

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2860

Chapter 6, Laws of 2006

59th Legislature
2006 Regular Session

COLUMBIA RIVER BASIN--WATER SUPPLY

EFFECTIVE DATE: 7/01/06

Passed by the House February 13, 2006
Yeas 94 Nays 4

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 14, 2006
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved February 16, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2860** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

February 16, 2006 - 2:45 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2860

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Capital Budget (originally sponsored by Representatives Grant, Newhouse, Hankins, Haler, Walsh and McCune)

READ FIRST TIME 02/13/06.

1 AN ACT Relating to water resource management in the Columbia river
2 basin; amending 2005 c 488 s 332 (uncodified); reenacting and amending
3 RCW 43.84.092; adding a new chapter to Title 90 RCW; creating a new
4 section; making appropriations; providing an effective date; and
5 providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that a key
8 priority of water resource management in the Columbia river basin is
9 the development of new water supplies that includes storage and
10 conservation in order to meet the economic and community development
11 needs of people and the instream flow needs of fish.

12 (2) The legislature therefore declares that a Columbia river basin
13 water supply development program is needed, and directs the department
14 of ecology to aggressively pursue the development of water supplies to
15 benefit both instream and out-of-stream uses.

16 NEW SECTION. **Sec. 2.** (1) The Columbia river basin water supply
17 development account is created in the state treasury. The account may

1 receive direct appropriations from the legislature, receipts of any
2 funds pursuant to sections 3 and 4 of this act, or funds from any other
3 sources.

4 (2)(a) Expenditures from the Columbia river basin water supply
5 development account may be used to assess, plan, and develop new
6 storage, improve or alter operations of existing storage facilities,
7 implement conservation projects, or any other actions designed to
8 provide access to new water supplies within the Columbia river basin
9 for both instream and out-of-stream uses. Except for the development
10 of new storage projects, there shall be no expenditures from this
11 account for water acquisition or transfers from one water resource
12 inventory area to another without specific legislative authority.

13 (b) Two-thirds of the funds placed in the account shall be used to
14 support the development of new storage facilities; the remaining one-
15 third shall be used for the other purposes listed in this section.

16 (3)(a) Funds may not be expended from this account for the
17 construction of a new storage facility until the department of ecology
18 evaluates the following:

- 19 (i) Water uses to be served by the facility;
- 20 (ii) The quantity of water necessary to meet those uses;
- 21 (iii) The benefits and costs to the state of meeting those uses,
22 including short-term and long-term economic, cultural, and
23 environmental effects; and
- 24 (iv) Alternative means of supplying water to meet those uses,
25 including the costs of those alternatives and an analysis of the extent
26 to which long-term water supply needs can be met using these
27 alternatives.

28 (b) The department of ecology may rely on studies and information
29 developed through compliance with other state and federal permit
30 requirements and other sources. The department shall compile its
31 findings and conclusions, and provide a summary of the information it
32 reviewed.

33 (c) Before finalizing its evaluation under the provisions of this
34 section, the department of ecology shall make the preliminary
35 evaluation available to the public. Public comment may be made to the
36 department within thirty days of the date the preliminary evaluation is
37 made public.

1 (4) Net water savings achieved through conservation measures funded
2 by the account shall be placed in trust in proportion to the state
3 funding provided to implement a project.

4 (5) Net water savings achieved through conservation measures funded
5 by the account developed within the boundaries of the federal Columbia
6 river reclamation project and directed to the Odessa subarea to reduce
7 the use of ground water for existing irrigation is exempt from the
8 provisions of subsection (4) of this section.

9 (6) Moneys in the Columbia river basin water supply development
10 account created in this section may be spent only after appropriation.

11 (7) Interest earned by deposits in the account will be retained in
12 the account.

13 NEW SECTION. **Sec. 3.** (1)(a) Water supplies secured through the
14 development of new storage facilities made possible with funding from
15 the Columbia river basin water supply development account shall be
16 allocated as follows:

17 (i) Two-thirds of active storage shall be available for
18 appropriation for out-of-stream uses; and

19 (ii) One-third of active storage shall be available to augment
20 instream flows and shall be managed by the department of ecology. The
21 timing of releases of this water shall be determined by the department
22 of ecology, in cooperation with the department of fish and wildlife and
23 fisheries comanagers, to maximize benefits to salmon and steelhead
24 populations.

