

# SENATE BILL REPORT

## SB 6445

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As Reported By Senate Committee On:  
Ecology & Parks, January 24, 1996

**Title:** An act relating to water supply regulation.

**Brief Description:** Making changes to water supply regulation.

**Sponsors:** Senators Sutherland, Swecker, Fraser, Rasmussen, McAuliffe and Haugen.

**Brief History:**

**Committee Activity:** Ecology & Parks: 1/22/96, 1/24/96 [DPS].

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### SENATE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** That Substitute Senate Bill No. 6445 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; Hochstatter, McAuliffe, Spanel and Swecker.

**Staff:** Susan Ridgley (786-7444)

**Background:** In 1993, the Washington Supreme Court held in Rettkowski v. State of Washington, commonly referred to as the "Sinking Creek" decision, that the Department of Ecology lacked statutory authority to regulate among water users unless a decree had been entered in a general stream adjudication for the water source that defined the rights and priorities of rights of the water users.

Prior to the decision, Ecology had issued regulatory orders to require water users that were "junior" in priority to restrict water uses having an adverse impact upon senior water right holders. Such regulatory orders are appealable to the Pollution Control Hearings Board. The existing statutes providing administrative regulatory authority to the department do not provide for notice and an opportunity to be heard by the parties to whom the regulatory order is directed.

The result of Sinking Creek is that either the senior water rights claimants or the Department of Ecology must seek injunctive relief in superior court to restrict water uses by junior claimants, where such use is impairing the rights of senior claimants. It has been suggested that such court actions are costly and time consuming, and that the Legislature should address the court's decision by providing specific regulatory authority to Ecology.

**Summary of Substitute Bill:** The Department of Ecology may regulate water users only in the following situations: (1) where all the rights at issue are permitted or certificated rights; (2) where an instream flow rule has been adopted; or (3) where water is being withdrawn without any right or authority whatsoever. In those circumstances, the department may regulate either through regulatory orders, or by seeking a court order.

If one or more of the rights are not permitted or certificated, then the department must bring an action in court seeking any necessary relief. If brought to a state court, it must be brought in the superior court where the water diversions are located. The legislation does not affect the general adjudication or relinquishment sections of existing water law, nor does it modify existing powers of the Department of Ecology, except as provided.

**Substitute Bill Compared to Original Bill:** The substitute bill limits the circumstances under which the Department of Ecology may itself regulate water users. Under the original bill, the department must first make a tentative determination of the priority, quantity, place of use, and point of diversion of the right. Ecology must then provide prior notice to the person to whom the order is proposed to be directed, and the person must be provided an opportunity to show cause in writing why the order should not issue. The order is not binding in a subsequent general adjudication, but it establishes evidence of the existence and conditions of the right.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** It is important to restore authority to Ecology in order to get the water permit process moving.

**Testimony Against:** None

**Testified:** Senator Sutherland; Bruce Wishart, Sierra Club (pro).