

SENATE BILL REPORT

SB 5877

As of February 23, 2007

Title: An act relating to clarifying when a water right is relinquished.

Brief Description: Clarifying when a water right is relinquished.

Sponsors: Senators Honeyford, Hargrove, Clements, Rasmussen, Morton, Parlette, Schoesler and Holmquist.

Brief History:

Committee Activity: Water, Energy & Telecommunications: 2/06/07.

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Staff: Margaret King (786-7416)

Background: A water right has several elements or conditions that identify the use of water under the right. One is its priority. Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used.

Washington law provides that a person can file an application with the Department of Ecology for a transfer of certain rights to use water. For example, water that has been applied to a beneficial use may be transferred to other land or place of use without the loss of the priority of the right if the change can be made without detriment or injury to other existing water rights. Likewise, the point of diversion of water or the purpose of use may be changed, if no injury to existing rights will occur.

Forfeiture is a statutory provision that provides if a person does not beneficially use his or her water right, or a portion thereof, he or she relinquishes that portion of the water right for the voluntary failure to continuously use the water for five or more consecutive years unless sufficient cause is shown.

Summary of Bill: There must be no relinquishment of any water right if the full or partial nonuse of the water occurred 15 or more years before a relinquishment or adjudication proceeding is filed.

The determination of the extent and validity of a water right that is being transferred must be based solely on the extent to which the right was originally perfected and is limited to the

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extent of use during the 15 year period preceding the application for a change, transfer, or amendment to a water right.

An intent section is provided.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There is a fear of relinquishment that keeps better water management from happening. Relinquishment acts as a disincentive to conservation. Limiting "look back" to 15 years would help with record keeping and will free up transfers. This bill would help the costs and other problems associated with going back with proof to the beginning of the water right. The trust program is unworkable. This bill doesn't change abandonment, the five year relinquishment time period, and doesn't change the extent and validity review or impairment and injury analysis.

CON: Relinquishment assures water is put to highest and best use and stops hoarding and speculation. Relinquishment allows junior water users and instream flows to receive water. There are currently 19 exemptions to relinquishment. Trust water rights programs allows the water user to place water into the trust program and while in the program it is not subject to relinquishment. Change should not occur in isolation but as part of a program. There are 169,000 claims and 6,300 new applications for water. Minimum stream flows are set only in about 1/3 of the state and there is little metering so we don't know how much water is being taken out. It is true that the current situation creates stasis but the conversation on partial relinquishment and "extent and validity" issues should not be teased out.

OTHER: There are concerns with a surgical change to the water law. We would like to look at issues more globally within the entire water law framework.

Persons Testifying: PRO: John Stuhlmiller, Washington Farm Bureau; Jack Field, Washington Cattlemen's Association; Kathleen Collins, Washington Water Policy Alliance; Gene Jenkins, citizen.

CON: Michael Mayer, Washington Environmental Council; Dawn Vyvyan, Yakama Nation; Steve Wehrly, Muckelshoot Tribe; Steve Robinson, NW Indian Fisheries Commission.

OTHER: Joe Stohr, DOE.