

---

HOUSE BILL 3081

---

State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Grant, Blake, Warnick, Hailey, Kretz, Hinkle, Haler, Walsh, and Newhouse

Read first time 01/22/08.      Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to water resource management on the main stem of  
2 the Columbia and Lower Snake rivers; adding a new section to chapter  
3 90.90 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that:

6            (1) There are sufficient waters in the Columbia river mainstem and  
7 the Lower Snake river mainstem to establish an allocation of one  
8 hundred thousand acre feet of water annually to be available pursuant  
9 to section 2 of this act for appropriation for biofuel irrigation and  
10 organic crop irrigation without harming instream resources;

11            (2) A program that makes water available for irrigation of biofuel  
12 irrigation and for organic crop irrigation will provide significant  
13 environmental and economic benefits for the state; and

14            (3) At such time as authorized water withdrawals for the biofuel  
15 and organically grown water rights reach one hundred thousand acre  
16 feet, but no later than 2013, the legislature should review the  
17 economic and environmental benefits resulting from this authorization  
18 and determine whether there is a need to increase the amount of water

1 allocated under section 2 of this act, taking into account cumulative  
2 withdrawals from water rights issued under chapter 90.90 RCW and the  
3 broader water code.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.90 RCW  
5 to read as follows:

6 (1) The definitions in this subsection apply throughout this  
7 section unless the context clearly requires otherwise.

8 (a) "Biofuel irrigation" means the use of water for the purpose of  
9 irrigating crops that are grown as feed stocks for the production of  
10 ethanol, biodiesel, or other types of engine, heating, or power  
11 generation fuels.

12 (b) "Columbia river mainstem" and "Lower Snake river mainstem" have  
13 the same meaning as defined in RCW 90.90.030(12).

14 (c) "Department" means the department of ecology.

15 (d) "Organic crop irrigation" means the use of water for the  
16 purpose of irrigating crops that are certified under United States  
17 department of agriculture or Washington department of agriculture  
18 standards as "organically grown" fruits or vegetables.

19 (e) "Person" means any firm, association, water users' association,  
20 corporation, limited liability company, irrigation district, municipal  
21 corporation, or other legal entity as well as an individual.

22 (2) Notwithstanding any other provision in this title, this  
23 chapter, or any other applicable law, an allocation of an annual  
24 aggregate of one hundred thousand acre feet of water from the Columbia  
25 river mainstem and the Lower Snake river mainstem is established in  
26 perpetuity. The waters allocated under this section are available for  
27 appropriation and use for biofuel irrigation and organic crop  
28 irrigation. The department is authorized and directed to issue permits  
29 and certificates for the uninterrupted appropriation and use of the  
30 water allocated under this section, but solely for the purpose of  
31 biofuel irrigation and organic crop irrigation.

32 (3) For the avoidance of doubt, no application, permit, or  
33 certificate to appropriate and use waters under this section may be  
34 denied or conditioned to be interruptible on the grounds that such a  
35 denial or condition is necessary to satisfy the instream flow or "no  
36 net loss" requirements, or any other state law or regulation. In  
37 addition, except as specifically provided in this section, water

1 allocated under the provisions of this section and permits and  
2 certificates issued under this section are deemed as not requiring any  
3 further mitigation and the allocation of water under this section and  
4 permits and certificates issued under this section are deemed to  
5 satisfy all consultation requirements under state law related to the  
6 issuance of new water rights.

7 (4) Any person may apply for a permit to appropriate waters  
8 allocated under this section. The following terms and conditions are  
9 applicable to permits and certificates issued under this section:

10 (a) Water withdrawal locations included in permits and certificates  
11 issued under this section must be within the Columbia river mainstem or  
12 the Lower Snake river mainstem;

13 (b) Waters appropriated under this section must be for biofuel  
14 irrigation or organic crop irrigation use within the Columbia basin  
15 project area;

16 (c) Except as modified and limited by this section, water rights  
17 issued under the biofuels or organic crop irrigation designation are  
18 subject to existing provisions required under the current water code;

19 (d) Permits for the use of waters for biofuel irrigation and  
20 organic crop irrigation must include a specific designation of the  
21 acreage where the water is to be used and the number of acres to be  
22 irrigated. Changes in the place of use must be approved. However, the  
23 number of irrigated acres may not be increased and the change does not  
24 impair any existing senior water right. No change to a use other than  
25 biofuel irrigation or organic crop irrigation may be approved;

26 (e) The total water duty for the biofuel and organic crops grown  
27 using an appropriation under this section is limited to no more than  
28 2.9 acre feet per acre (for a single seasonal crop);

29 (f) The new water rights issued under this section may be used with  
30 other water rights to establish suitable, multiyear crop rotations for  
31 long-term production needs;

32 (g) Except as modified and limited by this section, standard  
33 provisions included in permits and certificates such as provisions  
34 requiring water measuring and fish screens must be included in permits  
35 and certificates issued under this section; and

36 (h) Applicants for a biofuel or organic crop irrigation water right  
37 under this section must agree, as a condition of the department issuing  
38 the new water right, that the total water duty for all existing water

1 rights owned by the applicant be recalibrated using methodologies  
2 jointly agreed upon by the department and the state's water conservancy  
3 boards, and consistent with the current water code. This recalibration  
4 must be initiated upon issuance of the new biofuel or organic  
5 irrigation water right. Data and technical information for  
6 recalibration of existing water rights must be submitted to the  
7 department by the applicant within one year after the applicant's  
8 receipt of the new water right issued under this section. Recalibrated  
9 water rights must be reissued after the existing (thirty-day) appeal  
10 period for department water orders, with existing public/agency  
11 notification standards in place.

12 (5) The implementation of this section is not limited to, but may  
13 be directly included under, voluntary regional agreements under RCW  
14 90.90.030.

--- END ---