

# FINAL BILL REPORT

## ESHB 2050

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### FULL VETO

**Brief Description:** Identifying when a new water right would interfere with an existing water right.

**Sponsors:** By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Chandler, Clements and Honeyford).

**House Committee on Agriculture & Ecology**  
**Senate Committee on Agriculture & Environment**

**Background:** Protection of Senior Rights. If, upon investigating an application for a water right permit, the Department of Ecology (DOE) finds that the use of water proposed in the application would impair or conflict with existing rights, the department must deny the issuance of the permit.

Relationship of Groundwater Rights to Surface Water Rights. The groundwater code states that, to the extent that groundwater is part of or tributary to a surface stream or lake or the withdrawal of groundwater would affect the flow of a body of surface water, the right to use the surface water is superior to any subsequent right acquired to use the groundwater.

Instream Flows and Permit Processing. The establishment of a minimum instream flow or lake level constitutes an appropriation with a priority (seniority) date that is the effective date of the establishment of the flow or level. If the DOE approves a water right permit relating to a body of water for which minimum flows or levels have been adopted, the surface water code requires the permit to be conditioned to protect the levels or flows.

The Water Resources Act of 1971 provides a number of general fundamentals that are to guide the use and management of the waters of the state. One of these fundamentals requires that base- flows be retained in perennial rivers and streams to preserve certain instream values. Withdrawals of water which would conflict with the base flows may be authorized only for overriding considerations of the public interest.

The hydraulic code allows the DOE to refuse to issue a permit to divert or store water if the department determines that issuing the permit might result in lowering the flow of water in a stream below the flow necessary to support adequately food fish and game fish populations in the stream.

Other Rules For Issuing Groundwater Permits. The DOE cannot grant a permit for the use of groundwater beyond the capacity of the groundwater body to yield the water within a reasonable or feasible pumping lift or within a reasonable or feasible reduction of artesian pressure. The DOE may determine whether the granting of such a permit would injure or damage any existing rights and may require further evidence before granting or denying the permits.

**Summary:** Groundwater. A rule is established for determining whether a permit for the use of groundwater from a confined aquifer can be denied or conditioned on the basis of its impairment of or conflict with an existing surface water right. The permit cannot be denied or conditioned on this basis unless: (1) the withdrawal of groundwater will cause a measurable head reduction within 50 feet of the surface water body in question in the shallowest unconfined aquifer that underlies that surface water body; or (2) withdrawal of the groundwater will cause a measurable reduction in the flow or level of the surface water body. If these effects occur, the surface water right that is not being satisfied, including an instream flow set by rule, is deemed to be affected or impaired.

Neither this rule nor the rules of current law regarding the capacity of an aquifer to yield water prevent the DOE from limiting future withdrawals by adopting rules after following the procedures of: the Water Resource Act of 1971; a section of law that allows the adjustment of water use management under an existing groundwater area or subarea management plan; or statutes that permit groundwater management studies to be initiated locally and allow the development of local groundwater management programs.

A rule is also established for determining whether the withdrawal of groundwater from an unconfined aquifer would affect or impair surface water rights. The surface water rights are affected or impaired if, after no more than six months of pumping, the surface water will lie within the cone of depression of a well tapping the groundwater.

These rules of impairment regarding the use of water from a confined aquifer are provided only for the DOE's decisions regarding water permit applications and reflect the uncertainty that is inherent in making determinations regarding future impacts of withdrawing groundwater. A person claiming that a senior water right is injured by one or more junior water rights may file an action in a local superior court to enjoin the junior water rights. The superior court must hear the action de novo and if it finds, by a preponderance of the evidence, that the senior right is injured, the court may enjoin the use of the junior rights in reverse order of priority to protect the senior right. These provisions do not apply to a senior right that is a minimum flow or level or the closure of a surface water body to further appropriation.

The existence of hydraulic continuity between groundwater and a surface body of water does not, in itself, mean that an existing water right in the surface water body will be impaired by a proposed permit for a groundwater right or an amendment to such a right. If a surface water right would be impaired by a proposed groundwater permit for any reason, the DOE may still grant the permit if the applicant proposes a satisfactory plan for mitigating the impairment.

In considering applications for water use permits, the DOE must take into consideration: seasonal variations in water supply and in the recharge of surface and ground water bodies; and the effects of any impoundment or any other water supply augmentation or mitigation provided by the applicant on the availability of water and on the effects of granting the permit.

Reconsideration of Applications. If an application for a groundwater permit is denied between November 1, 1995, and the effective date of this bill, and one of the grounds for the denial is impacts on existing water rights, established instream flows, or surface water closures, the applicant may have the application reconsidered by the DOE without losing the priority date of the original application. The application must be submitted for reconsideration within 30 days of the effective date of the bill.

Transfers in General. Any right represented by an application for a water right for which a permit for water use has not been issued by the time a transfer, change, or amendment of an existing right is approved is not considered to be injured or detrimentally affected by the transfer, change, or amendment.

**Votes on Final Passage:**

House 59 35  
Senate 31 16 (Senate amended)  
House 60 38 (House concurred)