HOUSE BILL REPORT

HB 2629

As Reported By House Committee on:
Fisheries & Wildlife

Title: An act relating to declining stocks of salmonids.

Brief Description: Conserving water to halt the decline in wild stocks of salmonids.

Sponsor(s): Representatives R. King, Orr, G. Cole, Belcher, May, Rust, Fraser, Morris, R. Meyers, Basich, Leonard, Zellinsky, Nelson and Jacobsen.

Brief History:
Reported by House Committee on:
Fisheries & Wildlife, February 6, 1992, DPS.

HOUSE COMMITTEE ON FISHERIES & WILDLIFE

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 7 members: Representatives R. King, Chair; Morris, Vice Chair; Basich; G. Cole; Haugen; Orr; and Spanel.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Wilson, Ranking Minority Member; Fuhrman, Assistant Ranking Minority Member; Hochstatter; and Padden.

Staff: Keitlyn Watson (786-7310).

Background: Adequate instream flows are important for fish. The Endangered Species Committee of the American Fisheries Society (AFS) identified several stocks of salmonids that are in decline due to, in part, lack of adequate instream flows. The rivers containing these stocks are the Dewatto, Tahuya, Cowlitz tributaries, Dungeness, Okanogan, Wenatchee, Methow, and Entiat. No minimum flows have been adopted by the Department of Ecology (DOE) for the Entiat, Dungeness, or Cowlitz tributaries. The DOE has adopted rules that set minimum flow levels for the Dewatto, Tahuya, Wenatchee, Methow and Okanogan rivers. According to the conclusions reached by the AFS, these may be insufficient to meet the needs of the stocks of concern.

Water conservation techniques can help to achieve or restore adequate flows where they are currently inadequate. These

techniques can include incentives and can be applied selectively to areas where known problems exist.

Water use in Washington includes municipal, industrial, irrigation, hydroelectric generation, and instream uses. Irrigation accounts for the majority of water use in Washington. Water withdrawals in eastern Washington are primarily from surface water sources and used for irrigation. The largest surface water withdrawals are from the upper Columbia and Yakima river basins. In western Washington, withdrawals are also from surface water, but the main use is for public supply. Groundwater withdrawals are mainly from the Columbia river aquifer.

The DOE is the lead agency in water resource management. The Department of Health (DOH) and the Utilities and Transportation Commission (UTC) share the goal of assuring safe and reliable supplies of drinking water. The DOH has the authority under RCW 70.119A to implement the federal Safe Drinking Water Act amendments of 1986. DOH has regulatory jurisdiction over 12,500 public water systems. The UTC has regulatory jurisdiction over 65 water systems. The UTC has regulatory jurisdiction over investor-owned water companies.

Water System Funding

In Washington, any water system serving two or more connections is classified as a public water system. A public water system can be publicly or privately owned. Publicly owned systems include water districts, public utility districts, and cities and towns. Privately owned water systems include companies, associations, mutuals, and cooperatives. There are currently over 12,500 public water systems in the state of Washington that have two or more service connections. Over 12,300 of these have less than 1,000 service connections and are defined as small water systems. These systems often have financial problems, and 95 percent of them are privately owned.

Traditional funding sources for capital improvements such as grants and bonds are available only to publicly owned water systems. State public funding programs, in the form of grants and low interest loans, are the major source of financing for water system capital improvement projects. Public funding programs provided approximately $18.5 million during 1990 for water system capital improvements. One of these funding sources is the referendum 38 bond fund for municipal and irrigation water supply funding.

The referendum 38 bond fund, passed in 1979, directed the allocation of $75 million in funds to the DOH and $50

million in funds to the DOE for administration for municipal and agricultural water supply facilities. The funds administered by DOH are depleted. Approximately $30 million remains of the fund administered by DOE.

Trust Water Rights

In 1991, the Legislature passed ESHB 2026, which authorized a trust water rights program to be established in two pilot planning areas, and in up to eight water resource inventory areas designated by the Department of Ecology. Through this program, the state may acquire water rights by gift, purchases, or through dedication of public funds for water conservation projects, in exchange for rights to the net water savings achieved by the project. Acquisitions of trust rights must be voluntary and agreed to by all parties and must not impair existing water rights.

