

HOUSE BILL REPORT

HB 1582

*As Reported By House Committee on:
Agriculture & Rural Development*

Title: An act relating to water rights.

Brief Description: Providing for filing a statement of claim for water rights.

Sponsor(s): Representatives H. Myers, Rayburn, Peery, Ballard and Rasmussen.

Brief History:

Reported by House Committee on:
Agriculture & Rural Development, February 19, 1991, DPS.

**HOUSE COMMITTEE ON
AGRICULTURE & RURAL DEVELOPMENT**

Majority Report: *That Substitute House Bill No. 1582 be substituted therefor, and the substitute bill do pass.*

Signed by 11 members: Representatives Rayburn, Chair; Kremen, Vice Chair; Nealey, Ranking Minority Member; P. Johnson, Assistant Ranking Minority Member; Chandler; Grant; R. Johnson; Lisk; McLean; Rasmussen; and Roland.

Staff: Kenneth Hirst (786-7105).

Background: In 1917, the state established a permit system for appropriating, or establishing rights to use, the surface waters of the state. The system is based on the "first in time is first in right" principle of the prior appropriation doctrine of Western water law. Under this principle, a person's right to use water from a water source is inferior, or junior, to a previously established or senior right.

Prior to this permit system, rights to use surface water were established under a variety of circumstances and a variety of doctrines, some of which provided local notices and some of which did not. The 1917 Surface Water Code recognized the validity of these previously established rights, but declared the code's permit system to be the exclusive means by which any further rights to the use of surface waters could be established. A similar permit system was established in 1945 for appropriating the ground waters of the state.

In 1969, the Legislature required all persons who claimed rights to use water under any authority other than a permit or certificate issued by the state to file a statement of the claim with the state. The claims had to be filed by June 30, 1974. The penalty for failure to file the claim for such a right was relinquishment of the right.

The Legislature has provided limited exceptions to this requirement by reopening the filing period under certain circumstances. In 1985, the reopening required the claimant to petition the Pollution Control Hearings Board to demonstrate to the board that certain circumstances applied to the claim which should permit it to be filed. However, the Legislature also declared that this limited reopening of the claim period was not to affect or impair in any respect a water right existing prior to reopening the filing period.

In 1987, the Legislature permitted a person to file certain limited amendments to a previously filed statement of claim.

Summary of Substitute Bill: A person may file a statement of water right claim with the Department of Ecology if the statement is for a right to use water with a priority date which is prior to June 6, 1917, and the statement is accompanied by notarized affidavits supporting the claimed right. The persons signing the affidavits must state that they personally witnessed a posting of a notice of intent to establish a water right at the point of diversion of the claimed right and have direct knowledge of the diversion of the claimed waters to the places of beneficial use without interruption each year for the last 50 years.

The claim must be filed not later than August 31, 1991. The department must accept such a statement of claim. However, this reopening of the filing period must not affect or impair a water right existing prior to this authority to reopen the filing period.

Substitute Bill Compared to Original Bill: The substitute bill adds the provisions protecting existing water rights from being impaired by reopening the filing period. Deleted from the original bill by the substitute is a provision declaring that the "register it or lose it" requirement of current law for pre 1917 rights does not apply to a right filed under the bill.

Fiscal Note: Available.

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

Testimony For: (1) The Hell Roaring Irrigation Company thought that its attorney had filed a water right claim for the company in a timely manner. The attorney fell from a roof and died before filing the claim. (2) All of the irrigated agriculture in the area, the rural community which is based on agriculture, and a federal wildlife refuge depend on the unclaimed water right for their survival. (3) Passage of the bill will not upset water use in the area. The water has always been used in the manner that will be claimed.

Testimony Against: None.

Witnesses: Representative H. Myers (in favor); and Charles Roe, Kenneth Sheridan, and Daven E. Coate, Hell Roaring Irrigation Company (in favor).