

ANALYSIS OF HB 2050

House Agriculture & Ecology Committee
1997

February 24,

BACKGROUND:

Relationship of Groundwater Rights to Surface Water Rights. The state's Groundwater Code declares that . . . to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of groundwater may affect the flow of any . . . body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right . . . acquired in or to groundwater.– (RCW 90.44.030.)

Instream Flows and Permit Processing. The establishment of a minimum flow or level constitutes an appropriation with a priority (seniority) date that is the effective date of the establishment of the flow or level. (RCW 90.03.345.) 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. (RCW 90.54.020.) 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 if it is clear that . . . overriding considerations of the public interest will be served.– (RCW 90.54.020(3)(a).)

If the Department of Ecology (DOE) approves a water right permit relating to a body of water for which minimum flows or levels have been adopted and are in effect, the Surface Water Code requires the permit to be conditioned to protect the levels or flows. (RCW 90.03.247.) Further, state laws governing hydraulic projects allow the DOE to refuse to issue a permit to divert or store water if it determines that issuing the permit . . . might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.– (RCW 75.20.050.)

SUMMARY:

A permit for the use of groundwater cannot be denied or conditioned on the basis of its impairment of or conflict with an existing surface water right unless:

- the groundwater is in an unconfined aquifer and, after no more than six months of pumping, the surface water will lie within the cone of depression of a well tapping the groundwater; or*

- *the groundwater is in a confined aquifer and its withdrawal will cause a head reduction measurable in the field within 50 feet of the surface water body in question in the shallowest unconfined water table aquifer that underlies that surface water body; or*
- *withdrawal of the groundwater will cause a reduction measurable in the field in the flow or level of the surface water body. (Sections 1(2)(a),(b)&(c) and 3(2).)*

These are the only circumstances under which the surface water is impaired or affected. If they exist, the surface water right that is not being satisfied, including an instream flow set by rule, is affected or impaired. (Section 1(2)&(3).) This prohibition against denying permits does prevent the DOE from limiting future withdrawals by adopting rules after following the procedures of: a section of law that allows the adjustment of water use management under an existing groundwater area or subarea management plan; statutes that permit groundwater management studies to be initiated locally and allow local governments to assume the lead agency role in developing local groundwater management programs; or the Water Resource Act of 1971. (Section 3(2).)

If a surface water right would be impaired, the DOE may still grant a groundwater permit if the applicant proposes a satisfactory plan for mitigating the impairment. (Section 3(3).)