

HOUSE BILL REPORT

ESSB 6151

As Passed House - Amended:

March 3, 2006

Title: An act relating to water policy in regions with regulated reductions in aquifer levels.

Brief Description: Protecting aquifer levels.

Sponsors: By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Schoesler, Poulsen, Mulliken, Rasmussen, Jacobsen, Morton and Delvin).

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 2/22/06 [DP].

Floor Activity:

Passed House - Amended: 3/3/06, 96-2.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Establishes a mechanism to allow the non-use of a groundwater right from the Odessa aquifer to avoid relinquishment if certain conditions are satisfied.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: Do pass. Signed by 21 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Appleton, Bailey, Blake, Buri, Clibborn, Dunn, Grant, Haler, Holmquist, Kilmer, Kretz, Morrell, Newhouse, Quall, Strow, P. Sullivan and Wallace.

Minority Report: Do not pass. Signed by 2 members: Representatives Chase and McCoy.

Staff: Jason Callahan (786-7117).

Background:

Ground Water Management Subareas

Ground Water Management Subareas may be established by the Department of Ecology (Department) to address declining aquifer levels and regulate withdrawals of public ground water. The Department has adopted rules establishing the Odessa Groundwater Management Subarea.

The Department has the authority to enter into agreements with the United States and irrigation districts to offset aquifer depletions due to ground water withdrawals. The agreements allow conserved surface water to be delivered to certain deep well irrigated lands. Where such deliveries occur, the Department must issue a superseding water right permit or certificate to indicate that the unused portion of a replaced subarea ground water right is a reserve right with low flow protection from relinquishment. This reserve right may again be used if the delivery of conserved water is curtailed or otherwise unavailable. The total acreage irrigated under the subarea ground water right and delivered water must not exceed quantity or acreage limits described in the ground water permit or certificate.

Relinquishment

A person who has the right to use water will lose that right if he or she does not put the water to a beneficial use over a period of five consecutive years. This is commonly known as both "relinquishment" and the "use it or lose it" principle. The water right holder can lose, or relinquish, their entire right to use any water or a portion of their original water right depending on how much water was not put to beneficial use over the five years in question.

There are, however, instances when a water right holder cannot use the water for five years and still retain his or her rights to the water. This occurs when the water right holder can show a "sufficient cause" for not using the water. The qualifying sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, crop rotation practices, and holding water in a standby or reserve period during periods of drought. Water right holders that can show a sufficient cause do not relinquish their right to water even if they go more than five years without putting the water to a beneficial use.

Summary of Amended Bill:

A water user who fails to exercise a right to withdraw ground water from the Odessa aquifer subarea is deemed to have done so involuntarily due to a drought or low flow period, and thus will not relinquish his or her right to use the water.

The amount of water that is not used is considered a standby or reserve water supply, and may be used after the period of non-use has ended, if certain conditions are met. In order to use the unused water, the following must be satisfied:

- The reduction in water use must result from conservation practices, water use efficiencies, crop type or rotation changes, an unavailability of water, economic hardship, infrastructure costs, or participation in an effort to reduce aquifer depletion.
- The withdraw or diversion facility is maintained in good operating condition.
- The Department has not issued a superseding water right permit or certificate to designate a portion of the ground water right replaced by water from the federal Columbia Basin Project.

Water users choosing not to use water must notify the Department in writing within 180 days of stopping the water use. Notice must also be provided upon the recommencement of use.

The Department must report to the Legislature on the status of the Odessa aquifer, the participation in the program established for encouraging the non-use of groundwater, and the outcome of a study by the United States Bureau of Reclamation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The stakeholders have worked with the Governor and the Department to craft an immediate but temporary time out from the relinquishment law for ground water users in the Odessa aquifer. This solution will offer a little hope to ground water users in the Odessa aquifer and fits in with other state efforts to remedy the problems in the area. The bill is narrowly drafted to apply only to the Odessa aquifer subarea and will provide clarity and certainty to farmers considering a switch to low-water duty crops.

The Odessa aquifer spans four counties in eastern Washington and is being rapidly depleted. If the aquifer is not recharged, agriculture and municipal water users will suffer, and this bill is a good first step towards recharging the aquifer by taking pressure off of it and creating incentives to limit water pumping. The Columbia Basin Project promised surface water to the current aquifer users, but that promise has never been fulfilled. Helping people find sources other than Odessa aquifer water will help other water users in the area. Continuing uncertainty in water supply will cause farmers to have problems with financing their operations.

(Concerns) The bill is a time out from all of water law and should be very limited in time. An expiration date of 2016 is more appropriate since it would still give plenty of time to implement the recommendations of ongoing studies. The bill should also ensure that its only applicability is prospective.

Testimony Against: None.

Persons Testifying: (In support) Senator Schoesler, prime sponsor; John Stuhlmiller, Washington Farm Bureau; Mike Schwisow, Columbia Basin Development League; Chris McCabe, Association of Washington Business; Pat Boss, Odessa Aquifer Replenishment Coalition; Joe Stohr, Department of Ecology; and Jim Jesernig, Washington State Potato Commission.

(Concerns) Mo McBroom, Washington Environmental Council.

Persons Signed In To Testify But Not Testifying: None.