25 (b) Water available for appropriation under (a)(i) of this
26 subsection but not yet appropriated shall be temporarily available to
27 augment instream flows to the extent that it does not impair existing
28 water rights.

29 (2) Water developed under the provisions of this section to offset
30 out-of-stream uses and for instream flows is deemed adequate mitigation
31 for the issuance of new water rights provided for in subsection (1)(a)
32 of this section and satisfies all consultation requirements under state
33 law related to the issuance of new water rights.

34 (3) The department of ecology shall focus its efforts to develop
35 water supplies for the Columbia river basin on the following needs:

36 (a) Alternatives to ground water for agricultural users in the
37 Odessa subarea aquifer;

1 (b) Sources of water supply for pending water right applications;

2 (c) A new uninterrupted supply of water for the holders of
3 interruptible water rights on the Columbia river mainstem that are
4 subject to instream flows or other mitigation conditions to protect
5 stream flows; and

6 (d) New municipal, domestic, industrial, and irrigation water needs
7 within the Columbia river basin.

8 (4) The one-third/two-thirds allocation of water resources between
9 instream and out-of-stream uses established in this section does not
10 apply to applications for changes or transfers of existing water rights
11 in the Columbia river basin.

12 NEW SECTION. **Sec. 4.** (1) The department of ecology may enter into
13 voluntary regional agreements for the purpose of providing new water
14 for out-of-stream use, streamlining the application process, and
15 protecting instream flow.

16 (2) Such agreements shall ensure that:

17 (a) For water rights issued from the Columbia river mainstem, there
18 is no negative impact on Columbia river mainstem instream flows in the
19 months of July and August as a result of the new appropriations issued
20 under the agreement;

21 (b) For water rights issued from the lower Snake river mainstem,
22 there is no negative impact on Snake river mainstem instream flows from
23 April through August as a result of the new appropriations issued under
24 the agreement; and

25 (c) Efforts are made to harmonize such agreements with watershed
26 plans adopted under the authority of chapter 90.82 RCW that are
27 applicable to the area covered by the agreement.

28 (3) The protection of instream flow as set forth in subsection (2)
29 of this section is adequate for purposes of mitigating instream flow
30 impacts resulting from any appropriations for out-of-stream use made
31 under a voluntary regional agreement, and the only applicable
32 consultation provisions under state law regarding instream flow impacts
33 shall be those set forth in subsection (4) of this section.

34 (4) Before executing a voluntary agreement under this section, the
35 department of ecology shall:

36 (a) Provide a sixty-day period for consultation with county
37 legislative authorities and watershed planning groups with jurisdiction

1 over the area where the water rights included in the agreement are
2 located, the department of fish and wildlife, and affected tribal
3 governments, and federal agencies. The department of fish and wildlife
4 shall provide written comments within that time period. The
5 consultation process for voluntary regional agreements developed under
6 the provisions of this section is deemed adequate for the issuance of
7 new water rights provided for in this section and satisfies all
8 consultation requirements under state law related to the issuance of
9 new water rights; and

10 (b) Provide a thirty-day public review and comment period for a
11 draft agreement, and publish a summary of any public comments received.
12 The thirty-day review period shall not begin until after the department
13 of ecology has concluded its consultation under (a) of this subsection
14 and the comments that have been received by the department are made
15 available to the public.

16 (5) The provisions of subsection (4) of this section satisfy all
17 applicable consultation requirements under state law.

18 (6) The provisions of this section and any voluntary regional
19 agreements developed under such provisions may not be relied upon by
20 the department of ecology as a precedent, standard, or model that must
21 be followed in any other voluntary regional agreements.

22 (7) Nothing in this section may be interpreted or administered in
23 a manner that precludes the processing of water right applications
24 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
25 regional agreement.

26 (8) Nothing in this section may be interpreted or administered in
27 a manner that impairs or diminishes a valid water right or a habitat
28 conservation plan approved for purposes of compliance with the federal
29 endangered species act.

