

SENATE BILL REPORT

SB 6478

AS OF JANUARY 31, 1994

Brief Description: Providing for water resource management.

SPONSORS: Senators Fraser, Sutherland, Morton, Moore and Winsley

SENATE COMMITTEE ON ECOLOGY & PARKS

Staff: Gary Wilburn (786-7453)

Hearing Dates: February 1, 1994

BACKGROUND:

Washington's water resources laws are based upon the appropriative system, under which a person applying water to a beneficial use and receiving a permit for such use obtains a right to such use in perpetuity. The system is based upon seniority in time of acquiring the right, and during periods of reduced water availability from a river, groundwater or other water source, the most junior rights holders are restricted in water use. Restrictions are imposed beginning with the most junior rights holder, whose right to use water during the period of the shortage will be entirely prohibited before the next rights holder in order of time of acquiring the right is restricted.

Since 1917 a person seeking a water right to surface water has been required to obtain a permit from the state. In 1945 the Legislature required a permit for groundwater uses, except for small domestic uses. In determining whether to grant the application, the state Department of Ecology determines whether there is water available for appropriation and whether there will be an adverse impact upon existing rights holders. The department also determines whether granting the permit is in the "public interest." Upon granting the permit, the priority date of the water right relates back to the filing of the application.

State law provides for the protection of "instream" needs, such as fish habitat, in part by authorizing the Department of Ecology to adopt minimum flows or levels for rivers, streams and lakes. Such instream flows are adopted by rule and are a limitation upon all subsequent water rights which are obtained in the water source.

The waste of water is not considered a beneficial use of water, and may be cause for limiting or revoking a water right. Other practices that are not an efficient use of water are not prohibited by state water laws. In 1989 the Legislature adopted guidance encouraging water use efficiency

and directing state financial assistance and other programs to this end.

SUMMARY:

Beneficial Use

Legislative intent is expressed regarding the factors that should be considered in determining the "beneficial uses" of water. All existing and future water rights are to be determined based upon beneficial use, which are those uses that are: (1) efficient; (2) in the public interest; and (3) do not constitute a misuse of water. The enumeration of specific beneficial uses in the 1971 Water Resources Act is deleted and the beneficial use definition and public interest considerations are substituted.

Efficient Use of Water

The standard for efficient use is provided, based upon a water duty for each type of use plus reasonable transportation loss. Beneficial effects of return flows are also to be considered. The Department of Ecology is to adopt rules further providing methods to determine efficiency of uses.

The department is directed to review the efficiency of existing uses through appropriative rights. The review shall be on a statewide basis and include all types of uses. Prior notice and a compliance period are to be provided before a regulatory order may be issued requiring efficiency measures to be undertaken. Failure to comply constitutes a relinquishment of the quantity of the right which the measures would have achieved. The department may enforce the requirements through an adjudicatory proceeding before the Pollution Control Hearings Board.

Public Interest Considerations

In reviewing applications for new water rights, transfers, or changes in use or point of diversion, the department is directed to consider ten factors in the "public interest" evaluation. These include the economic net benefits to the state and local region, the cost-effectiveness of the use compared to alternative water sources, effects upon instream uses, water resource and land use plans applicable to the area, and other considerations.

Misuse of Water

Misuse of water is defined under the beneficial use requirement as occurring when the use degrades water quality below applicable state water quality standards.

Eminent Domain

The private right of condemnation of water rights is modified to delete the standard of "greatest public benefit" and direct the court to apply the "public interest" considerations

described above. Additionally, provisions specific to condemnation for irrigation purposes are deleted.

Instream Flows

A minimum flow or level adopted for a water source is a limitation upon all permits to use water from that water source approved after November 12, 1889. The adopted minimum flow or level is to be considered an appropriative right and have a priority date of November 12, 1989 [1889], rather than the effective date of the rule setting the flow or level, as under existing law.

Review and Issuance of Permits for New Water Rights

The public interest determination in the issuance of permits for new rights is amended to include the public interest considerations described above. A preliminary permit issued for conducting further studies may not authorize construction of any diversionary works. The governing standards for issuance of the permit are reorganized and the beneficial use definition and public interest considerations made applicable.

For permits to appropriate ground waters, the department must determine that: (1) no injury will occur to rights under prior permits; (2) the permit is consistent with the public interest, using the considerations described above; and (3) the ground water source will not be depleted beyond the rate of recharge.

The date of the appropriative right is established as of the date of permit issuance, instead of relating back to the date of application for the permit.

Transfers and Changes in Use or Point of Diversion

To approve a transfer, or a change in use or point of diversion, the department must determine that the transfer or change is in the public interest, considering the factors described above.

Periods of Critical Water Shortage

The Governor may declare a critical water shortage in a region of the state when there is reduced water availability and it is likely to cause severe hardship in the region. The shortage may be due to natural conditions, an emergency, or an action to establish a minimum flow or level likely to reduce withdrawals by junior rights holders. As to natural conditions or an emergency, a water supply below 60 percent of normal may be declared a critical water shortage. In making the determination, the Governor is to consider the advice of state and federal water-monitoring agencies. In determining "economic hardship" the governor is to consider the views of the local governments in the region.

Provisions for publicizing the declaration are made. The declaration may be for up to one year, and renewed in the

manner in which the original declaration was made. During the period of the declaration, the Governor may direct the Department of Ecology to issue orders restricting uses of water within the area. The restrictions are to apply to all waters, be equitable, and consider the relative seniority of the rights and the public interest factors described above. The greatest weight is to be accorded to seniority, but such weight may be reduced depending upon the extent of the shortfall of water supplies in the area.

Relinquishment of a Water Right

The "legal proceedings" exception to the relinquishment provisions of existing law is narrowed to administrative or court orders temporarily preventing use of the water right. Compliance with a water quality discharge permit is added as an additional exception to the relinquishment provisions.

Appropriation: none

Revenue: none

Fiscal Note: requested January 24, 1994