

SSB 5298 - S AMD 482

By Senator Ericksen

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that foreign
4 water is a unique commodity that does not naturally contribute as a
5 source of water supply to a river, river basin, or groundwater in a
6 basin where the foreign water is imported or developed and used. The
7 legislature recognizes that opportunities to use foreign water as a
8 domestic water source are rare but have the potential for great
9 environmental benefits. Further, the legislature recognizes that the
10 city of Lynden is uniquely positioned to use foreign water for
11 domestic use. Further, the legislature recognizes that the city of
12 Lynden is actively pursuing implementation of a major salmon habitat
13 restoration project on Pepin creek, a tributary of the Nooksack
14 river, that will improve habitat for several endangered species in
15 the Nooksack river.

16 (2) The legislature further recognizes that the implementation of
17 this act does not alleviate the need to fully evaluate the water
18 rights throughout the Nooksack river basin and develop a
19 comprehensive solution to adequate water supply for all parties, and
20 in particular, native tribes.

21 **Sec. 2.** RCW 90.03.397 and 2011 c 117 s 1 are each amended to
22 read as follows:

23 (1) The department may approve a change of the point of diversion
24 prescribed in a permit to appropriate surface water for a beneficial
25 use if the ownership, purpose of use, season of use, and place of use
26 of the permit remain the same to an approved intake structure with
27 capacity to transport the additional diversion to either: (a) A point
28 of diversion that is located downstream; or (b) a point of diversion
29 located between Columbia river miles 215.6 and 292, if the existing
30 point of diversion is contained therein.

1 (2) This section may not be construed as limiting in any manner
2 whatsoever other authorities of the department under RCW 90.03.380 or
3 other changes that may be approved under RCW 90.03.380 under
4 authorities existing before July 25, 1999.

5 (3)(a) Except as otherwise provided in this section, the
6 legislature finds that it will clearly serve overriding
7 considerations of the public interest for the department to make
8 uninterruptible supplies of water available for appropriation for a
9 municipal water supplier, notwithstanding any minimum instream flows
10 or levels established under chapter 90.22 or 90.54 RCW, when all of
11 the following conditions are satisfied:

12 (i) For both the instantaneous rate of the diversion, as measured
13 on a daily basis, and the annual volume of the diversion, a quantity
14 of foreign water that is equivalent to or greater than the quantity
15 of water diverted by the municipal water supplier is introduced:

16 (A) Into the Nooksack river, between river mile seventeen and
17 river mile nineteen; and

18 (B) Less than one mile downstream from the point of diversion;

19 (ii) The instantaneous diversion represents no more than 0.1
20 percent of adopted minimum instream flows or levels;

21 (iii) The total volume diverted and the total volume of foreign
22 water introduced are measured and reported to the department no less
23 than four times per year; and

24 (iv) The introduction of foreign water complies with all
25 applicable water quality regulations for receiving water and all
26 local, state, and federal permitting requirements.

27 (b) For the purposes of this subsection, "foreign water" means
28 water that does not naturally contribute as a source of water supply
29 that would reach the river, river basin, or groundwater associated
30 with the location of the diversion.

31 (c) Nothing in this section:

32 (i) Allows the instantaneous diversion of foreign water between
33 river mile seventeen and river mile nineteen on the Nooksack river at
34 any time when the amount of water in the Nooksack river is at or
35 below any minimum instream flows or levels established by the
36 department;

37 (ii) Allows the instantaneous diversion of foreign water between
38 river mile seventeen and river mile nineteen on the Nooksack river at
39 any time when the diversion would cause the amount of water in the

1 Nooksack river to fall below any minimum instream flows or levels
2 established by the department;
3 (iii) Limits the ability of the legislature to reconsider its
4 finding relating to the overriding consideration of public interest
5 as described in this section in the event of future changed
6 circumstances; and
7 (iv) May be construed to affect, constrain, or otherwise limit
8 the authority of the department to determine that overriding
9 considerations of the public interest have been met in approving new
10 withdrawals under RCW 90.54.020(3)."

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11 On page 1, line 1 of the title, after "waters;" strike the
12 remainder of the title and insert "amending RCW 90.03.397; and
13 creating a new section."

EFFECT: Limits the provision of the bill to municipal water diversion occurring between river miles seventeen and nineteen on the Nooksack river, states that the legislature can reconsider its finding of an overriding consideration of public interest should circumstances change, limits the provisions of the bill in times when minimum instream flows are not being met or when foreign water diversions will cause river levels to fall below minimum instream flows, and provides an intent section.

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