Water Resources Forum

Members of the Joint Select Committee on Water Resource Policy, other legislators, the governor's office, and tribal leaders agreed in 1990 to develop a process for regional water resources planning. ESHB 2932, passed by the Legislature in 1990, required that this occur. The Chelan Agreement was formulated to provide a framework for this planning, and the Water Resources Forum is carrying out the planning process.

Rate Structures

Under current law, water purveyors including irrigation districts, public utility districts, municipalities, sewer districts, water districts, and public water companies are authorized to consider water conservation in establishing rates or charges for water service. This authorization was explicitly given for many of these purveyors by ESHB 2026.

RCW 43.20.230 requires the Department of Health to adopt model rate structures that are not necessarily conservation oriented. This has not been done. Several large utilities have begun an incremental process of rate reform to remove disincentives to conservation. At least one irrigation district has adopted an increasing block rate.

Metering of Diversions

Current law requires that owners of ditches or canals shall maintain metering to the satisfaction of the Department of Ecology (RCW 90.03.360). Metering of any diversions may be required as a condition for all new water right permits. The Northwest Power Planning Council, in its phase II

amendment to its Fish and Wildlife Program, recommended that instantaneous and seasonal flow metering devices be required for all diversions from tributaries to the Columbia and Snake rivers that contain salmon and steelhead. The purpose of metering is to assure that water withdrawals do not exceed appropriated amounts.

Diversion Screening - Current Law

The Department of Wildlife and the Department of Fisheries, under current law, have the authority to require that irrigation diversions be screened. The purpose of screening is to prevent fish from becoming entrained in water or irrigation systems. The statute regulating the Department of Wildlife (RCW 77.16.220) exempts anyone operating a lawful diversion prior to enactment of this 1947 law from the screening requirement. There is no such exemption in the statute that pertains to the Department of Fisheries (RCW 75.20.040). The Department of Wildlife manages steelhead and resident fish and the Department of Fisheries manages salmon. Salmon and steelhead with some exceptions occur in the same stream reaches.

Summary of Substitute Bill: The exemption in current law for water diversions in existence prior to 1947 from the fish screening requirement of the Department of Wildlife in RCW 77.16.220 is removed. Previously exempted diverters must provide adequate screening within four years of the effective date of the act.

The Department of Ecology is directed to determine whether water systems with a capacity to withdraw or divert one or more cubic feet per second of water from the portions of the Columbia or Snake rivers or their tributaries that contain salmon and steelhead should be equipped with devices to measure instantaneous and seasonal water flows. The director is to base this decision on whether such water withdrawals or diversions are potentially harmful to declining stocks of wild salmonids. The director is to ensure compliance by December 31, 1993, and shall make every effort to seek federal funding to assist in implementation.

The Department of Ecology is to give preference, in its administration of proceeds from the sale of Referendum 38 bonds, to agricultural water supply facilities that have adopted water rate structures that provide an incentive to water users to conserve water.

The departments of Health and Ecology shall develop alternative model rate-setting formulas for water conservation and provide these to public water purveyors and irrigation districts.

By October 1, 1993, the following types of water purveyors are to evaluate whether it is appropriate to adopt and implement water delivery rate structures that encourage water conservation, and submit these recommendations to the departments of Ecology and Health and the appropriate legislative committees: municipal water systems, public utility districts, water districts, public water companies, counties, and irrigation districts.

By December 31, 1992, the Department of Ecology is directed to, in cooperation with the departments of Fisheries and Wildlife and other parties, establish a list of priorities for evaluation and implementation of minimum flows in basins with declining stocks of wild salmonids. In establishing these priorities, the department is to consider the recovery of anadromous wild salmonids as its primary goal. The department is to consider as possible priorities the rivers identified by the American Fisheries Society as containing declining stocks of wild salmonids due to low flows. These rivers are the Tahuya, Dewatto, Dungeness, Cowlitz, Wenatchee, Methow, Okanogan, and Entiat. The department is to present these priorities to the appropriate legislative committees and to the Water Resources Forum. The Department of Ecology is to recommend to the Legislature methods of applying water savings from water rights transfers to achieve minimum flows.

Substitute Bill Compared to Original Bill: The substitute bill is a combination of original HB 2629 and HB 2627. The provisions in the original bill that require that diversions newly subjected to screening requirements register with the Department of Ecology and that require the Department of Ecology to provide screening criteria to the registrants are removed from the substitute bill.

