

HOUSE BILL REPORT

HB 1350

As Reported by House Committee On:
Agriculture & Ecology

Title: An act relating to appeals of water right decisions regarding water rights subject to a general stream adjudication.

Brief Description: Changing water right appeals procedures for rights subject to a general stream adjudication.

Sponsors: Representatives G. Chandler and Linville.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/8/01, 2/20/01 [DP].

Brief Summary of Bill

- Requires appeals of the Department of Ecology's (DOE's) decisions regarding transfers or changes of existing water rights that are subject to a general stream adjudication to be made to the Pollution Control Hearings Board and, subsequently, to the superior court conducting the general adjudication.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Mielke, Republican Vice Chair; B. Chandler, Delvin, Dunshee, Grant, Hunt, Kirby, Quall, Roach, Schoesler and Sump.

Staff: Kenneth Hirst (786-7105).

Background:

The Surface Water Code has established a means by which the various existing rights to surface water from a water body may be adjudicated in court to determine the validity of claims to water rights and to identify the amounts of water to which each person with a right is entitled, the order of priority (seniority) of those rights, and other aspects of the rights. It is called a general adjudication of water rights and is analogous to a quiet title

action involving various claims of land ownership in a particular area. The Ground Water Code applies this procedure to determining rights to ground water as well. The rights subject to such an adjudication proceeding include all rights to use the water, including diversionary and instream uses and water rights of the United States. Federal law authorizes the water rights of the United States to be adjudicated in state court if certain findings are made by a federal court. A general adjudication proceeding for water rights has been underway for surface water rights in the Yakima River watershed since the late 1970s.

Summary of Bill:

Hearings regarding the proceedings of the DOE in general adjudications of water rights are no longer entirely outside of the jurisdiction of the Pollution Control Hearings Board (PCHB). Within the jurisdiction of the board are appeals of the DOE's decisions on transfers or changes of water rights that are subject to a general stream adjudication. An appeal of the board's decision in such a case may be made only to the superior court conducting the general adjudication.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (1) If the DOE is authorized to process applications to modify existing water rights during a general adjudication, any appeal of a decision of the DOE regarding such an application may go through two rounds of appeals up through the Supreme Court, one round duplicating the other, before the decision of the DOE is incorporated back into the adjudication process. Just one round of appeals is needed. (2) It would be a shame for appeals to bounce from one court to another just because the law is not clear on how the appeals should be handled. The process should be fair, not repetitive.

Testimony Against: (1) Making the PCHB part of a round of appeals complicates matters for those representing federally held water rights or rights held in trust by the United States that are also part of the general adjudication. Federally held rights are adjudicated in state court under a federal waiver of sovereign immunity that may not extend to having decisions made in a state administrative setting such as the PCHB. (2) Water rights of third parties must not be harmed by the DOE's decision on such an application. Their rights should be protected. (3) Both the courts and the PCHB should have a role. A good record needs to be maintained.

Testified: (In favor): Joe Mentor and Steve Gano, TrendWest Resorts; Kathleen Collins,

Washington Water Policy Alliance; and Jim Halstrom, Washington Water Policy Alliance and Washington State Horticultural Association.

(In favor of concept): Ken Slattery, Department of Ecology; and Jim Zimmerman, Washington Cattlemen's Association.