30 (9) The department of ecology shall monitor and evaluate the water
31 allocated to instream and out-of-stream uses under this section,
32 evaluate the program, and provide an interim report to the appropriate
33 committees of the legislature by June 30, 2008. A final report shall
34 be provided to the appropriate committees of the legislature by June
35 30, 2011.

36 (10) If the department of ecology executes a voluntary agreement
37 under this section that includes water rights appropriated from the

1 lower Snake river mainstem, the department shall develop aggregate data
2 in accordance with the provisions of section 6 of this act for the
3 lower Snake river mainstem.

4 (11) Any agreement entered into under this section shall remain in
5 full force and effect through the term of the agreement regardless of
6 the expiration of this section.

7 (12) The definitions in this subsection apply to this section and
8 section 6 of this act, and may only be used for purposes of
9 implementing these sections.

10 (a) "Columbia river mainstem" means all water in the Columbia river
11 within the ordinary high water mark of the main channel of the Columbia
12 river between the border of the United States and Canada and the
13 Bonneville dam, and all ground water within one mile of the high water
14 mark.

15 (b) "Lower Snake river mainstem" means all water in the lower Snake
16 river within the ordinary high water mark of the main channel of the
17 lower Snake river from the head of Ice Harbor pool to the confluence of
18 the Snake and Columbia rivers, and all ground water within one mile of
19 the high water mark.

20 (13) This section expires June 30, 2012.

21 NEW SECTION. **Sec. 5.** (1) To support the development of new water
22 supplies in the Columbia river and to protect instream flow, the
23 department of ecology shall work with all interested parties, including
24 interested county legislative authorities and watershed planning
25 groups, adjacent to the Columbia river, and affected tribal
26 governments, to develop a Columbia river water supply inventory and a
27 long-term water supply and demand forecast. The inventory must
28 include:

29 (a) A list of conservation projects that have been implemented
30 under this chapter and the amount of water conservation they have
31 achieved; and

32 (b) A list of potential water supply and storage projects in the
33 Columbia river basin, including estimates of:

- 34 (i) Cost per acre-foot;
35 (ii) Benefit to fish and other instream needs;
36 (iii) Benefit to out-of-stream needs; and
37 (iv) Environmental and cultural impacts.

1 (2) The department of ecology shall complete the first Columbia
2 river water supply inventory by November 15, 2006, and shall update the
3 inventory annually thereafter.

4 (3) The department of ecology shall complete the first Columbia
5 river long-term water supply and demand forecast by November 15, 2006,
6 and shall update the report every five years thereafter.

7 NEW SECTION. **Sec. 6.** (1) In order to better understand current
8 water use and instream flows in the Columbia river mainstem, the
9 department of ecology shall establish and maintain a Columbia river
10 mainstem water resources information system that provides the
11 information necessary for effective mainstem water resource planning
12 and management.

13 (2) To accomplish the objective in subsection (1) of this section,
14 the department of ecology shall use information compiled by existing
15 local watershed planning groups, federal agencies, the Bonneville power
16 administration, irrigation districts, conservation districts in the
17 basin, and other available sources. The information shall include:

18 (a) The total aggregate quantity of water rights issued under state
19 permits and certificates and filed under state claims on the Columbia
20 river mainstem and for ground water within one mile of the mainstem;
21 and

22 (b) The total aggregate volume of current water use under these
23 rights as metered and reported by water users under current law.

24 (3) The department of ecology shall publish the aggregate data on
25 the department's web site no later than June 30, 2009, and shall
26 periodically update the data.

27 (4) For purposes of this section, the definition of Columbia river
28 mainstem in section 4(12) of this act shall apply and the use of the
29 definition is solely limited to the purpose of collecting data to meet
30 the information requirements of this section.

31 **Sec. 7.** 2005 c 488 s 332 (uncodified) is amended to read as
32 follows:

33 **FOR THE DEPARTMENT OF ECOLOGY**

34 Columbia River Initiative (06-2-010)

35 The appropriation in this section is subject to the following
36 conditions and limitations:

1 (1) \$6,000,000 is provided solely for feasibility studies related
2 to off-mainstem storage projects and impacts of changing operations at
3 the Potholes reservoir, and grant funding for the purchase and
4 installation of water measuring devices.

