

HOUSE BILL REPORT

ESHB 1110

As Passed House

March 14, 1997

Title: An act relating to water resources.

Brief Description: Prohibiting a moratorium on new appropriations of Columbia or Snake river waters based on certain contingencies.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, McMorris, Koster, Delvin, Mulliken, Schoesler and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/20/97, 2/10/97 [DPS].

Floor Activity:

Passed House: 3/14/97, 58-37.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

Minority Report: Do not pass. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Kenneth Hirst (786-7105).

Background: Through the adoption of emergency and more permanent rules, the Department of Ecology has placed applications for water right permits to withdraw water from the main stems of the Columbia and Snake rivers on hold. The rules do not apply to applications that were filed with the department before December 20, 1991, which is the date the National Marine Fisheries Service listed Snake River sockeye salmon as endangered under the federal Endangered Species Act. The rules, WAC 173-563-015 and 173-564-040, are now scheduled to expire on July 1, 1999, unless a new instream resources protection program is adopted by the department before that date.

The rules establishing this "moratorium" policy apply to applications for the use of surface water and to applications for the use of groundwater that is in direct hydraulic continuity with the main stem of either river. As exceptions to the moratorium, the rules allow the department to issue water withdrawal permits for applications filed by the United States for uses of water withdrawn for the Columbia Basin project with a priority date of 1938; nonrecurring temporary projects for up to six months' duration, with a possible extension of no more than six additional months; certain nonconsumptive uses; uses necessary for emergency public health and safety needs, when all other reasonable methods of obtaining water have been exhausted; and uses which are specifically intended to benefit weak fish stocks. The rules establishing the moratoria cite the 1991 federal listing of Snake River sockeye salmon as endangered and the 1992 listing of Snake River spring/summer and fall chinook salmon as threatened.

Summary of Bill: No action taken by the Department of Ecology to withdraw the unappropriated waters of the main stem of the Columbia River from further appropriation may apply, upstream of the confluence of the Columbia and Snake rivers, to an application for the use of ground or surface water that was filed before September 1993. This prohibition applies to an application for less than 700 gallons of groundwater per minute or for less than 1.6 cubic feet per second (cfs) of surface water and to an application that is amended to be for less than these quantities of water. WAC 173-563-015 as it currently exists is declared to be in conflict with this prohibition and is void to the extent of the conflict. The department must notify persons affected by this change in the moratorium policy regarding the change.

If a person who filed an application for more than 700 gallons per minute or 1.6 cfs before September 1993 chooses to amend the application to be for less than these amounts in order to qualify for processing under this bill, the person does not lose his or her place in the permit line for the remaining amount of water in the original application. The original application is split into two applications, each with the original's priority date. One is for less than 700 gallons per minute or 1.6 cfs and the other is for the remaining amount.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (1) The flow of the Columbia River is five times greater than that of the Missouri River and nine times that of the Colorado River, yet the moratorium the Department of Ecology has established means that in some of the legislative districts along the river there is no water available for new uses. For example, the city of Brewster cannot get a water use permit for low income housing or emergency hospital

expansion. (2) The Columbia River and Snake River policies of Idaho and Oregon both allow new domestic uses of water. This state should have a common sense policy. (3) The moratorium was set without scientific data to support it and represents an abuse of administrative power. (4) There is no water crisis on the Columbia or Snake rivers. Diversions for projects as large as the Columbia Basin Project use only a very small amount of the flow of the river. (5) The moratorium has nothing to do with salmon survival; it is a no use– policy that is being substituted for making findings about water availability. (6) Many of the actions being taken by the Northwest Power Planning Council are simply experiments being pursued while tried and true techniques are ignored. (7) Fish runs were declining before the development of the river. (8) The moratorium precludes using pumped storage from the Columbia River to provide water releases for fish and agriculture in the Yakima River. (9) The optimum flows sought for some rivers and stream are greater than the flows of the rivers in their natural conditions. These flows and the moratorium constitute a no-growth strategy for central Washington.

Testimony Against: (1) A federal agency has found that the flow levels, including velocity, of the Columbia and Snake rivers were below those needed for fish. Steelhead will likely be listed under the Endangered Species Act in August of this year. This is a disadvantageous time to repeal the moratorium; it is a time to focus on fish recovery. The moratorium may be used in the development of a recovery plan. (2) Tribal fishing rights are impacted if there are not instream flows to protect fish.

Testified: Speaker Ballard; Mark Booker, Columbia Basin Development League; Mike Schwisow, Washington Water Resources Association; and Dick Ducharme, Yakima Growers and Shippers' Association (in favor). Dawn Vyvyan, Yakima Nation; and Judy Turpin, Washington Environmental Council (opposed).