
**Agriculture & Natural Resources
Committee**

ESB 6589

Brief Description: Concerning a feasibility study to examine whether water storage would provide noninterruptible water resources to users of permit exempt wells.

Sponsors: Senators Bailey, Pearson and Warnick.

Brief Summary of Engrossed Bill

- Requires the Department of Ecology to examine the feasibility of using water storage to recharge the Skagit River basin as needed to satisfy minimum instream flow requirements and to provide non-interruptible water resources to the users of permit exempt wells.

Hearing Date: 2/24/16

Staff: Jason Callahan (786-7117).

Background:

Instream Flows.

The Department of Ecology (Department) 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 levels, commonly called "instream flows", essentially function as water rights with a priority date set at the adoption date of the corresponding rule.

The establishment of an instream flow cannot affect an existing water right with a senior time priority date. Likewise, the Department may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serve to satisfy an overriding consideration of the public interest.

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.

As of today, there is an instream flow rule in place for almost half of the state's 64 identified watersheds.

Exempt Groundwater Wells.

All groundwater withdrawals require an application and permit from the Department. However, there is a class of lawful, unpermitted wells, often referred to as "permit exempt wells," which may be constructed and used without first obtaining a permit from the Department. Exemptions from the permitting requirement include any withdrawal of public groundwater for stock-watering purposes, or for watering a lawn or a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes in an amount not exceeding 5,000 gallons a day are also included in the class of permit exempt wells.

The Department has exercised authority in certain regions of the state to limit the availability of new permit exempt wells. This includes agency rules applicable to portions of Skagit, Kittitas, Clallam, and Jefferson counties.

Skagit River Basin.

The Department adopted specific rules related to instream flows and interruptible water withdrawals in the Skagit River basin in 2001. In 2006, in response to a legal settlement, the Department amended these rules to assure that certain future withdrawals were uninterruptible. The rules included a determination by the Department that water is not available in the Skagit River basin for new year-round consumptive appropriations. The Department's rule set aside a limited amount of surface water for future out-of-stream uses in the Skagit River basin; however, with some exceptions, the basin was to be closed to future appropriation once those set asides were allocated. These reservations provided uninterruptible water supplies for new agricultural, residential, commercial or industrial, and livestock uses across 25 sub-basins of the Skagit River.

In October 2013 the Washington Supreme Court invalidated a portion of the Department rules (*Swinomish Indian Tribal Community v. Washington State Department of Ecology*). The Supreme Court held that the exception for withdrawals that effect an instream flow to address an overriding consideration of the public interest is narrow and requires extraordinary circumstances before the minimum flow water right can be impaired. The Court also found that the Department could not set aside water reservations through water management rules where it had previously set aside water to support stream flows for fish.

Summary of Bill:

The Department is required to examine the feasibility of using effectively sized water storage to recharge the Skagit River basin as needed to satisfy minimum instream flow requirements and to provide non-interruptible water resources to the users of permit exempt wells. The study must be conducted in cooperation with the Department of Health, Skagit County, tribes, and any non-municipally owned private water systems located in the Skagit River basin.

A report outlining the Department's findings must be delivered to the Legislature by December 1, 2016.

Appropriation: None.

Fiscal Note: Available.

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