

SENATE BILL REPORT

SSB 5212

As Passed Senate, February 12, 2025

Title: An act relating to filing of adjudication claims for precode uses of groundwater and surface water in the water resource inventory area 1 water rights adjudication.

Brief Description: Concerning filing of adjudication claims for precode uses of groundwater and surface water in the water resource inventory area 1 water rights adjudication.

Sponsors: Senate Committee on Agriculture & Natural Resources (originally sponsored by Senators Shewmake, Short, Chapman and Nobles).

Brief History:

Committee Activity: Agriculture & Natural Resources: 1/16/25, 1/30/25 [DPS].

Floor Activity: Passed Senate: 2/12/25, 49-0.

Brief Summary of First Substitute Bill

- Provides that notwithstanding any time restrictions in current law, an adjudication claim form filed in Water Resource Inventory Area 1 after June 1, 2023 satisfies statement of claim filing requirements.

SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5212 be substituted therefor, and the substitute bill do pass.

Signed by Senators Chapman, Chair; Krishnadasan, Vice Chair; Short, Ranking Member; Liias, Muzzall, Saldaña, Schoesler, Shewmake and Wagoner.

Staff: Jeff Olsen (786-7428)

Background: Water Rights. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water were established under a permit

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

system. The permit system is based on the prior appropriation doctrine of first in time is first in right.

Claims Registration. With the enactment of legislation in 1967, the state required persons with claims of rights to the use of water based on something other than a water right permit or certificate, to register the claims with the Department of Ecology (Ecology). Claims had to be filed by June 30, 1974. The filing period was reopened on a limited basis in 1979, and again in 1985 and 1997. For the filing period opening in 1985 authorizing the acceptance of a petition for certification, the filing may not affect or impair any water right existing prior to July 28, 1985.

From September 1, 1997, through June 30, 1998, a filing period for persons whose water rights pre-date the water codes but who failed to file statements of claims for the rights during the previous filing periods was established. Similar to the 1985 claim registration filing period, a water right embodied in a statement of claim filed during the opening is subordinate to existing water rights. A person who failed to file a statement of claim as required is deemed to have waived and relinquished the right.

Water Rights Adjudication. Washington State's Surface Water Code establishes a general adjudication procedure. An adjudication can determine rights to surface water, ground water, or both. An adjudication is conducted in a superior court with Ecology as the plaintiff, and the defendants being the persons or entities owning real property situated within the area to be adjudicated. Ecology filed a water rights adjudication for Water Resource Inventory Area 1 (WRIA 1), with the Whatcom County Superior Court on May 1, 2024. WRIA 1, or Nooksack Basin, includes the entire Nooksack River watershed as well as nearby Bellingham Bay, Birch Bay, Chuckanut, Drayton Harbor, Lake Whatcom, Lummi Bay, Point Roberts, and Sumas River watersheds.

Summary of First Substitute Bill: Notwithstanding existing time restrictions for registering an existing water right, filing an adjudication claim form for an adjudication filed in WRIA 1 after June 1, 2023, satisfies the statement of claim filing requirements under current law. Filing statements of claim shall not affect or impair any water right existing before July 27, 1997.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: To make the adjudication process

in WRIA 1 smooth and fair, this bill allows for precode users who have not filed to be included in the process. This does not guarantee a water right, but allows everyone to participate. Filing a claim allows a person to have their time in court to see if they have a water right. The claim allows a person to have access to justice, and there should not be very many people that use this process.

OTHER: The Department of Ecology is neutral on the bill that is intended to create transparency and fairness. There have been times including 1967, 1986, and 1997, where the claims registry has been open for pre-code users. One concern is the new claims under this approach are not subordinate, while during the 1985 and 1997 open registration, a person registering would have a water right that is junior to an existing water right.

Persons Testifying: PRO: Senator Sharon Shewmake, Prime Sponsor; Bill Clarke, Whatcom Ag Water Board.

OTHER: Ria Berns, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: PRO: Jamie Morin.