

Oregon water law proposal sparks due process debate

Proposal would remove the 'automatic stay' provision from Oregon water law

By MATEUSZ PERKOWSKI
Capital Press

A legal tool that allows Oregon farmers to prevent irrigation shutdowns is safe for now but lawmakers may revisit a proposal to eliminate it.

In times of low water availability, state regulators can order a grower to halt irrigation to protect the owner of a senior water right with an older "priority date" for withdrawing water.

Under current Oregon law, the junior irrigator can fend off such enforcement by filing a "petition for review" lawsuit against the Oregon Water Resources Department.

Critics of this "automatic stay" mechanism claim it's being abused by irrigators who know that slow-moving legal processes will effectively allow them to keep diverting water to the detriment of senior users.

In recent years, the prac-



Capital Press file photo

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tice has become controversial due to numerous lawsuits against OWRD's orders "regulating off" irrigators at the urging of the Klamath Tribes, who hold the most senior "time immemorial" water rights.

"There are other senior water rights in Oregon that this should be a concern of theirs because any junior water right can use this loophole anywhere in the state of Oregon," said Don Gentry, tribal chairman of the Klamath Tribes.

Gentry and other tribal

representatives recently testified in favor of House Bill 3430, a proposal that would remove the "automatic stay" provision from Oregon water law.

While the bill is currently dead due to legislative deadlines, the May 21 hearing before the House Committee on Energy and the Environment was likely an effort to "gear it up" for a future legislative session, said Jerome Rosa, executive director of the Oregon Cattlemen's Association.

Eliminating the automatic

stay would leave irrigators vulnerable to potentially erroneous shutdown orders, he said.

"Our concern is some of these judicial decisions can take years, and in the meantime, our farmers and ranchers won't be able to utilize their water rights."

Opponents of HB 3430 argued that eliminating the automatic stay would endanger due process in water rights enforcement, while the bill's proponents claimed the mechanism already harms the due process of senior

water rights holders.

"We believe it's a necessary fix to something that flies in the face of prior appropriations doctrine," said Gentry of the Klamath Tribes, referring to the "first in time, first in right" tenet of Oregon water law.

Senior water users don't even receive a notice when an enforcement action is suspended due to the automatic stay, said Ed Goodman, an attorney for the Klamath Tribes.

"The automatic stay doesn't protect due process, the automatic stay deprives the senior water right of due process," he said.

Even without the automatic stay, junior water users could still seek a temporary restraining order against an allegedly unjustified enforcement action, Goodman said.

Though the Oregon Water Resources Department can overturn an automatic stay, this process takes time during which the senior water user is harmed, said Tom Byler, the agency's director.

Since 2015, the agency has denied six of the 32 automatic stays associated with cases challenging enforcement orders, he said.

In the past, a grower has filed another lawsuit against the denial of an automatic

stay, effectively reinstating the stay and "creating this loop pattern," Byler said. "I want to be clear that the department does not support taking away due process. The question is what does that due process look like?"

Without the automatic stay, farmers would be forced to spend money on litigation without being able to earn a living, said Sarah Liljefelt, an attorney for the Oregon Cattlemen's Association.

"Rather than putting them out of business, this automatic stay is their first chance to try the facts," Liljefelt said.

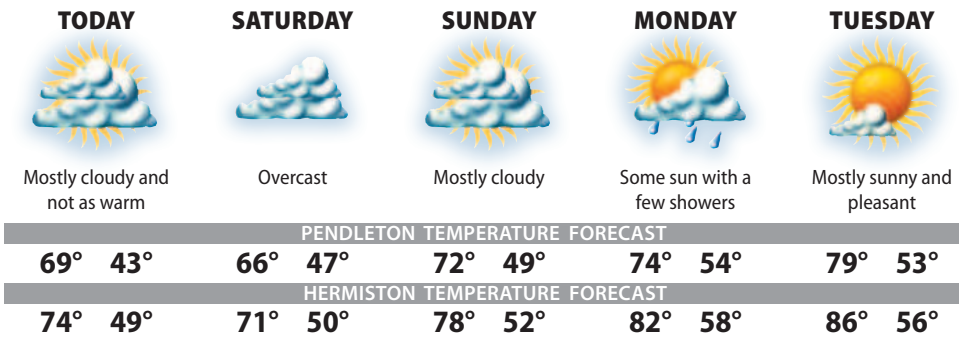
The Oregon Water Resources Department can take aggressive action against lawsuits it considers frivolous, since unsupported claims are subject to civil sanctions, said Dominic Carollo, an attorney who represents irrigators.

