

Agriculture & Ecology Committee

HB 1873

Brief Description: *Metering or measuring water.*

Sponsors: *Representatives G. Chandler and Linville.*

Brief Summary of Bill

- *The Department of Ecology's (DOE's) authority to require metering for ground water withdrawals is discretionary.*

Hearing Date: *2/15/01*

Staff:

Background:

The Surface Water Code requires the owner of a water diversion to maintain, to the satisfaction of the Department of Ecology, controlling works and a measuring devices. It allows the DOE to require the owners of water storage reservoirs to construct measuring devices for determining the natural flow into and out of the reservoir.

The Surface Water Code identifies the following as instances in which the DOE must require such metering or measuring devices. They must be required:

- *for all new surface water right permits; and*
- *for all new and previously existing water rights or claims where:*
 - *diversions are from waters in which the salmonid stock status is depressed or critical, or*
 - *where the volume of water being diverted exceeds one cubic foot per second.*

The DOE is to give this requirement priority ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The Code allows the DOE require to such metering or measuring devices for other previously existing surface water rights. These instances in which metering or measuring is by statute required do not apply to

public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted. (RCW 90.03.360.)

The Ground Water Code allows the DOE to require withdrawals of ground water to be metered or measured as a condition for issuing a new water right permit. It also states that surface water rights are superior to subsequently authorized ground water rights. (RCW 90.44.450.) In a recent Thurston County superior court case, the court determined that the mandatory metering or measuring component of the Surface Water Code applies to ground water rights in areas where the right may affect surface waters supporting depressed or critical salmon stocks.

Summary of Bill:

The provisions of the Surface Water Code and the Ground Water Code may not be interpreted as mandating that the DOE exercise its authority to require metering or measuring devices for ground water rights. Its authorities for requiring such devices under the Ground Water Code are exclusively discretionary.

Appropriation: None.

Fiscal Note: Requested on February 8, 2001.

Effective Date: Ninety days after adjournment of session in which bill is passed.