

HOUSE BILL REPORT

HB 2203

As Passed House:

February 2, 1996

Title: An act relating to the hydraulic continuity of ground and surface waters.

Brief Description: Establishing criteria to determine hydraulic continuity.

Sponsors: Representatives Mastin, Chandler, Honeyford and Robertson.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/15/96 [DP].

Floor Activity:

Passed House: 2/2/96, 688-26.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 5 members: Representatives R. Fisher; Murray; Ogden; Regala and Rust.

Staff: Kenneth Hirst (786-7105).

Background: With the adoption of the surface water code in 1917, the Legislature created a permit system for establishing new rights to the use of surface water. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Under this doctrine, a person with a junior water right may not exercise the right in a manner that interferes with the ability of a person with a more senior water right to exercise the senior right. With the enactment of the groundwater code in 1945, the permit system was, with certain exceptions, extended to apply to new rights to groundwater as well. The groundwater code states that, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, the right of an appropriator of surface water is superior to any subsequent right authorized to be acquired to ground water.

Other laws authorize the state to establish minimum flows and levels for streams and lakes. The surface water code states that the establishment of a reservation of water or minimum flow or level constitutes an appropriation with a priority date that is the date it was established. Further, whenever an application for a permit to make beneficial use of public waters is approved relating to a water body for which minimum flows or levels have been adopted, the permit must be conditioned to protect the levels or flows.

The extent to which the withdrawal of groundwater would affect a senior right to the use of surface water or a minimum instream flow or level for a body of surface water depends on the nature of the connection, if any, between the surface water and the groundwater that is withdrawn. The connection between surface water and groundwater is referred to as the hydraulic continuity of the surface water and groundwater.

Summary of Bill: Rules for determining the hydraulic continuity of surface water and groundwater are established by statute. All wells located less than one-fourth mile from a surface water source that produce water from an unconfined aquifer are assumed to be hydraulically continuous to the surface water. The burden is on an applicant or other person to demonstrate otherwise. For water from a confined aquifer, the burden of proof is on the Department of Ecology to demonstrate that the aquifer is hydraulically continuous with surface water. The continuity must be demonstrable in field tests or through similar sources of information.

Criteria are established for determining whether a well using water that is hydraulically continuous with a surface water source is to be assumed to have the potential of causing substantial interference with the surface water source.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill establishes measurable criteria for determining hydraulic continuity.

Testimony Against: (1) Hydraulic continuity is a technical subject with long-term implications. Rather than adopting these policies, the Legislature should create a panel of hydrogeologists and instruct them to develop a policy. (2) This level of technical rule-making should not be accomplished by statute. (3) The "clear and direct" relationship set by the bill is too stringent a standard. The bill places too heavy a burden on the Department to prove hydraulic continuity.

Testified: Kathleen Collins, Washington Water Alliance (in favor); Judy Turpin, Washington Environmental Council; and Bruce Wishart, Sierra Club (against).