

**SENATE BILL REPORT**

**SB 6504**

**AS OF JANUARY 31, 1994**

**Brief Description:** Modifying procedures regarding enforcement of water rights.

**SPONSORS:** Senators M. Rasmussen, Newhouse, Loveland, Morton, Snyder, Haugen and Winsley

**SENATE COMMITTEE ON ENERGY & UTILITIES**

**Staff:** Phil Moeller (786-7445)

**Hearing Dates:** February 1, 1994

**BACKGROUND:**

There are two processes in state law designed to make legal determinations regarding water right disputes: a water right enforcement procedure and a water right adjudication procedure.

The enforcement procedure provides for the Department of Ecology to issue a regulatory order to holders of water rights who are either impairing senior rights or violating the water code. These regulatory orders are appealable to the Pollution Control Hearings Board and then on to Thurston County Superior Court.

Water right adjudications are formal legal proceedings whereby all water rights within a basin need to be legally proven as to their existence, the date of priority, the current amount of water contained in the right including whether all or a portion of the right has been relinquished for nonuse. Water right adjudications are initiated by the Department of Ecology. Hearings are held in the superior court in the county that the basin is located. The Department of Ecology provides the staff for the adjudication process.

Traditionally, the Department of Ecology used their powers to take enforcement actions to settle water right disputes in instances normally involving relatively few water right holders. The adjudication process has been used to settle issues on a basinwide basis.

Current statutes lack clear criteria as to when one process or the other should be used.

In September 1993, in the "Sinking Creek" decision, the Washington Supreme Court ruled that Ecology lacked sufficient statutory authority to determine priorities of some water rights and to issue enforcement orders consistent with the determined priorities. The court ruled that the water right

adjudication process should have been used. The court's action raised questions as to whether and under what circumstances Ecology has authority to enforce the water code, short of conducting a full water right adjudication.

**SUMMARY:**

It is clarified that the Department of Ecology may regulate and control the diversion and withdrawal of water whether or not water rights have been determined through an adjudicative proceeding.

When Ecology serves a regulatory order of violation relating to a water right, the order shall only be issued when an existing right is immediately threatened and only if Ecology has provided adequate notice of time and remedy and has attempted to mediate the specific issues of the order. Such orders do not constitute an adjudication of water rights and do not constitute evidence in a general water right adjudicative proceeding.

The authority of the Pollution Control Hearings Board to hear and decide an appeal of a regulatory order of violation relating to a water right is removed.

When a regulatory order by Ecology of a violation relating to a water right is appealed, it shall be stayed on its issuance for 21 days, and may be appealed to the superior court for the county in which the property lies. By the end of the 21-day period, the superior court shall sustain, reverse, or modify the order. The decision of the superior court may be appealed to an appellate court.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested January 27, 1994