

SENATE BILL REPORT

SHB 1258

AS REPORTED BY COMMITTEE ON ENERGY & UTILITIES, MARCH 29, 1993

**Brief Description:** Modifying water rights claims provision.

**SPONSORS:** House Committee on Agriculture & Rural Development (originally sponsored by Representative Rayburn)

**HOUSE COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT**

**SENATE COMMITTEE ON ENERGY & UTILITIES**

**Majority Report:** Do pass.

Signed by Senators Sutherland, Chairman; Jesernig, Vice Chairman; Amondson, Hochstatter, McCaslin, and Vognild.

**Minority Report:** Do not pass.

Signed by Senator Williams.

**Staff:** Bennie Barnes (786-7198)

**Hearing Dates:** March 29, 1993

**BACKGROUND:**

In 1917, the Legislature enacted a permit system for appropriating the surface waters of the state (the Surface Water Code). (A similar permit system for appropriating the ground waters of the state, the Ground Water Code, was enacted in 1945.) Prior to this permit system, the right to use water was established by putting the water to use or by posting a "notice" near the point of diversion.

In 1969, the Legislature established the requirement that all persons claiming a right to use water, for which there was no water right permit or certificate issued by the state, file a water right claim with the "Water Rights Claims Registry" by June 30, 1974. Anyone who failed to do so was deemed to have waived and relinquished any such right.

The Legislature provided limited exemptions to the filing deadline requirement of the Water Rights Claims Registry in 1979 and in 1985. Certain limited amendments to a previously filed claim were also permitted in 1987.

It is recommended that the Water Rights Claims Registry be reopened for a limited time period to permit the filing of a water right claim which predates the 1917 Surface Water Code.

**SUMMARY:**

A person may file a water right claim with the Department of Ecology if the priority date of the claim is prior to June 6, 1917, and the statement is accompanied by notarized affidavits supporting the claimed right. The claim must be filed no later than August 31, 1993.

The persons signing the affidavits must state 1) 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 2) that they have direct knowledge of the diversion associated with that right to the places of beneficial use without interruption for the 50-year period immediately preceding the effective date of this act.

The statute declaring a water right to be waived or relinquished if not filed by June 30, 1974, does not apply to a claim of right filed under this act. Any claim of right filed under this act is considered subordinate to any water right derived from a permit or certificate previously issued under the state's Surface Water Code or Ground Water Code or filed in the Water Rights Claims Registry.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

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 by the company until 1989. This bill would permit the water right to be filed. The company was not ignoring the filing requirement; state records show that the attorney did request the appropriate forms for filing the claim. 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:**

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. 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. The company's diversion of water has, in the past, adversely affected tribal fishery resources. Passage of this bill will invite litigation, not negotiation.

**TESTIFIED:** Cecil J. James, Jr. (con); Paul J. Ward, Elizabeth Hamilton, Jack Flander, Yakima Indian Nation (con); Charles B. Roe, Perkins Coie; Kenneth Sheridan, Steve Hoodenpyl, Hell Roaring Irrigation (pro)