

SENATE BILL REPORT

SB 6077

As Reported by Senate Committee On:
Environment, Water & Energy, February 25, 2009

Title: An act relating to improving water management through filing notice of foregone water use and establishing a monitoring system.

Brief Description: Improving water management.

Sponsors: Senator Rockefeller.

Brief History:

Committee Activity: Environment, Water & Energy: 2/24/09, 2/25/09 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 6077 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Fraser, Marr, Morton, Ranker and Sheldon.

Minority Report: Do not pass.

Signed by Senators Delvin and Holmquist.

Minority Report: That it be referred without recommendation.

Signed by Senator Hatfield.

Staff: Karen Epps (786-7424)

Background: Washington water law is based on the prior appropriation doctrine. The doctrine known as "first in time is first in right" creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent, while use of water under more junior rights may be reduced or prohibited. Under the relinquishment statute, if persons abandon or voluntarily fail to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state.

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.

The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's Trust Water Rights Program and managed by the Department of Ecology (Ecology). Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Ecology places into the Trust Water Rights Program the full amount of water diverted or withdrawn according to a water right donated or acquired on a temporary basis. This same amount reverts to the donor or original right holder when the trust period ends. Statutory relinquishment provisions do not apply to trust water rights.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): A person may provide written notice to Ecology of their election to forego water use or a portion of their water use without the period of nonuse being included within the five-year period of nonuse constituting relinquishment. This foregone water is deemed to be a temporary trust water right. This foregone water must be used by Ecology for the maintenance and enhancement of stream flows and to preserve or restore aquifer conditions. The water right holder or claimant may revoke or amend the election to forego water use at any time by submitting a notice in writing to Ecology. Ecology must provide notice annually to water right holders or claimants who have a notice of foregone water use in operation. The water right holder or claimant must provide updated notice if any information in the existing notice has changed. Ecology may invalidate a notice of foregone water use for good cause, including situations in which the water right holder or claimant is not acting in good faith, if the water right holder or claimant is acting fraudulently, or in situations in which the foregone water use is not bona fide. Ecology must include in the report on the Trust Water Rights Program the number of notices received, how much water the notices involve, the geographic locations affected by the notices, and the impacts on streams.

Additionally, Ecology must prepare, by June 30, 2010, a data gap analysis that includes:

- summarizing historic and current monitoring of groundwater and surface water levels and water quality across the state;
- evaluating the completeness and quality of the data and conclusions produced from such monitoring;
- identifying basins where water quantity levels are of concern but no monitoring is being conducted;
- evaluating and recommending quality controls and other protocols associated with data collection;
- summarizing and compiling existing studies of groundwater and surface water levels, water quality, and monitoring activities; and
- recommending components necessary to establish a comprehensive, statewide groundwater and surface water monitoring and assessment program and the funding necessary to implement the program.

Ecology must submit the data gap analysis to the Legislature.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute as Passed Committee): Requires Ecology to

provide notice annually to water right holders or claimants who have a notice of foregone water use in operation. Requires the water right holder or claimant to provide updated notice if any information has changed. Establishes that Ecology may invalidate a notice of foregone water use for good cause, including situations in which the water right holder or claimant is not acting in good faith, if the water right holder or claimant is acting fraudulently, or in situations in which the foregone water use is not bona fide.

Appropriation: None.

Fiscal Note: Requested on February 21, 2009.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: It is a small step forward from the stakeholder group. This bill will allow a water right holder to provide notice in for a donation into the trust program, which right now is a complex form and allows for notice back out. This bill will make it easier for water users to avail themselves of the protections of the Trust Water Rights Program to be used for instream flows. One goal of this legislation is to get more water instream and that the water stays instream. This bill does not expand relinquishment. It does not force a water user to use the full extent of their water once every five years. However, it is important that there be an enforcement mechanism and a data piece so that Ecology knows that the water is staying instream. It is important to start collecting information about water uses. This is a prospective only approach to provide relinquishment flexibility. There needs to be oversight of this program and a trust water right master, so that the water master is able to enforce and address illegal water use.

CON: This change to the relinquishment rules as proposed in this bill will not help instream flows. This bill allows private water right holders, rather than the state, to determine the future use of water that is no longer needed or used by a water right holder by allowing the holder to make a call to Ecology that they are not going to use all their water. The Muckleshoot Tribe was not a participant in the discussion around this bill. There is concern about whether or not the water that would be put into the trust program would undergo a determination of validity of that water right or claim. This provides relief to water users without adequate protection of tribal water rights. There is no protection that the junior water right user won't take water from the stream to meet that person's water needs.

Persons Testifying: **PRO:** John Stuhlmiller, Washington Farm Bureau; Mo McBroom, Washington Environmental Council; Kathleen Collins, Washington Water Policy Alliance; Darcy Nonemacher, American Rivers.

CON: Martin Durkin, Jr., Muckleshoot Indian Tribe; Dawn Vyvyan, Yakama Nation and Puyallup Tribe; Steve Robinson, Northwest Indian Fisheries Commission.