

SENATE BILL REPORT

ESSB 5703

As Passed Senate, February 9, 1998

Title: An act relating to granting water rights.

Brief Description: Concerning a water right for the beneficial use of water.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Anderson and Morton).

Brief History:

Committee Activity: Agriculture & Environment: 2/19/97, 2/25/97, 2/27/97 [DPS, DNP].
Passed Senate, 3/14/97, 33-16.
Passed Senate, 2/9/98, 34-15.

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5703 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Newhouse, Oke and Rasmussen.

Minority Report: Do not pass.

Signed by Senators Fraser and McAuliffe.

Staff: Bob Lee (786-7404)

Background: The surface water code was enacted in 1917 and the ground water code was enacted in 1945. To obtain a water right after these dates requires the filing of an application and the issuance of a water right permit from the state. An exception from the permit requirement is for certain uses of ground water that do not exceed 5,000 gallons per day.

The permit system is based on the prior appropriation doctrine of "first in time is first in right." Prior to the 1917 and the 1945 enactments, water rights were obtained in a variety of ways and under a variety of water doctrines.

Summary of Bill: A person who placed surface or ground water to beneficial use for irrigation, stock watering, or public water system with 100 or fewer connections before January 1, 1993, for which a right was not issued, may continue to use the water if a statement of claim is filed by June 30, 1999 and the water has been used at least three years of the five preceding years to the full extent of the statement of claim and if two of the following conditions are met:

1. A statement is signed by two persons, other than the person filing the statement of claim, verifying that water was beneficially used by the claimant before January 1, 1993;
2. A copy of a dated photograph or records that clearly demonstrates the presence of grass or a crop requiring irrigation or livestock requiring water, or receipts of the sale of crops indicating irrigation in the amount claimed was required to produce the crops;
3. Records of equipment purchases or repairs associated with the water use specified;
4. Water well construction records identifying the date the well was constructed for a particular point of withdrawal;
5. Electrical bills directly associated with the withdrawal of the claimed water;
6. Personal records, photographs, journals, or correspondence indicating the use of water as asserted.

Public water supply systems must provide evidence of service connections using water including homes that were built and occupied.

If the claimant has not already filed an application for a water right, such application must be filed with the statement of claim. If both have been filed, the person has standing to assert a claim of water right in a general adjudication.

The claimant may continue to use the water until either the department makes final decision on granting or denying the application following the completion and adoption of a locally developed water resource watershed plan, or a court adjudication is completed. In areas where a local watershed planning process has commenced, the department must not make a final decision on the application within four years of the effective date.

If the department denies the claimant's use, the use of water must cease. A continuing use of water authorized under this act does not impair a water right existing before September 1, 1998. Senior water right holders may take legal action against any other water user to prevent impairment of his or her water right.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Persons registered water right claims in the early 1970s thinking that such action established a water right. This bill would protect existing water rights and established instream flows because the priority date of the right conveyed under this bill would be junior to all existing water rights. It has been several years since negotiations in the Nooksack Basin were started with little progress being seen. A large portion of the production of agricultural crops in the Nooksack Basin is a result of supplemental irrigation. Several

public water systems failed to obtain water rights and homes could be without water if the bill does not pass.

Testimony Against: The bill applies statewide and is not limited to the Nooksack Basin. There are ongoing negotiations in the Nooksack Basin that should be used to resolve the pending disputes. The bill rewards persons who have failed to comply with the permit requirements of the water code by granting water rights even though they were aware of the permit requirements. The bill could cause an adverse impact on instream resources where instream flows have not yet been established.

Testified: Senator Ann Anderson, prime sponsor (pro); Robin Dexter, PSUOA, Whatcom County (con); Henry Bierlink, WCAPC (pro).

House Amendment(s): The general provisions of the bill are retained with the following changes:

The Department of Ecology is to notify persons who make claims to the use of water under this chapter of the instream flow conditions that each diversion or withdrawal must comply pending the completion of a watershed management plan or a general water right adjudication. If instream flows conditions have been established by rule, the department shall use those flows to regulate the diversion or withdrawal during times that the flows are not being met. For areas that instream flows have not been established by rule, the Department of Ecology shall consult with the Department of Fish and Wildlife and determine the flows to which diversions will be conditioned.

In making decisions regarding an application associated with such a claim, the department shall consider alternative sources or augmented sources of water including storage enhancements, or the substitution of ground water for surface water.

The continued use of water authorized under this chapter is considered an interim use. Only for watersheds for which watershed planning commences before July 1, 2000, does the requirement apply for the department to make a final decision on the application following the completion of a watershed plan. The claimant has the burden of presenting evidence that the claim and application meet the requirements for granting a water right.