"They have tools available under the Oregon process to weed those lawsuits out," Carollo said.

Growers must also expend a substantial amount of time and money to file a petition for review of an agency action, said Caylin Barter, attorney for the Oregon Association of Nurseries.

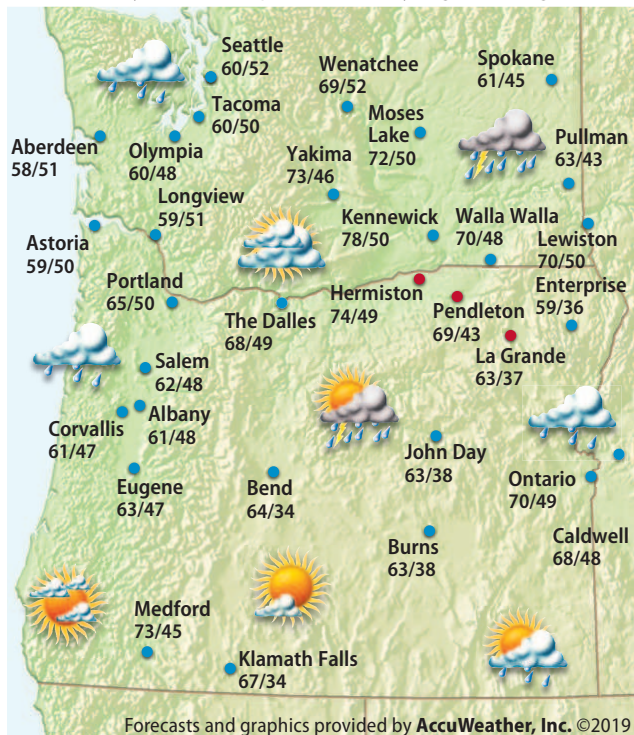
"They are not simple documents to put together," she said.

Forecast for Pendleton Area



OREGON FORECAST

Shown is today's weather. Temperatures are today's highs and tonight's lows.



