers and leases on behalf of water right holders in the basin. The bill requires the Department to notify relevant legislative committees within 30 days after the court issues the water rights decree and all appeals have been resolved.

Next Steps for Upper Klamath Basin Surface Water Adjudication

The adjudication process is now in the second phase. This is the review of the ACFFOD by the Klamath County Circuit Court. Adjudication claimants or contestants who dispute the Department's determination of their claims or contests have had an opportunity to file exceptions with the Court. The Court is in the process of hearing exceptions which have been filed and will ultimately issue a Judgment affirming or modifying the Final Order of Determination. The Department can issue water right certificates in accordance with the Judgment once it is issued by the Court.

Additionally, in 2023, the Court remanded the Klamath Tribes determined claims back to the Department for referral to the Office of Administrative Hearings, to receive testimony regarding whether the Tribal claims should be adjusted to incorporate the Moderate Living Standard.