

ANALYSIS OF HB 1110

House Agriculture & Ecology Committee
1997

January 20,

BACKGROUND:

Through the adoption of emergency rules, the Department of Ecology placed on hold applications for water right permits to withdraw water from the main stems of the Columbia and Snake River. The rules did not apply to applications that were filed with the Department before December 20, 1991, the date the National Marine Fisheries Service listed Snake River sockeye salmon as endangered under the federal Endangered Species Act. The Department subsequently adopted more permanent rules withdrawing from further appropriation the waters of the main stems of these river. The rules were to have expired on June 30, 1994. 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 for the rivers 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 in direct hydraulic continuity with the main stem of either of the rivers. (WAC 173-563-015(4)&(5) and 173-564-040(4)&(5).) As was the case with the emergency rules, the moratorium does not apply to water right applications accepted for filing before December 20, 1991. (WAC 173-563-015(1)&(3) and 173-564-040(1)&(3).) As exceptions to the moratorium, the rules permit the Department to issue water withdrawal permits for:

- (a) Applications filed by the United States for uses of water withdrawn for the Columbia Basin project with a priority date of 1938;
- (b) Nonrecurring temporary projects for up to six months duration, with a possible extension of no more than six additional months;
- (c) Certain nonconsumptive uses;
- (d) Uses necessary for emergency public health and safety needs, when all other reasonable methods of obtaining water have been exhausted; and
- (e) Uses which are specifically intended to benefit weak fish stocks.
(WAC 173-563-015(2) and 173-564-040(2).)

The rules establishing the moratorium cite the federal listing of Snake River sockeye salmon as endangered and the 1992 listing of Snake River spring/summer and fall chinook salmon as threatened in 1992 and state that " . . .(s)ince then, new information and changing conditions continue to place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from

the main stem of [these rivers]. . . ." (WAC 173-563-015(1) and 173-564-040(1).)

SUMMARY:

The Department of Ecology is prohibited from withdrawing from further appropriation Columbia or Snake river waters based upon uncertainty as to whether sufficient waters would be available, following new appropriations, to satisfy the needs of unquantified or speculative future instream uses of the waters of these rivers.

Two rules adopted by the Department, WAC 173-563-015 and 173-564-040, are declared to be in conflict with this policy and void.