5 (2) Of the amount appropriated in this section, \$10,000,000 (~~may~~
6 ~~not be expended prior to enactment of state legislation that~~
7 ~~establishes the policy requirements for a new water resources and water~~
8 ~~rights management program for the Columbia river mainstem. If such~~
9 ~~legislation is not enacted prior to June 30, 2006, this amount shall~~
10 ~~lapse~~) is provided to begin implementation of the Columbia river basin
11 water supply development program in sections 2 through 6 of this act.
12 Within this amount, the department shall support, to the extent that
13 projects are ready to proceed and to the extent that resources allow,
14 the following water supply projects, including, but not limited to:
15 Storage development or storage enhancement projects, projects that
16 provide surface water supply for the Odessa subarea within the
17 boundaries of the Columbia basin federal reclamation project, projects
18 that enhance water supplies for the Walla Walla and Yakima rivers
19 through exchanges and other methods, and investments resulting in water
20 use efficiency. The department shall report progress under this
21 section to the appropriate committees of the legislature by December 1,
22 2006.

23 Appropriation:

24	State Building Construction Account--State	\$16,000,000
25	Prior Biennia (Expenditures)	\$0
26	Future Biennia (Projected Costs)	\$52,610,000
27	TOTAL	\$68,610,000

28 **Sec. 8.** RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005
29 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are
30 each reenacted and amended to read as follows:

31 (1) All earnings of investments of surplus balances in the state
32 treasury shall be deposited to the treasury income account, which
33 account is hereby established in the state treasury.

34 (2) The treasury income account shall be utilized to pay or receive
35 funds associated with federal programs as required by the federal cash
36 management improvement act of 1990. The treasury income account is
37 subject in all respects to chapter 43.88 RCW, but no appropriation is

1 required for refunds or allocations of interest earnings required by
2 the cash management improvement act. Refunds of interest to the
3 federal treasury required under the cash management improvement act
4 fall under RCW 43.88.180 and shall not require appropriation. The
5 office of financial management shall determine the amounts due to or
6 from the federal government pursuant to the cash management improvement
7 act. The office of financial management may direct transfers of funds
8 between accounts as deemed necessary to implement the provisions of the
9 cash management improvement act, and this subsection. Refunds or
10 allocations shall occur prior to the distributions of earnings set
11 forth in subsection (4) of this section.

12 (3) Except for the provisions of RCW 43.84.160, the treasury income
13 account may be utilized for the payment of purchased banking services
14 on behalf of treasury funds including, but not limited to, depository,
15 safekeeping, and disbursement functions for the state treasury and
16 affected state agencies. The treasury income account is subject in all
17 respects to chapter 43.88 RCW, but no appropriation is required for
18 payments to financial institutions. Payments shall occur prior to
19 distribution of earnings set forth in subsection (4) of this section.

20 (4) Monthly, the state treasurer shall distribute the earnings
21 credited to the treasury income account. The state treasurer shall
22 credit the general fund with all the earnings credited to the treasury
23 income account except:

24 (a) The following accounts and funds shall receive their
25 proportionate share of earnings based upon each account's and fund's
26 average daily balance for the period: The capitol building
27 construction account, the Cedar River channel construction and
28 operation account, the Central Washington University capital projects
29 account, the charitable, educational, penal and reformatory
30 institutions account, the Columbia river basin water supply development
31 account, the common school construction fund, the county criminal
32 justice assistance account, the county sales and use tax equalization
33 account, the data processing building construction account, the
34 deferred compensation administrative account, the deferred compensation
35 principal account, the department of retirement systems expense
36 account, the developmental disabilities community trust account, the
37 drinking water assistance account, the drinking water assistance
38 administrative account, the drinking water assistance repayment

