

HOUSE BILL REPORT

HB 2094

As Reported By House Committee On:

Agriculture and Ecology

Title: An act relating to water rights claims.

Brief Description: Modifying the reopening of a filing period for water rights claims.

Sponsors: Representatives G. Chandler and Linville.

Brief History:

Committee Activity:

Agriculture and Ecology: 2/25/99, 3/2/99 [DPS].

Brief Summary of Substitute Bill

- Requires DOE to file claims submitted during a recent filing period in the state's registry of claims under certain circumstances.

HOUSE COMMITTEE ON AGRICULTURE AND ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

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 except for certain uses of groundwater not exceeding 5,000 gallons/day. 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; Filing Periods. With the enactment of legislation in 1967, the state required persons with claims of historical rights to the use of water that predated the surface or groundwater code 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 to have waived and relinquished the right.

In 1997 legislation was enacted that established a new period for filing such claims. The new filing period began September 1, 1997, and ended June 30, 1998. Exempted from this filing period were rights being adjudicated in a general adjudication proceeding for water rights or regulated by groundwater acreage expansion rules. The right for a claim filed during this period is subordinate to rights embodied in water right permits or certificates issued before the claim was filed and subordinate to rights for claims filed in previous filing periods.

Summary of Substitute Bill:

The DOE must file in the state's water rights claims registry a claim filed with it during the most recent claim filing period if: the claim was rejected by the department because the water rights in the claim had not been timely established; and the department's action regarding the claim has been appealed. This filing of claims in the state's registry does not constitute prima facie evidence of the validity or quantification of the water right.

Substitute Bill Compared to Original Bill: Removed by the substitute bill are the provisions of the original bill that declare claims filed with the DOE, but not filed in the registry, to have been filed in substantial procedural compliance with the filing law and prohibit administrative distinctions between these and other claims in the registry. Added by the substitute bill are the provisions requiring certain claims to be filed in the registry if the claims are being appealed and were rejected based on the untimely establishment of the right claimed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) If a statement of claim was filed as required, it should be filed by the department in the state's registry.

Testimony Against: (Original bill) (1) The bill is too broad. It requires all claims filed to be treated the same, whether rejected or not. This is inequitable and may present equal protection problems. (2) The bill should be applied only to rejections based on uncertainties regarding the claims. (3) The stay on enforcement provided by the bill should be lifted.

Testified: (In support) Mary Burke.

(Opposed, original bill) Ken Slattery, Department of Ecology; and Dawn Vyvyan, Yakama Indian Nation.