

HOUSE BILL REPORT

HB 3061

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to determining the impairment of water rights and uses.

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

Sponsors: Representative Chandler.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/5/98 [DP].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Carole Richmond (786-7114).

Background: Relationship of Groundwater Rights to Surface Water Rights. The Groundwater Code states that the right to use surface water is superior to any subsequent right acquired to use groundwater, when 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.

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. 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.

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, the Surface Water Code requires the permit to be conditioned to protect the levels or flows. 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.

Summary of Bill: Three tests are established as being the only bases upon which a permit for the use of groundwater can be denied or conditioned on the grounds that it would impair or conflict with an existing surface water right. The permit may be conditioned or denied on these grounds only if: (1) 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; (2) 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 aquifer that underlies that surface water body; or (3) withdrawal of the groundwater will cause a reduction measurable in the field in the flow or level of the surface water body.

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. This prohibition against denying permits does not 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Watershed planning will provide information about hydraulic continuity. Ecology takes an extreme approach against groundwater withdrawals on the basis of hydraulic continuity. Statutory guidance is needed.

Testimony Against: The criteria established are not scientific. This is not a good system for determining hydraulic continuity. Establishment of water rights should be done on a site-specific basis.

Testified: Steve Wehrly, Muckleshoot Indian Tribe (con); Judy Turpin, Washington Environmental Council (con), Chuck Lean, Water Policy Alliance (pro); and Paul Parker, Washington Association of Counties (pro - section 3).