

ANALYSIS OF HB 2304

House Agriculture & Ecology Committee
1998

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BACKGROUND:

Relinquishment of a Water Right for Nonuse. If a person abandons or voluntarily fails to use beneficially all or any part of the person's water right for five successive years without sufficient cause, the right or portion unused is relinquished. (RCW 90.14.160 through 90.14.180.) A number of exemptions from this relinquishment requirement are listed by statute. Among the circumstances providing exemptions are that the water right is claimed for municipal water supply purposes. (RCW 90.14.140.) The state's Supreme Court recently stated that the exemption provided by the statute is an exemption from the relinquishment-for-nonuse requirements established by the statute in 1967 and not from abandonment under the common law that preceded it. (*Okanogan v. Twisp*, 133 Wn.2d __, Slip Opinion, December 4, 1997.) A procedure has been established under which the Department of Ecology (DOE) may determine and the Pollution Control Hearings Board may confirm that a water right has reverted to the state for nonuse. (RCW 90.14.130.)

With the adoption of the Surface Water Code in 1917 and the Groundwater Code in 1945, new rights to the use of water are to be established under a permit system. (RCW 90.03.250 and 90.44.050.) If a person has been issued a permit to withdraw groundwater and the DOE is shown that construction has been completed in compliance with the terms of the permit, the DOE is to issue the person a water right certificate stating that the appropriation under the permit has been perfected. The relationship between the amount of water that may be used under a water right held by a public water system, the amount of system capacity in place, and the amounts listed on a permit or certificate authorizing the withdrawal of water is the subject of a case currently before the state's Supreme Court, *Department of Ecology v. George Theodoratus*.

SUMMARY:

The water right that may be considered to be claimed for municipal water supply purposes and, therefore, that is a right qualifying for an exemption from the relinquishment-for-nonuse law is defined. It is a water right that is certified, permitted, or authorized by the DOE to a public water system and the system is both: granted an operating permit for public water systems by the Department of Health or approved by a county health agency; and an expanding public water system with an approved water system comprehensive plan under the laws and rules of the State Board of Health. (Section 1.) Water rights represented by certificated or permitted appropriations for municipal water supply purposes are perfected to the full certificated or permitted rates. (Section 2.)