
**Economic Development,
Agriculture & Trade Committee**

HB 2860

Brief Description: Regarding water resource management in the Columbia river basin.

Sponsors: Representatives Grant, Newhouse, Hankins, Haler, Walsh and McCune.

Brief Summary of Bill

- Creates a new chapter to guide the appropriation of Columbia River mainstem waters.
- Requires the Department of Ecology to develop a best management practices program for water use.
- Creates a hydropower mitigation fee.

Hearing Date: 1/30/06

Staff: Jason Callahan (786-7117).

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.

A water right has several elements that define the right or place limits on water use under the right. These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use. State statutes include requirements for specifying each of these elements in a water right permit or certificate and provide a process for changing certain elements of the water right, such as the place or purpose of use.

State and federal water rights exist in Washington. State-based permits and certificates are water rights based on the statutory permit system. Historic claims are rights to use water that predate permit requirements. Washington law also recognizes certain exempt uses (i.e., uses that do not require a permit or certificate) and instream flows as water rights. Federal water rights include rights held by the United States for the federal government and those rights held in trust for Indian tribes.

Washington adopted a water right permit system through enactment of a surface water code in 1917 and a ground water code in 1945. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. A person seeking a new water right files an application with the Department of Ecology (DOE), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Summary of Bill:

Multiple new definitions are added for the appropriation of water in the mainstem of the Columbia River. Best management practices (BPM) requirements are established, and the DOE is directed to undertake rule making to establish BPM standards and a certification program to certify water users that meet the BPM standards. A hydropower mitigation fee of \$10.00 per acre foot of water is established that is to be updated every five years. A water conservation project revolving fund is created to fund conservation projects and to offset the flow impacts of new waters appropriated from the mainstem.

A definition is created for saved water as the difference in the amount of water between the quantity of water shown on the face or "nameplate" of the existing water right and the amount of water actually withdrawn after the holder becomes certified in the BMP program. Saved water is deemed to have been at all times beneficially used. Saved water is deemed to include the quantity of water stated on the face of the water permit if the holder of the permit becomes certified under the BMP program and pays the annual hydropower mitigation fee for the amount of saved water actually withdrawn.

Permits are authorized for new appropriations in the mainstem of up to 300,000 acre-feet of water for those that are certified under the BMP program under certain conditions. New appropriations using new water are subject to a hydropower mitigation fee based on the amount that the user is entitled to withdraw as reflected on the face of the water right. A new appropriator of water has 15 years to develop and put the water to beneficial use. An appropriator of saved water likewise has 15 years to beneficially use the water but the time does not start running until the user has been certified under the BMP program. The holder of any water right may elect to pay the hydropower mitigation fee in lieu of using saved water to meet his beneficial use requirement.

The new provisions replace the administrative regulations currently set out for the water resource program for the John Day-McNary pools reach of the Columbia river, Water Resource Inventory Area (WRIA) 31 and parts of WRIA's 32, 33, 36, and 37 as well as any conflicting provisions of the existing water code for new stream appropriations withdrawals of ground water.

Appropriation: None.

Fiscal Note: Not requested.

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