

SENATE BILL REPORT

SB 5586

As of February 2, 1998

Title: An act relating to water supply regulation.

Brief Description: Making changes to water supply regulation.

Sponsors: Senators Fraser and Spanel.

Brief History:

Committee Activity: Agriculture & Environment: 2/18/97.

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Staff: Bob Lee (786-7404)

Background: The Department of Ecology has the statutory authority to enforce the state's water resource laws through the issuance of regulatory orders. That authority has been interpreted by the department to provide it with the opportunity to protect senior water rights holders from appropriation by users with lower priority.

In 1993, the state Supreme Court examined that interpretation in the now legendary "Sinking Creek" case. The case presented a factual situation in which deep well irrigators were ordered by the department to discontinue their water use in order to protect stock watering users who claimed senior rights, dating back to initial appropriation prior to the adoption of the 1917 Water Code. The rights involved were not embodied in a permit or certificate, and had not been subjected to a general adjudication.

In its decision, the court viewed the action of the department as a determination of the existence or the priority of water rights, a function which had not been delegated to it by the Legislature. In fact, the court held, that authority had been specifically granted to the superior courts in provisions establishing a procedure for the general adjudication of water rights. In the absence of a judicial determination of water rights priorities, the court decided, the department had no authority to employ the regulatory order mechanism to resolve conflicting claims of priority.

Summary of Bill: The Department of Ecology is authorized to use its power to issue regulatory orders or to pursue appropriate legal remedies, including injunctive relief, when: (a) it proposes to regulate a right evidenced by a permit or certificate in order to protect a prior right which is also evidenced by a permit or certificate, or (b) a minimum water flow or level has been established by rule, or (c) the department believes public water is being withdrawn without right or authority.

When any right the department proposes to regulate and any prior right it proposes to protect are not recognized by a certificate or permit, the department's regulatory power is limited to the pursuit of an appropriate remedy through the courts. Legal actions instituted under

the authority granted in this legislation are to be filed in the superior court of the county in which a point of diversion of the water right to be regulated is located.

The powers granted to the department by this legislation are not contingent upon the completion of a general adjudication and are not to be interpreted as authorizing a general adjudication of water rights or its equivalent by the department. The legislation is not to be interpreted as amending or repealing provisions relating to the issuance of relinquishment orders by the department, nor as otherwise modifying the department's regulatory powers except as specifically provided.

Appropriation: None.

Fiscal Note: Not requested.

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