1 account, the Eastern Washington University capital projects account,
2 the education construction fund, the education legacy trust account,
3 the election account, the emergency reserve fund, The Evergreen State
4 College capital projects account, the federal forest revolving account,
5 the freight mobility investment account, the health services account,
6 the public health services account, the health system capacity account,
7 the personal health services account, the state higher education
8 construction account, the higher education construction account, the
9 highway infrastructure account, the high-occupancy toll lanes
10 operations account, the industrial insurance premium refund account,
11 the judges' retirement account, the judicial retirement administrative
12 account, the judicial retirement principal account, the local leasehold
13 excise tax account, the local real estate excise tax account, the local
14 sales and use tax account, the medical aid account, the mobile home
15 park relocation fund, the multimodal transportation account, the
16 municipal criminal justice assistance account, the municipal sales and
17 use tax equalization account, the natural resources deposit account,
18 the oyster reserve land account, the perpetual surveillance and
19 maintenance account, the public employees' retirement system plan 1
20 account, the public employees' retirement system combined plan 2 and
21 plan 3 account, the public facilities construction loan revolving
22 account beginning July 1, 2004, the public health supplemental account,
23 the public works assistance account, the Puyallup tribal settlement
24 account, the real estate appraiser commission account, the regional
25 transportation investment district account, the resource management
26 cost account, the rural Washington loan fund, the site closure account,
27 the small city pavement and sidewalk account, the special wildlife
28 account, the state employees' insurance account, the state employees'
29 insurance reserve account, the state investment board expense account,
30 the state investment board commingled trust fund accounts, the
31 supplemental pension account, the Tacoma Narrows toll bridge account,
32 the teachers' retirement system plan 1 account, the teachers'
33 retirement system combined plan 2 and plan 3 account, the tobacco
34 prevention and control account, the tobacco settlement account, the
35 transportation infrastructure account, the transportation partnership
36 account, the tuition recovery trust fund, the University of Washington
37 bond retirement fund, the University of Washington building account,
38 the volunteer fire fighters' and reserve officers' relief and pension

1 principal fund, the volunteer fire fighters' and reserve officers'
2 administrative fund, the Washington fruit express account, the
3 Washington judicial retirement system account, the Washington law
4 enforcement officers' and fire fighters' system plan 1 retirement
5 account, the Washington law enforcement officers' and fire fighters'
6 system plan 2 retirement account, the Washington public safety
7 employees' plan 2 retirement account, the Washington school employees'
8 retirement system combined plan 2 and 3 account, the Washington state
9 health insurance pool account, the Washington state patrol retirement
10 account, the Washington State University building account, the
11 Washington State University bond retirement fund, the water pollution
12 control revolving fund, and the Western Washington University capital
13 projects account. Earnings derived from investing balances of the
14 agricultural permanent fund, the normal school permanent fund, the
15 permanent common school fund, the scientific permanent fund, and the
16 state university permanent fund shall be allocated to their respective
17 beneficiary accounts. All earnings to be distributed under this
18 subsection (4)(a) shall first be reduced by the allocation to the state
19 treasurer's service fund pursuant to RCW 43.08.190.

20 (b) The following accounts and funds shall receive eighty percent
21 of their proportionate share of earnings based upon each account's or
22 fund's average daily balance for the period: The aeronautics account,
23 the aircraft search and rescue account, the county arterial
24 preservation account, the department of licensing services account, the
25 essential rail assistance account, the ferry bond retirement fund, the
26 grade crossing protective fund, the high capacity transportation
27 account, the highway bond retirement fund, the highway safety account,
28 the motor vehicle fund, the motorcycle safety education account, the
29 pilotage account, the public transportation systems account, the Puget
30 Sound capital construction account, the Puget Sound ferry operations
31 account, the recreational vehicle account, the rural arterial trust
32 account, the safety and education account, the special category C
33 account, the state patrol highway account, the transportation 2003
34 account (nickel account), the transportation equipment fund, the
35 transportation fund, the transportation improvement account, the
36 transportation improvement board bond retirement account, and the urban
37 arterial trust account.

1 (5) In conformance with Article II, section 37 of the state
2 Constitution, no treasury accounts or funds shall be allocated earnings
3 without the specific affirmative directive of this section.

4 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act constitute
5 a new chapter in Title 90 RCW.

6 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2006.

7 NEW SECTION. **Sec. 11.** If specific authority to issue general
8 obligation bonds of at least two hundred million dollars for the
9 purposes of this act, referencing this act by bill or chapter number,
10 is not provided by June 30, 2006, in a bond authorization act, this act
11 is null and void.

 Passed by the House February 13, 2006.

 Passed by the Senate February 14, 2006.

 Approved by the Governor February 16, 2006.

 Filed in Office of Secretary of State February 16, 2006.