

SENATE BILL REPORT

SB 6734

As of February 5, 2004

Title: An act relating to providing certainty and clarity in the administration of water rights.

Brief Description: Creating a water rights confirmation process.

Sponsors: Senators Morton, Hale, Doumit, Hewitt, B. Sheldon and T. Sheldon, Stevens, Mulliken and Rasmussen; by request of Governor Locke.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/5/04.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Staff: Evan Sheffels (786-7486)

Background: Forfeiture statutes provide for water right relinquishment when a person, for five or more consecutive years, abandons or voluntarily fails without sufficient cause to beneficially use water in accordance with the recorded right's terms. Relinquished water reverts to the state. Intent to abandon, or clear evidence of such intent, is required under the common law theory of abandonment. Intent to abandon is not required under Washington's forfeiture statutes. Concern exists that this statutory "use it or lose it" policy creates disincentives for using water efficiently.

Certain aspects of a water right may be modified with the approval of the Department of Ecology (DOE) if the modification would not impair other existing water rights. Such an approved modification does not affect the priority date of the right. Alterations in water rights are referred to in statute as transfers, changes, and amendments.

Summary of Bill: Most state-based water right holders are required to confirm and document the quantity of their water right put to beneficial use, based on the highest instantaneous and annual quantity used between the January 1, 1994 to December 31, 2003. The water rights confirmation process is to be conducted by court appointed referees and completed by 2014. The quantity confirmation process recognizes current relinquishment exceptions and exemptions, as well as specific new exceptions and modifications. Certain water rights would not be required to confirm quantity. Otherwise, a presumption of abandonment applies for failure to file for confirmation.

The Referee's focus is limited to quantity used during the applicable 10-year period, and not the perfection and priority of a water right. If the Referee's decision is not appealed, the Referee issues a superceding document reflecting the confirmed quantity.

The recipient of the quantity decision can appeal the referee's decision. Other aggrieved water right holders from within the same watershed or with rights to the same source of supply can

also appeal the referee's decision. Appeal goes to the superior court (to the water court if available).

Once water rights have been confirmed, water rights holders are required to submit an annual notice of actual and planned beneficial water use to Ecology. This notice provision allows for unused water to be left in the stream or aquifer, with protection from relinquishment or abandonment due to nonuse.

A water right holder may transfer all or part of their right to another user or use, including instream flows. Ecology is to rely on the confirmed quantity when processing applications for change or transfer of a water right. Impairment of other water rights is not allowed. Statutory relinquishment provisions are repealed and replaced with the annual notice of use requirement and the prescribed abandonment process for failures to file water use documentation.

Ecology must provide notice to a water user who fails to file the regular notice of water use. At the end of the 10th year, absent notice or other corrective action, the right is deemed abandoned.

During any future adjudication, the court would be directed to accept the quantity of a water right that went through the water right confirmation process. The initial confirmation process in this bill does not apply to rights in the midst of the Yakima adjudication. Once court orders have been issued in the Yakima adjudication, the annual beneficial use update requirements will apply.

Appropriation: None.

Fiscal Note: Requested on February 3, 2004.

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