

ANALYSIS OF ESSB 5703

House Agriculture & Ecology Committee

February 18, 1998

BACKGROUND:

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 have been 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 these enactments, rights to water were obtained in a variety of ways and under a variety of water doctrines.

SUMMARY:

Continued Use of Water; Statement of Claim. A procedure is established under which a person who used water for certain uses before January 1, 1993, without a state water use permit or certificate is allowed to continue to use the water. This procedure applies to persons who used the water beneficially for irrigation or stock watering purposes or for domestic uses by a public water supply system with up to 100 service connections. To continue using the water beneficially, the person or public water supply system must: (1) file with the Department of Ecology (DOE) a statement of claim for the use during a filing period beginning September 1, 1998, and ending midnight, June 30, 1999; and (2) file with the statement of claim certain specified evidence that the water described in the claim was used beneficially as claimed before January 1, 1993. The person or system must have used the water to the full extent of the claim during three of the last five years. The procedure does not apply to the use of water for which an application has been denied by the DOE.

Application for Water Right Permit. If the person or system has not already filed an application for a water right for the use stated in the statement of claim, the person or system must file such an application with the statement of claim. If a claimant does so, the claimant has standing to assert a claim of a water right in a general adjudication proceeding for the use.

Decision on Continued Use. The claimant may continue using the water until the DOE makes a final decision granting or denying the application or, prior to such a decision, a superior court issues a general adjudication decree defining or denying the use. The DOE or court may authorize the continued use of water only if the claimant meets the requirements of: provisions of the surface water code regarding instream flows set by rule, the processing of an application, the implementation of a water use permit, and the issuance of a water right certificate; the provisions of the ground water code; and a section of the Water Resources Act of 1971 declaring fundamentals that govern the use and management of water.

*Prepared for the House Agriculture & Ecology Committee
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Local Watershed Planning. The DOE may not make final decisions on water right applications associated with such a claim filed in those watersheds where a local watershed planning process has commenced by the effective date of this section. The process must be one established under a chapter of law enacted for watershed planning in 1997, Chapter 90.82 RCW. If the local planning process results in a watershed plan acceptable to the DOE, decisions on applications associated with the claims for water from the watershed shall be consistent with the watershed plan. If a watershed plan is not completed within four years, the DOE may, after that date, make a final decision on any applications pending in the watershed.

If the applicable requirements are met, a water right certificate is to be issued. The priority date of the right is the date the application was filed with the DOE.

Prohibitions. Such a right of continued water use may not affect or impair a right that existed before the opening of the claim filing period. The filing of a statement of claim does not constitute an adjudication of the claim between the claimant and the state or between a water use claimant and others. However, a statement of claim is admissible in a general adjudication of water rights as prima facie evidence of certain aspects of the right. This right of continued use does not apply in an area that is currently regulated under rules establishing acreage expansion limitations as part of a groundwater management plan. It may not apply in an area where similar rights are being adjudicated in a general adjudication proceeding.

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