The original bill requires that the Department of Fisheries conduct an inventory of water diversions outside of the Columbia river basin within four years of the effective date of the act. This requirement is removed from the substitute bill.

The original bill requires that the director of the Department of Ecology ensure that all existing and new water diversions from the portions of the Columbia river basin that contain salmon and steelhead be equipped with devices to measure instantaneous and seasonal water flows. The substitute bill directs the Department of Ecology to confine this requirement to those water systems that withdraw or divert one or more cubic feet per second of water and that are potentially harmful to declining stocks of wild salmonids, and to determine which diversion should be equipped with measuring devices. The substitute adds a

requirement that the Department of Ecology make every effort to seek federal funding to assist in implementation.

The original bill confines the scope of the water rate evaluations by public water purveyors and the prioritization of referendum 38 bond funds to specific watersheds identified in the bill. The substitute implements these provisions statewide.

The substitute bill adds a requirement that the departments of Health and Ecology recommend to the appropriate legislative committees by December 31, 1992 whether there is a need for additional cost-share programs as incentives for water purveyors to adopt water conservation measures.

The original bill requires that the Department of Ecology, in consultation with the Water Resources Forum, evaluate or reevaluate and implement minimum flow levels for the Tahuya, Dewatto, Dungeness, and tributaries to the Cowlitz rivers, and recommend appropriate minimum flow levels for the Entiat, Okanogan, Wenatchee, and Methow rivers. The substitute bill requires that the Department of Ecology identify priority basins for instream flow evaluation or implementation, considering the specific rivers named in the original bill, and that the department provide this priority list to the Legislature and to the Water Resources Forum.

Fiscal Note: Available.

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

Testimony For: (On HB 2627): Using fish screens at water diversions is beneficial to both the protection of fish and the reliable operation of irrigation systems. This will improve the fisheries resource for commercial fishermen. (On HB 2629): This will improve fisheries for commercial fishermen; low flows have been identified as a cause of fish decline.

Testimony Against: (On HB 2627): It is not clear who will bear the costs of the screens. (On HB 2629): The incentive of cost-share programs should be included for water conservation projects.

Witnesses: (On HB 2627): Bob Johnson, Trout Unlimited (in favor); Ray Schindler, Washington Association of Wheatgrowers (in favor); Dawn Vyvyan, Yakima Indian Nation (in favor); Dick Erikson, Water Resources Association (concerns: Most irrigation diversions are currently screened. For those that aren't, it may be expensive. A cooperative approach to screening should be adopted, such as

in the Salmon Summit); Marlyta Deck, Washington State Cattlemen's Association (opposed); Ed Manary, Department of Fisheries (concerns: creates an atmosphere of non-cooperation); Hedia Adelsman, Department of Ecology (supports intent, has concerns: authority for screening has not typically been with DOE, there will be fiscal impacts); Robert Snell, Washington Trollers Association (in favor). (On HB 2629): Bob Johnson, Trout Unlimited (in favor); Ray Schindler, Washington Association of Wheatgrowers (opposed as currently written, in favor of the objective); Dawn Vyvyan, Yakima Indian Nation (in favor); Dick Erikson, Water Resources Association (concerns: Tying referendum 38 bond funds to rate structures may be a disincentive to conserve. Limits on adopting rate structures that encourage conservation exist for irrigation districts. The administrative costs for administering referendum 38 bond funds as outlined in the bill may be high. The minimum flow program needs to dovetail with existing programs pursuant to the Chelan Agreement); Pam Madsen, Department of Wildlife (concerns: needs to be coordinated with the Water Resources Forum); Hedia Adelsman, Department of Ecology (concerns: The bills are too site specific and should be broader in geographic scope and concentrated on areas that have greater water resource problems than those areas mentioned in the bill; the instream flow reevaluation in the Methow is already occurring as part of the pilot project in the Chelan Agreement; there are many rivers without instream flows that the bill should address; the Water Resources Forum should be directed to evaluate all weak stocks statewide; there is yet another standard for instream flow setting that adds to confusion.); Robert Snell, Washington Trollers Association (in favor); and Michael Grady, Department of Community Development (comments: The Methow Valley Pilot Planning Project is implementing several conservation oriented activities.).