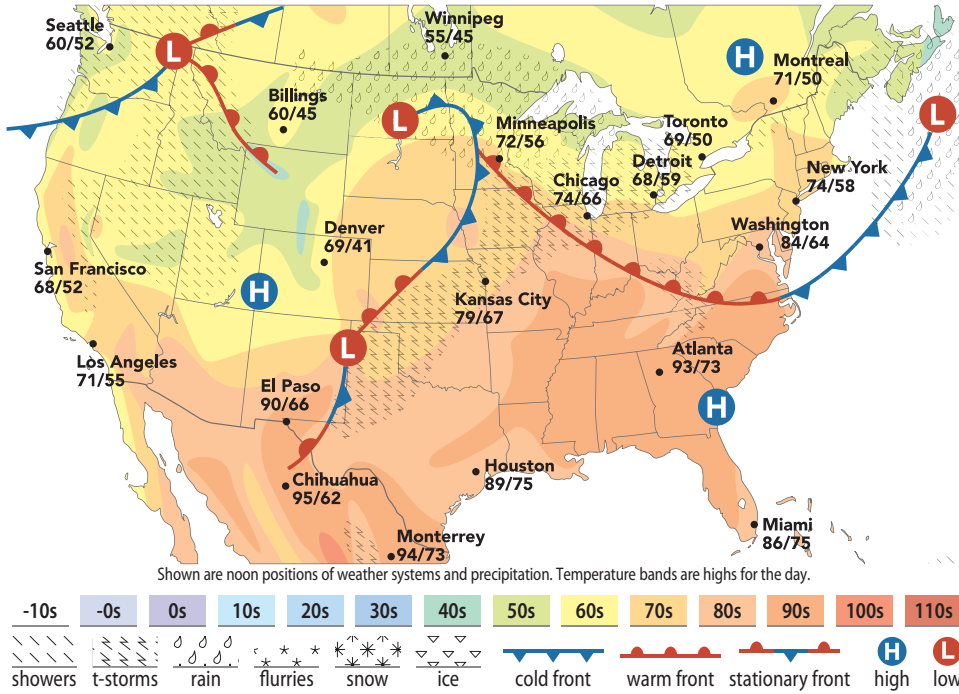
ALMANAC

PENDLETON through 3 p.m. yest.			
TEMP.	HIGH	LOW	
Yesterday	75°	45°	
Normals	72°	49°	
Records	95° (2001)	23° (1903)	
PRECIPITATION			
24 hours ending 3 p.m.	0.00"		
Month to date	1.35"		
Normal month to date	0.96"		
Year to date	9.11"		
Last year to date	6.07"		
Normal year to date	6.07"		
HERMISTON through 3 p.m. yest.			
TEMP.	HIGH	LOW	
Yesterday	82°	43°	
Normals	74°	49°	
Records	101° (1951)	30° (1964)	
PRECIPITATION			
24 hours ending 3 p.m.	0.00"		
Month to date	0.44"		
Normal month to date	0.83"		
Year to date	4.32"		
Last year to date	4.96"		
Normal year to date	4.82"		
WINDS (in mph)			
Today	Sat.	Sun.	
Boardman WSW 12-25	WSW 7-14	WSW 7-14	
Pendleton WSW 12-25	WSW 7-14	WSW 7-14	
SUN AND MOON			
Sunrise today	5:15 a.m.		
Sunset tonight	8:29 p.m.		
Moonrise today	12:57 a.m.		
Moonset today	10:23 a.m.		
Last	New	First	Full
May 26	June 3	June 9	June 17

NATIONAL EXTREMES

Yesterday's National Extremes: (for the 48 contiguous states)
High 103° in Pecos, Texas Low 20° in Climax, Colo.

NATIONAL WEATHER TODAY



Trying to finish, Oregon House to begin Saturday sessions

Associated Press

SALEM — The Oregon House of Representatives will begin holding Saturday floor sessions next week.

Speaker Tina Kotek made that announcement Wednesday in the latest sign lawmakers are ramping up with an eye toward the Constitutional session deadline five weeks away.

"Because of the need to continue to move bills on the floor, I ask you to hold your Saturdays through the month of June, starting June 1. We

will do 10 a.m. floors on Saturdays," Kotek, D-Portland, announced on the House floor.

"I don't know how long they will last; it will be dependent on where the calendar is," she said. "But we are getting close to the end of session and sine die is imminent."

The *Statesman Journal* reported that while legislative leadership hopes to end session by June 21, nine days ahead of their Constitutional deadline, the House is grappling with a massive backlog of bills ready to

receive a vote. It's the byproduct of a slowdown tactic deployed by House Republicans for more than three weeks. Democrats control both the House and Senate.

House Republican Leader Carl Wilson said Wednesday that Republicans will continue their tactic of requiring bills to be read in full. This was popularized during the 2016 session and slows down the legislative process considerably, particularly when lengthy bills come to the floor.

OREGON IN BRIEF

Bonamici joins call for impeachment proceedings against Trump

Rep. Suzanne Bonamici on Wednesday became Oregon's second U.S. House member to call for impeachment proceedings to start against President Donald Trump.

"The president and the administration are sending the message they're above the law," Bonamici, D-Oregon, told Oregon Public Broadcasting.

She accused Trump of a variety of impeachable offenses, ranging from obstructing the Mueller investigation of his administration to human rights abuses in separating children from their families at the border.

The Democrat from Washington County said she's also become increasingly concerned about the president's refusal to provide information sought by congressional investigators.

"How can we hold the president and the administration accountable if they won't cooperate and answer questions?" she asked.

Rep. Earl Blumenauer, D-Oregon, earlier this month also called for an inquiry into impeachment. He said the Mueller Report on Russian involvement in the 2016 election produced a "treasure trove of information that deserves further investigation."

Reps. Peter DeFazio, D-Oregon, and Kurt Schrader, D-Oregon, the other two Democrats in the state's House delegation, have both stopped short of calling for

impeachment proceedings. But they support continued investigations of the Trump administration.

Owner of Bend Bulletin plans to dissolve the company

BEND (AP) — The owner of the *Bend Bulletin* plans to dissolve the company and sell all seven newspapers in its Pacific Northwest chain, according to a liquidation plan filed in federal bankruptcy court Wednesday, Oregon Public Broadcasting reported Thursday.

In the plan, Western Communications outlines the terms of its own demise, but provides few details on who might buy the newspapers, real estate and other assets. The corporation is roughly \$30 million in debt, about two-thirds of which is secured under a single creditor through the terms of a previous bankruptcy. This week's court filing assures creditors the company is negotiating with a short list of buyers.

The disclosure statement signed by Chairwoman Elizabeth McCool says five potential buyers have toured the *Bulletin's* facilities and engaged in follow-up negotiations.

Western Communications also owns the *Baker City Herald*, the *Curry Coastal Pilot*, the *La Grande Observer* and the *Redmond Spokesman* in Oregon. In California, the company owns the *Daily Triplicate* in *Crescent City* and the *Union Democrat* in *Sonora*.

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