

# SENATE BILL REPORT

## SB 5287

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As of February 7, 2003

**Title:** An act relating to recognizing interests based upon federal laws in the management of state waters.

**Brief Description:** Recognizing interests based on federal laws in the management of state waters.

**Sponsors:** Senators Fraser, Jacobsen, Kline and Kohl-Welles.

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 2/7/03.

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### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

**Staff:** Evan Sheffels (786-7486)

**Background:** In October 2002, the Washington State Attorney General issued a report to the Legislature entitled "Federal and Indian Reserved Water Rights." That report summarized federal and Indian reserved rights as follows: "Many of these rights have not yet been judicially confirmed, quantified, or prioritized. The uncertainty surrounding the existence, quantity, and priority of these rights in a particular watershed gives rise to an overall uncertainty among all water users in the watershed.... Issues, such as whether a particular reservation creates a water right and, if so, for what quantity and with what priority date, are questions that depend upon the particular facts, circumstances, and legal documents surrounding the creation of the reservation."

Federal reserved water rights, which vest on the date the reservation is created and are not subject to relinquishment, are often among the most senior rights in the "first in time, first in right" hierarchy. They are also often characterized as large, but undefined and perhaps inchoate (dormant), in quantity. These uncertainties make it difficult to assess the amount of water actually available for appropriation in a watershed where senior, unquantified federal or tribal rights must be protected from impairment.

Tribal reserved rights include rights to both water and other resources, such as fish and wildlife. Such rights can be expressly granted by treaty or by congressional action. Conversely, a tribe's native or aboriginal rights, dating from time immemorial, may be expressly or implicitly *reserved* to the extent they were never expressly granted to the federal government. In carrying out the United States government's trust responsibilities, the federal Bureau of Indian Affairs has participated on behalf of Indian tribes in adjudicating Indian reserved claims.

In addition to reserved tribal interests, the federal government implicitly reserves large water rights sufficient to satisfy the primary purposes of various reservations of land, ranging from national forests to military installations and Indian reservations. A federal law, known as the

McCarran Amendment, allows a state to join the United States as a defendant so that federal water rights may be addressed and resolved in general water right adjudications in state court.

Numerous other federal laws, most notably the Clean Water Act and the Endangered Species Act, also intersect with the state's management of water resources.

**Summary of Bill:** RCW 90.54.020, the state's general declaration of fundamentals that shall guide the utilization and management of the state's waters, is amended to include the following policy: the state will recognize federal reserved rights, tribal federal treaty rights, and applicable requirements of federal law, and will seek to integrate the interests encompassed by or related to these rights into state water policy.

**Appropriation:** None.

**Fiscal Note:** Requested on February 5, 2003.

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