

SENATE BILL REPORT

SB 6536

AS REPORTED BY COMMITTEE ON ENERGY & UTILITIES, FEBRUARY 3, 1994

Brief Description: Establishing the department of ecology's water rights authority.

SPONSORS: Senators Sutherland, Fraser, Morton, M. Rasmussen and Newhouse

SENATE COMMITTEE ON ENERGY & UTILITIES

Majority Report: That Substitute Senate Bill No. 6536 be substituted therefor, and the substitute bill do pass.

Signed by Senators Sutherland, Chairman; Ludwig, Vice Chairman; Amondson, Hochstatter, McCaslin, Owen, Roach, A. Smith, West and Williams.

Staff: Phil Moeller (786-7445)

Hearing Dates: February 1, 1994; February 3, 1994

BACKGROUND:

The Washington State Supreme Court issued a decision with wide-ranging implications related to water rights in Rettowski v. Department of Ecology, September, 1993. Commonly referred to as the "Sinking Creek" case, the issue involved two competing groups of water users (ranchers, irrigators) in a particular basin and the manner in which the dispute was determined by the Department of Ecology and the subsequent appeals of the determination.

The court ruled that Ecology lacked the statutory authority to determine the priorities of water rights in the basin and also lacked the statutory authority to issue enforcement orders consistent with the priorities. The court further ruled that a general adjudication process pursuant to RCW 90.03 was necessary to determine the existence, amount, and priorities of the water rights claimed in the basin.

SUMMARY:

In a regulatory situation where a water right or all water rights have been authorized by the Department of Ecology (Ecology) through a permit or certificate, Ecology may regulate the right or rights.

In a regulatory situation where one or more of the water rights have not been authorized through a permit or certificate issued by Ecology or when it appears to Ecology that public waters are being withdrawn without any right, Ecology may bring an appropriate action at law or in equity, including seeking injunctive relief. Actions brought in state

court are to be initiated in superior court of the county in which is located the points of diversion of the water right or rights.

EFFECT OF PROPOSED SUBSTITUTE:

Language is added to clarify Ecology's authority to regulate when senior water rights are involved. Additional language is added clarifying that Ecology may regulate specific cases whether or not a water rights general adjudication has been conducted.

It is clarified that an instream flow established by rule is deemed a certificated water right for the purposes of Ecology's authority to regulate water rights.

Two statutory references are corrected.

Appropriation: none

Revenue: none

Fiscal Note: requested January 27, 1994

TESTIMONY FOR:

This legislation is needed to give the Department of Ecology the authority that the department assumed it had. The bill is needed to get the water rights regulatory process moving again.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Tom Frick, WA Assn. of Wheat Growers; Scott Barr; Gale Rettkowski, Citizens For Irrigation; Herman F. Ruy, Jr., Sinking Creek irrigator; Steve Hailey, . Kent Lebsack, Mary Burke, WA Cattlemen's Assn.; Mike Frautkramer, WA State Drilling and Groundwater Assn.; Bruce Wishart, Sierra Club; Bill and Sharon Rosman; Pat Samption, Friends of the Green (neutral)