

# HOUSE BILL REPORT

## SB 5363

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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:** Senators Newhouse, Sutherland, Snyder, Anderson, Loveland, Hochstatter and Barr.

**Brief History:**

Reported by House Committee on:  
Agriculture & Rural Development, March 30, 1993, DP.

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### HOUSE COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT

**Majority Report:** Do pass. Signed by 10 members:  
Representatives Rayburn, Chair; Kremen, Vice Chair;  
Chandler, Ranking Minority Member; Schoesler, Assistant  
Ranking Minority Member; Chappell; Foreman; Grant;  
Karahalios; 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 is 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 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. It is not to be

construed as a recognition by the Legislature that a claim filed during this period is valid or that the water right in the claim does or does not exist.

**Fiscal Note:** Available.

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

**Testimony For:** An attorney representing the Hell Roaring Irrigation Company informed the company that he would file the statement of claim required by state law for the company's historical water right from Hell Roaring Creek. The attorney requested the form from the state but fell from his roof and died before filing it. The failure to file was not discovered until it was noted by the company in 1989. This bill would permit the company to file the claim for the benefit of its irrigation users and for the national wildlife refuge which also uses water under the claim.

**Testimony Against:** (1) The Hell Roaring Irrigation Company should apply for a water permit from the Yakima Nation. The nation is not interested in turning off water to the company, but it is interested in protecting its natural resources. (2) This issue should be negotiated, not legislated. Legislating a solution to this issue is contrary to the government-to-government negotiations for solving problems that the state is encouraging tribal governments to use in other areas.

**Witnesses:** Charles Roe, Hell Roaring Irrigation Company (in favor); and Paul Ward, Yakima Nation (opposed).