

House Bill Analysis

HB 2996

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

February
4, 2000

- Requires the Department of Ecology to file water right claims submitted during a recent filing period for historical rights in the state's Water Rights Claims Registry in certain circumstances.
- Requires that claims for the authority for a public body to operate a free-flowing well for public use be filed in the Registry.
- Requires that a well completed into a confined aquifer be allowed to flow freely for public use if a claim for this use is filed in the Registry and under certain additional circumstances.

BACKGROUND:

Water Rights Claims Registration Required; Filing Periods. Legislation was enacted in 1967 that required persons with claims of historical rights to the use of water that predated the surface or ground water 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. In 1997 a new period for filing such claims was opened. The new filing period began September 1, 1997, and ended June 30, 1998. 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.

Wells. The Groundwater Code prohibits groundwater that has been withdrawn from being wasted without economical beneficial use. The DOE must require that flowing wells be capped or equipped with valves so that the flow of water can be completely stopped when the wells are not in use under the terms of the water rights or permits for the wells. Both flowing and nonflowing wells must be constructed and maintained to prevent the waste of groundwater through leaky casings, pipes, fittings, valves, or pumps. (RCW 90.44.110.)

The DOE has issued an administrative order requiring the decommissioning or repair and sealing of a well located in downtown Olympia. The order followed an inspection by the department in which it found an unchecked artesian flow from the well, which the order states is in violation of the Groundwater Code. (Order No. DE 98WR-S150.) The date by which the well must be decommissioned or repaired has been extended to January 23, 2000. (Order Amendment dated 1/7/99.)

Artesian Wells in Irrigation Areas. In sections and communities where the use of water for irrigation purposes is necessary or customary, it is the duty of each person or entity

possessing or controlling an artesian well to securely cap the well annually from October 15th to March 15th to prevent the flow or escape of water from the well. (RCW 90.36.020 and 90.36.030.)

SUMMARY:

Water Rights Claims Registration. If a person submitted a water right claim form to the DOE during the latest filing period for historical water rights and the claim was rejected by the DOE for being incomplete, the person may, under certain circumstances, submit additional information in support of the claim between July 1, 1999, and December 31, 1999. The circumstances that must be satisfied are: the person checked the box labeled "other" on the water right claim form regarding the legal doctrine under which the water right is claimed; and the premise of the claim for a groundwater right is that a right to ground water was inherent in and appurtenant to the original land patent issued by the federal government at the time the person's land was severed from federal ownership. However, this premise need not have been asserted in the claim. (Section 1(2)(a).)

If these circumstances are met, the person may submit to the DOE a statement that the groundwater right claim is based on this assertion for lands they now own or occupy. Such a claimant must also submit a bona fide copy of the original land patent document issued by the United States. If this is done, the water right claim is deemed sufficient in lieu of compliance with other procedures and must be accepted for filing in the water rights claims registry. (Section 1(2)(b).)

This authority does not apply to other claims rejected as ineligible for being incomplete, for failure to remit a filing fee, or for submitting a claim for a purpose that is exempt from the filing requirement. Accepting such a claim for the registry confers no special status to or recognition of the claim. (Section 1(2)(c).)

Wells.

A well completed into a confined aquifer must be allowed to flow freely for public uses if: a statement of claim for its free-flowing public use is filed for the Water Rights Claims Registry; and the well is constructed according to state law and agency rules, has a discharge rate not exceeding 12 gallons/minute, and is owned, operated, and maintained by a recognized public body. The "public body" owning, operating, and maintaining the well may be the state or any agency, political subdivision, taxing district, or municipal or public corporation of the state. The operator of the well must ensure the unused portion of the flow is piped from the well head and discharged directly into a surface water body within the limits of the city and the discharge cannot allow for any degradation of water quality. (Sections 2(3) and 3(4).)

Registry. No public body may operate a free-flowing well for public use on a year-round

basis without first registering its authority to operate the well in this manner with the DOE. Any public body desiring to operate a free-flow well in this manner must file a statement of claim with the DOE identifying how each of the requirements for such a free-flowing well are satisfied, attesting that the well satisfies those requirements, and identifying the water right for the well. Upon receiving such claim for the free-flowing well, the DOE must file the statement in a portion of the Water Rights Claims Registry reserved for claims to the right to operate wells in this manner. Filing of such a claim does not in itself establish or represent a water right to use the well. Such a statement of claim may be filed at any time under this section. (Section 1 (1).)

Null and Void: The provisions of the bill requiring and allowing claims for certain free-flowing wells for public use are null and void if any of the provisions regarding claims filed in the last filing period for historical water rights are vetoed by June 30, 2000. (Section 1(1).)