

# SENATE BILL REPORT

## ESSB 6445

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As Passed Senate, February 12, 1996

**Title:** An act relating to water supply regulation.

**Brief Description:** Making changes to water supply regulation.

**Sponsors:** Senate Committee on Ecology & Parks (originally sponsored by Senators Sutherland, Swecker, Fraser, Rasmussen, McAuliffe and Haugen).

**Brief History:**

**Committee Activity:** Ecology & Parks: 1/22/96, 1/24/96 [DPS].  
Passed Senate, 2/12/96, 49-0.

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### SENATE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** That Substitute Senate Bill No. 6445 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; Hochstatter, McAuliffe, Spanel and Swecker.

**Staff:** Susan Ridgley (786-7444)

**Background:** In 1993, the Washington Supreme Court held in Rettkowski v. State of Washington, commonly referred to as the "Sinking Creek" decision, that the Department of Ecology lacked statutory authority to regulate among water users unless a decree had been entered in a general stream adjudication for the water source that defined the rights and priorities of rights of the water users.

Prior to the decision, Ecology had issued regulatory orders to require water users that were "junior" in priority to restrict water uses having an adverse impact upon senior water right holders. Such regulatory orders are appealable to the Pollution Control Hearings Board. The existing statutes providing administrative regulatory authority to the department do not provide for notice and an opportunity to be heard by the parties to whom the regulatory order is directed.

The result of Sinking Creek is that either the senior water rights claimants or the Department of Ecology must seek injunctive relief in superior court to restrict water uses by junior claimants, where such use is impairing the rights of senior claimants. It has been suggested that such court actions are costly and time consuming, and that the Legislature should address the court's decision by providing specific regulatory authority to Ecology.

**Summary of Bill:** The Department of Ecology may regulate water users only in the following situations: (1) where all the rights at issue are permitted or certificated rights; (2) where an instream flow rule has been adopted; or (3) where water is being withdrawn

without any right or authority whatsoever. In those circumstances, the department may regulate either through regulatory orders, or by seeking a court order.

If one or more of the rights are not permitted or certificated, then the department must bring an action in court seeking any necessary relief. If brought to a state court, it must be brought in the superior court where the water diversions are located. The legislation does not affect the general adjudication or relinquishment sections of existing water law, nor does it modify existing powers of the Department of Ecology, except as provided.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** It is important to restore authority to Ecology in order to get the water permit process moving.

**Testimony Against:** None

**Testified:** Senator Sutherland; Bruce Wishart, Sierra Club (pro).