

SENATE BILL REPORT

SB 5299

As of February 11, 2009

Title: An act relating to water resource management on the mainstem of the Columbia and lower Snake rivers.

Brief Description: Concerning water resource management on the Columbia and Snake rivers.

Sponsors: Senators Hatfield, Delvin, Holmquist, Marr, Morton, Schoesler, Ranker, Sheldon, Murray and Shin.

Brief History:

Committee Activity: Environment, Water & Energy: 2/10/09.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

Background: Washington water law is based on the prior appropriation doctrine. The doctrine known as "first in time is first in right" creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent, while use of water under more junior rights may be reduced or prohibited. Under the relinquishment statute, if persons abandon or voluntarily fail to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state.

Water users may make a seasonal or temporary change of point of diversion or place of use of water when the change can be made without detriment to existing rights. Water users who own the land to which the water rights are attached may also rotate the use of the water when the rotation can be accomplished without detriment to other existing water rights. However, before any change of a water right can be made, a water user must file a written application with the Department of Ecology (Ecology). If it appears that the change of point of diversion, or place of use can be made without harming existing rights, Ecology must grant the change.

In 2006 the Legislature enacted the Columbia River Basin Water Supply Act relating to water resource management in the Columbia River basin. A priority of this act is the development of new water supplies that includes storage and conservation for the economic and community development needs of people, as well as the instream flow needs of fish.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Ecology may enter into voluntary regional agreements, limited to parties that use or propose to use water from the mainstem of the Columbia and that establish the approval conditions for water withdrawals from the Columbia River. When voluntary regional agreements are based on conserved water, Ecology is given specific directions as to how the conserved water is to be allocated. All allocations must ensure that water is provided for out-of-stream uses while not causing a reduction in stream flows in the mainstem of the Columbia River during fish critical periods.

Summary of Bill: Water rights, or portions of water rights, are not subject to relinquishment if the right or portion of the right consists of past, current, or future reduced annual diversions or withdrawals of irrigation water from the Columbia River mainstem or the Lower Snake River mainstem as a result of conservation operation and maintenance savings.

A point of diversion, place of use, and purpose of use may be seasonally changed and transferred to any other land or place of use without loss of priority.

Ecology may enter into voluntary regional agreements for the purpose of providing new water from the Columbia River mainstem or the Lower Snake River mainstem when that new water is achieved through conservation and maintenance savings.

"Conservation operation and maintenance savings" includes any past, present, or future water savings, including savings achieved under voluntary regional agreements, use of soil moisture and monitoring probes, weather forecast and crop use data, irrigation scheduling, and other seasonal water management practices. Water savings must be measured by the real-time reduction in water withdrawals from the water saving techniques, as long as the water savings are no less than 10 percent of the pre-practice usage. Conservation operation and maintenance savings do not include those savings achieved through fixed capital investments such as higher efficiency irrigation systems, canal linings, pipe conversions, or modifications.

Appropriation: None.

Fiscal Note: Requested on January 23, 2009.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This bill will provide incentives for water conservation. Conservation measures can save up to 20% annually, so 10% of the water conserved could go to instream flows. This bill will encourage sharing of this resource. Relinquishment affects all aspects of water uses. This bill augments the conservation goals of the Columbia River bill from 2006. This bill would result in a benefit to the economy. There are disincentives that currently exist against encouraging conservation of water and this bill would encourage actual conservation.

CON: This bill allows water spreading and could harm other users. Additionally, this bill contradicts the intent of the Columbia River bill from 2006. Many folks believe the current water system is broken, but there needs to be a more balanced approach in order to fix it. Current law is adequate if it is enforced. These efforts to change relinquishment are made to allow for hoarding of water. This bill is specifically retroactive and as such there is a legal question as to the constitutionality

OTHER: There is concern about the possible retroactive application in this bill. Additionally, this bill seems to be in conflict with the Columbia River Program.

Persons Testifying: PRO: Jack Field, Washington Cattlemen's Association; John Stuhlmiller, Washington Farm Bureau; Pat Boss, Columbia Snake River Irrigators Association; John Larson, Washington Association of Conservation Districts.

CON: Mo McBroom, Washington Environmental Council; Darcy Nonemacher, American Rivers; Steve Robinson, Northwest Indian Fisheries Commission; Dawn Vyvyan, Yakama Nation.

OTHER: Ken Slattery, Department of Ecology.