

# HOUSE BILL REPORT

## HB 2198

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### As Reported By House Committee On:

Agriculture & Ecology

**Title:** An act relating to water rights claims.

**Brief Description:** Reopening the water rights claim filing period.

**Sponsors:** Representatives Mastin, Chandler, Schoesler, Lisk, Mulliken, Grant, Honeyford, Koster, Delvin, Robertson, Campbell, Horn and Johnson.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 1/9/96, 1/10/96, 1/11/96, 1/15/96 [DPS].

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## HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Ogden; Robertson and Schoesler.

**Minority Report:** Do not pass. Signed by 4 members: Representatives R. Fisher; Murray; Regala and Rust.

**Staff:** Kenneth Hirst (786-7105).

**Background:** Code and Pre-Code Rights. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Prior to the enactment of the 1917 and 1945 codes, rights to water were obtained in a variety of ways and under a variety of water doctrines. The surface water code expressly acknowledges the validity of water rights established prior to its enactment. The use of public groundwater under the 1945 act is subject to existing rights.

Registration Required. 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 (DOE). In general, claims had to be filed by June 30, 1974. However, the filing period was reopened on a limited basis in 1979 and again in 1985. A person who failed to file a statement of claim as required is to be deemed as having relinquished the right.

**Summary of Substitute Bill:** A new period for filing statements of claim for water rights is established. The period begins on September 1, 1996, and ends at midnight, June 30, 1997. This reopening of the filing period is not to impair existing rights, and a claim filed under it is subordinate to rights embodied in water right permits and certificates issued before the claim is filed and is subordinate to claims filed in the state registry during previous filing periods. The new filing period does not apply to groundwater rights that may be obtained without a permit under current law, rights for which a water right permit or certificate has been issued, or claims already filed in the state registry. Claims cannot be filed for the withdrawal of water in any area that is the subject of an ongoing general adjudication proceeding for water rights.

The DOE must publish notices regarding the new filing period and must distribute information describing the types of rights for which claims must be filed, the effect of filing, the effect of not filing, and other information regarding filings and statements of claim.

Amendments to statements of claim that are already in the claims registry may be submitted to correct errors in the statements. Such an amendment must be filed during the new filing period, and the claimant must attest that the amendment does not constitute an expansion of the right for which the original statement of claim was intended.

During the period beginning March 1, 1994, and ending with the close of the new filing period, neither the DOE nor the Pollution Control Hearings Board may determine or find that relinquishment of a right has occurred as a result of a person's failure to file a claim.

The DOE must ensure that its employees are readily available for inquiries regarding statements of claim and that all the information it has at its disposal is available to the person making the inquiry. The department must provide water right records to requestors within 10 working days in certain circumstances.

**Substitute Bill Compared to Original Bill:** Added by the substitute bill are provisions for closing the filing period to claims for water in areas governed by ongoing adjudication proceedings for water rights, and for clarifying that claims are

not to be filed for "exempt" wells or for rights for which claims are already in the state's claims registry.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The bill is very important for those with historical rights who did not realize that they were supposed to file claims during earlier filing periods. Without this opportunity, they may be without any water rights.

**Testimony Against:** The bill should not apply to claims to water on a federal Indian reservation.

**Testified:** Jerry Harper and Ralph Thomsen, Columbia/Snake River Irrigators' Association; and Kathleen Collins, Washington Water Alliance (in favor). Dawn Vyvyan, Yakima Tribal Council (commented on the bill).