
**Agriculture & Natural
Resources Committee**

SSB 5028

Brief Description: Clarifying the state's authority to regulate water pollution.

Sponsors: Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton and Hale).

Brief Summary of Substitute Bill

- Amends the definition of "pollution" in the state water pollution control statutes to exclude the exercise of a water right, claim, permit, or certificate.
- Requires the Department of Ecology to rely only on authority in state water resources statutes to condition, limit, regulate, or control any water claim, permit, or certificate.

Hearing Date: 3/28/03

Staff: Caroleen Dineen (786-7156).

Background:

Federal Clean Water Act

The federal Clean Water Act (CWA) sets a national goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The CWA defines "pollutant" to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. The CWA also requires states to adopt water quality standards, which specify the desired water quality to be achieved or maintained and requires existing water quality to be protected from degradation.

The CWA also requires applicants for a federal license or permit to provide the federal licensing or permitting agency a certification that any discharge to navigable waters associated with the licensed or permitted activity will comply with federal CWA requirements. The state Department of Ecology (DOE) issues these water quality certifications for projects in Washington.

State Water Pollution Control Law

Washington's pollution control law defines "pollution" as contamination or alteration of the physical, chemical, or biological properties of any state waters. The definition includes changes in temperature, taste, color, turbidity, or odor of water or any discharge of liquid, gas, solid, radioactive, or other substances into water likely to create a nuisance or cause waters to jeopardize public health, safety, or welfare or injure beneficial uses or livestock, animals, birds, fish or other aquatic life.

The state's oil and hazardous substance spill prevention and response statutes authorize the Director of the DOE to supervise oil and hazardous substance spill prevention, abatement, response, containment, and cleanup efforts in the navigable waters of the state. The Director of the DOE also serves as the head of the state incident command system for a spill of oil or hazardous substances and must coordinate the response efforts of state agencies and local emergency response personnel.

The DOE may bring a legal action, including an action for injunctive relief, to enforce or implement water pollution control and oil and hazardous substance spill prevention and response statutes.

Minimum Stream Flow Conditions

In 1994 the United States Supreme Court determined that the DOE may condition a water quality certification for a hydroelectric power plant on any limitations necessary to ensure compliance with state water quality standards. *PUD No. 1 of Jefferson County v. Department of Ecology*, 511 U.S. 700 (1994). The court in that case concluded that a minimum stream flow condition was an appropriate requirement of state law on which to condition the water quality certification.

In another case involving a hydroelectric facility, the Washington Supreme Court concluded in 2002 that the DOE may impose instream flow conditions in a water quality certification without regard to whether the applicant for a federal license has existing water rights. *PUD No. 1 of Pend Oreille County v. Department of Ecology*, 146 Wn.2d 778 (2002).

Summary of Bill:

The definition of "pollution" in state water pollution control law is amended to exclude exercise of a water right, claim, permit, or certificate granted under state law to divert or withdraw water.

Statutory provisions authorizing the DOE to bring an action to enforce state water pollution law are amended. The DOE may rely only on authority in state surface and ground water rights and claims statutes to condition, limit, regulate, or control any water claim, permit, or certificate.

State policy is amended to specify that authority to regulate water pollution is based on powers granted in the state water pollution control statutes.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.