

# ***ANALYSIS OF HB 2094***

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***House Agriculture & Ecology Committee  
25, 1999***

***February***

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- Requires claims filed during a recent filing period for water right claims to be considered to have been filed in substantial procedural compliance with the filing procedures and prohibits certain distinctions between these claims and others until they are found invalid.

## **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 ground water code to register the claims with the Department of Ecology. 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.

This new filing period used many of the procedures established for previous filing periods. For example, the original plus two copies of the claim were to have been filed with the Department of Ecology (DOE).

## **SUMMARY:**

Any statement of claim filed with DOE during the latest filing period is considered to have been filed in substantial procedural compliance with the procedures that applied to that filing period. This consideration applies whether the claim was or was not filed by DOE in the state's water rights claims registry. (Section 1.)

If the claim was filed during the new filing period but was not filed by DOE in the registry, in conducting its regulatory activities, DOE must make no distinction between the water rights represented by these claims and those represented by claims filed during the new filing period and also filed in the registry. This policy applies until and unless the Pollution Control Hearings Board determines that the water right, or a part of it, is invalid. In the latter case, DOE make such a distinction to the extent that the water right or part of it has been determined to be invalid by the Board or by a court upon appeal. (Section 2.)