

# HOUSE BILL REPORT

## HB 1534

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to water pollution.

**Brief Description:** Clarifying the state's authority to regulate water pollution.

**Sponsors:** Representatives Condotta, Schoesler, Chandler, Clements, Newhouse, Armstrong and Holmquist.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/12/03, 2/28/03 [DP].

**Brief Summary of Bill**

- Amends the definition of "pollution" in the state water pollution control statutes to exclude the exercise of a water right, claim, permit, or certificate granted under state law.
- Specifies for enforcement actions the Department of Ecology may rely only on authority statutes regarding surface waters, ground waters, and water rights to condition, limit, regulate, or control any claim, permit, or certificate to withdraw or divert water.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Orcutt, Quall and Sump.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hunt and McDermott.

**Staff:** Caroleen Dineen (786-7156).

**Background:**

## Federal Clean Water Act

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate discharge of pollutants into navigable waters. The CWA defines "pollutant" to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. "Navigable waters" is defined broadly in the CWA to include: (1) navigable waters and their tributaries; (2) interstate waters; (3) oceans out to 200 miles; and (4) intrastate waters if used for recreation by interstate travelers or if used for commercial fishing or industrial activities related to interstate commerce.

The CWA set technology-based effluent limitations for discharges to navigable waters and authorized federal grants to finance sewage treatment systems improvements. The CWA also requires states to adopt water quality standards to protect fish, other aquatic life, and humans. Water quality standards specify the desired water quality to be achieved or maintained and protect existing water quality from degradation.

Finally, the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are discernable, discrete, and confined conveyances from which pollutant discharges can or do occur. NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters.

The United States Environmental Protection Agency (EPA) implements the CWA. The EPA may delegate authority to states to issue NPDES permits and administers the NPDES program in nondelegated states. The Washington Department of Ecology (DOE) has been delegated NPDES permit authority by the EPA.

## State Water Pollution Control Law

Washington's Pollution Disclosure Act of 1971 requires all pollution dischargers to use all known, available, and reasonable methods of wastewater treatment before discharge to prevent pollution. "Pollution" is defined for purposes of state law as contamination or alternation of the physical, chemical, or biological properties of any state waters. The definition includes changes in temperature, taste, color, turbidity, or odor of water or any discharge of liquid, gas, solid, radioactive, or other substances into water likely to create a nuisance or cause waters to jeopardize public health, safety, or welfare or injure beneficial uses or livestock, animals, birds, fish or other aquatic life.

In addition to its NPDES permit responsibilities, the DOE administers a state permit program for discharge of pollutants to state waters. State permits are required for: (1) anyone who discharges waste materials from a commercial or industrial operation to

ground or to publicly-owned treatment plants; and (2) municipalities that discharge to ground.

### Oil and Hazardous Substance Spill Prevention and Response

The state enacted comprehensive oil and hazardous substance spill prevention and response legislation in 1991. In addition to other requirements, the Director of the DOE is authorized to supervise oil and hazardous substance spill prevention, abatement, response, containment, and cleanup efforts in the navigable waters of the state. The Director of the DOE also serves as the head of the state incident command system for a spill of oil or hazardous substances and must coordinate the response efforts of all state agencies and local emergency response personnel. Further, the DOE is required by statute to prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan.

### Legal Actions

The DOE may bring an action, including an action for injunctive relief, to enforce or implement statutes governing water pollution control and oil and hazardous substance spill prevention and response.

In 1994 the United States Supreme Court determined that states may condition water quality certification for a hydroelectric power plant on any limitations necessary to ensure compliance with state water quality standards. *PUD No. 1 of Jefferson County v. Department of Ecology*, 511 U.S. 700 (1994). The court in that case concluded that a minimum flow condition was an appropriate requirement of state law on which to condition the water quality certification.

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### **Summary of Bill:**

The definition of "pollution" for purposes of the state water pollution control statutes is amended to exclude exercise of a water right, claim, permit, or certificate granted under state law.

Statutory provisions authorizing the DOE to bring an action to enforce state water pollution law are amended. In any enforcement action, the DOE may rely only on authority granted in state statutes regarding surface waters, ground waters, and water rights to condition, limit, regulate, or control any claim, permit, or certificate to withdraw or divert water.

State policy is amended to specify that authority to regulate water pollution is based on powers granted in the state water pollution control statutes.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The exercise of a water right cannot be defined as pollution. Methow Valley Irrigation District has received a notice of violation for discharge of pollution. The definition of pollution seems to include every property of water. The law needs to be written more precisely so that the definition of pollution includes only an actual discharge.

The federal Clean Water Act and state water pollution control statutes provide sufficient authority for regulating water pollution. This bill clarifies that the water rights statutes control when an existing water right has been issued and that the water pollution control statutes govern pollutant discharges. This bill is not an attempt to overturn the United States Supreme Court decision or the DOE's ability to administer the federal Clean Water Act.

Water as a property right has to be protected. The intent of the federal Clean Water Act is not to abrogate state water rights. Agency mistakes in interpreting the law can cost citizens thousands of dollars in legal fees.

Human use of water is a very small percentage of the total water supply in the Methow basin. It is essential to continue surface water diversions in the Methow basin to maintain the agricultural land base and rural lifestyle.

**Testimony Against:** This bill is not a balanced approach. This bill is a blunt instrument to address a fairly technical issue. The Methow Valley Irrigation District situation is the catalyst for this bill, but its provisions apply statewide. The DOE needs to retain its authority to condition federally licensed projects.

This bill attempts to decouple water quality and water quantity. The connection between water quality and water quantity has been recognized scientifically, politically, and economically. The United States Supreme Court has recognized that reduction in water quantity can equal pollution under the federal Clean Water Act.

The misuse of a water right can be a water quality violation. The Methow Valley Irrigation District case involved a waste of water, and that case includes both water code and water quality violations.

**Testified:** (In support) Representative Condotta, prime sponsor; Mike Schwisow,

Washington State Water Resources Association; Kathleen Collins, Washington Water Policy Alliance; Jim Miller, City of Everett; William Hahn, Washington PUD Association; Scott Hazelgrove, Washington Association of Sewer and Water Districts; John Kirner, Tacoma Water Utility; Hertha Lund and Mike Poulson, Washington Farm Bureau; Ron Perrow; Marty Williams; and Michael Gage.

(Concerns) Dick Wallace, Department of Ecology.

(Opposed) Carl Samuelson, Department of Fish and Wildlife; David Mears, Washington Attorney General's Office; Michael Moran, Center for Environmental Law and Policy; Craig Engelking, Sierra Club; and Josh Baldi, Washington Environmental Council.