

SENATE BILL REPORT

SB 5794

As of February 21, 2017

Title: An act relating to the transfer of seasonal irrigation water rights to the trust water rights program for the purpose of providing mitigation water to a third party for year-round potable water supplies.

Brief Description: Concerning the transfer of seasonal irrigation water rights to the trust water rights program for the purpose of providing mitigation water to a third party for year-round potable water supplies.

Sponsors: Senator Short.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 2/16/17.

Brief Summary of Bill

- Provides that a transfer of a seasonal irrigation water right to the Trust Water Rights Program for the purpose of providing mitigation water for year-round potable water supplies may not be considered to cause impairment to instream flows under certain conditions.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Staff: Karen Epps (786-7424)

Background: Water Rights. Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. Exemptions include any withdrawal of public groundwater for stock watering purposes, for watering a lawn, or for a noncommercial garden less than one half an acre. Single or group domestic uses or industrial purposes not exceeding 5000 gallons a day are also exempt.

The Department of Ecology (Ecology) must consider a four-part test when deciding whether to issue a new water right, specifically whether: (1) water is available, (2) a beneficial use of water would be made, (3) granting the right would impair existing rights, and (4) the

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proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Instream Flow Rules. Ecology has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. These minimum water flow levels, commonly called instream flows, function as water rights with a priority date set at the adoption date of the corresponding rule. Instream flows have been set in 29 watersheds plus the mainstem of the Columbia River. The instream flow cannot affect an existing water right with a senior priority date.

Trust Water Rights Program. The Trust Water Rights Program enables the voluntary transfer of water and water rights to the state, either temporarily or permanently. While a water right is held in trust, it is considered an exercised water right and is protected from relinquishment. Additionally, water held in trust retains its original priority date. Generally, the process to establish a water bank begins with a consultation between Ecology's Water Resources Program and a would-be banker. If Ecology agrees that the banker's proposal is within the public's interest, a water banking agreement may be negotiated. This agreement describes how Ecology will take ownership of a water right and hold it in the Trust Water Rights Program in exchange for processing applications for mitigated new uses.

Summary of Bill: A transfer of a seasonal irrigation water right to the Trust Water Rights Program for the purpose of providing mitigation water for year-round potable water supplies may not be considered to cause impairment to instream flows adopted by Ecology as long as the transfer of the water for mitigation does not exceed the total use and consumptive use that is available under the water right in the Trust Water Rights Program.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Counties are looking at water banking opportunities to provide mitigation to allow housing development and allow industrial development. For Spokane County and the two northern counties, they have been working for about three years on a water bank. This bill specifically helps the tri-county region as they look to develop a water bank. Spokane County has purchased a water right that would provide mitigation for 1600 homes. This bill would provide a flexible and streamlined approach to move that water into the water bank so it can be used for mitigation. This bill will move this process along much quicker and allow water banking to work more effectively statewide. The demand curve for domestic use is very similar to the demand curve for irrigation use in that most of the demand curve is in the summer. This bill will also shift some water use from the summer to the winter and will actually improve summer instream

flows. This bill is about economic development for these three counties. These transfers will occur when there is an increase to instream flows in the summer months and if that is not the case, these transfers do not occur.

CON: There is a commitment to making water banks work and there will be a need to incorporate some of what is in this bill into a larger fix. This bill allows for seasonal water rights to be used as mitigation for year round impacts from domestic use. While the total volume of water used would be mitigated for, the timing of the mitigation would be off. There is a better solution to address these seasonal water rights and the fact that it is not mitigating year round, which would be in the form of mitigation projects such as off-stream storage projects and flow augmentation projects. There is opposition to turning a seasonal water right into a year round water right.

OTHER: There is support for the concept of the bill and to encourage water banking. Additional flexibility is needed to provide the balance between instream and out of stream water use, especially in rural areas. The bill attempts to promote water banking and transfer some of the impacts from critical summer season, allow people to use water for domestic use, and transfer those impacts to the less critical winter season. There are some technical issues with the way the bill is drafted. In some areas of the state, water banks are a good tool, but in other areas of the state water banks do not work. The ideas in this bill should be integrated into a larger bill.

Persons Testifying: PRO: Senator Shelly Short, Prime Sponsor; Shelly O'Quinn, Spokane County Commissioner; Mike Hermanson, Spokane County Water Resources; Carl Einberger, Aspect Consulting; Wes McCart, Stevens County Commissioner.

CON: Anne Savery, Tulalip Tribes; Bruce Wishart, CELP / Sierra Club.

OTHER: David Christensen, Ecology; Kathleen Collins, WA Water Policy Alliance.

Persons Signed In To Testify But Not Testifying: No one.