

HOUSE BILL REPORT

HB 1258

As Reported By House Committee On:
Agriculture & Rural Development

Title: An act relating to claim of right to withdraw, divert, or use ground or surface waters.

Brief Description: Modifying water rights claims provision.

Sponsors: Representative Rayburn.

Brief History:

Reported by House Committee on:
Agriculture & Rural Development, February 1, 1993, DPS.

HOUSE COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Rayburn, Chair; Kremen, Vice Chair; Chandler, Ranking Minority Member; Schoesler, Assistant Ranking Minority Member; Chappell; Foreman; Grant; Lisk; 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 (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 exemptions to this requirement by reopening the filing period under limited 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 any right existing prior to the reopening of 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 waters associated with the right 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, 1993.

The provisions of law declaring a right to be extinguished, if a claim for the right was not filed by a specified deadline, do not apply to a claim for a right filed under this new authority. However, this act of reopening the filing period must not affect or impair any water right existing before the period was reopened whether such a previously existing right was established under territorial, state, or federal law or is embodied in federal treaty rights or federally reserved rights. Further, a claim filed in this new filing period is subordinate to any water right derived from a permit or certificate issued under the state's Surface Water Code or Ground Water Code or embodied in a previously filed claim.

This reopening of the filing period does not impact or affect the authority of the state, an Indian tribe, or any other governmental entity to allocate or administer water rights on a federal reservation nor does it change the jurisdiction of any governmental entity.

Substitute Bill Compared to Original Bill: In the substitute bill, the claim must be supported by an affidavit attesting to the uninterrupted beneficial use of water for the 50 year period immediately before January 1, 1993, rather than, as in the original, the 50 year period immediately before the effective date of the bill.

Fiscal Note: Not requested.

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

Testimony For: (1) The Hell Roaring Irrigation Company employed the services of a former county prosecutor to file its water right claim as required by law. Although the attorney fell from his roof and died before filing the claim, the company thought that the claim had been filed. The failure to file was not discovered until the company discovered it in 1989. This bill would permit the water right claim to be filed. (2) The company was not ignoring the filing requirement; state records show that the attorney did request the appropriate forms for filing the claim. (3) The water right in question is the source of 60 percent of the company's water; without it there would not be enough water for the community and wildlife refuge served by the company.

Testimony Against: (1) At stake in this matter is the jurisdiction of the Yakima Tribal Council to regulate activities in the closed area of its reservation. State authority to issue water rights in the closed area is invalid. (2) The Yakima Nation has always been a good neighbor; it will consider issuing a permit to the company if the company applies for it under the council's water code. Tribal members are among those served by the company. (3) The company's diversion of water has, in the past, adversely affected tribal fishery resources. (4) Passage of this bill will invite litigation, not negotiation.

Witnesses: Charles Roe and Ken Sheridan, Hell Roaring Irrigation Company (in favor); Harry Miller (in favor); Clifford Moses and Ross Sockzehigh, Yakima Tribal Council members (opposed); Jim Barkeley, attorney for the Yakima Tribal Council (opposed); and Dawn Vyvyan, tribal lobbyist (opposed).