

# SENATE BILL REPORT

## SB 6467

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As of February 3, 2014

**Title:** An act relating to ensuring that existing exempt water uses in the Skagit river basin are not subject to interruption.

**Brief Description:** Ensuring that existing exempt water uses in the Skagit river basin are not subject to interruption.

**Sponsors:** Senators Honeyford, Bailey, Becker, Angel and Pearson.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 2/04/14.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Staff:** Diane Smith (786-7410)

**Background:** On October 3, 2013, the Swinomish case was decided by the Washington State Supreme Court in *Swinomish Indian Tribal Community v. Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013). In this case, the Washington State Supreme Court invalidated the uninterruptable water rights of 475 homes and eight businesses in the Skagit River basin. These homes and businesses were developed between April 14, 2001, and October 3, 2013, using groundwater wells. On April 14, 2001, the Department of Ecology (DOE) established an in-stream flow rule for the Skagit River basin.

The 2001 in-stream flow rule did not include allocations or reserves for other future uses. In 2006 DOE amended the 2001 rule, using as its authority a statutory provision allowing for overriding considerations of the public interest (OCPI). This amendment established 27 non-interruptible reservations for uses including rural permit-exempt wells. The 475 homes and eight businesses relied on these reservations for their water supplies.

DOE found in applying an economic balancing test as part of the 2006 amendment that the total of these reservations would not significantly harm fish runs. The Supreme Court held that DOE's amendment of the in-stream flow rule to allow these reservations was invalid because the OCPI was a narrow exception into which the amended rule did not fit.

**Summary of Bill:** The bill as referred to committee not considered.

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*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.*

**Summary of Bill (Proposed First Substitute):** Permit-exempt wells established between April 14, 2001, and October 3, 2013, in the Skagit River basin are not subject to interruption from in-stream flow rules previously established for the basin.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2014.

**Committee/Commission/Task Force Created:** No.

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