

SENATE BILL REPORT

SB 6581

As Reported By Senate Committee On:
Water, Energy & Environment, February 2, 2006
Ways & Means, February 7, 2006

Title: An act relating to water resource management in the Columbia river basin.

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

Sponsors: Senators Poulsen and Delvin.

Brief History:

Committee Activity: Water, Energy & Environment: 1/26/06, 2/2/06 [DPS-WM, DNP].
Ways & Means: 2/6/06, 2/7/06 [DP2S, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6581 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Delvin and Regala.

Minority Report: Do not pass.

Signed by Senators Honeyford and Mulliken.

Staff: Margaret King (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6581 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Hewitt, Rasmussen, Regala, Rockefeller, Schoesler and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Parlette, Pflug and Roach.

Staff: Kirstan Arestad (786-7708)

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 These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use.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 (Ecology), 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 Second Substitute Bill: The Department of Ecology is directed to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses. To support development of new water supplies, the Department of Ecology is to work with stakeholders to develop a Columbia river water supply inventory by November 2006 that is to be updated annually and is to look at existing studies.

A Columbia River Basin Water Supply account is created in the State Treasury and for the biennium ending June 30, 2007, and fifty million dollars is appropriated from the state building construction account to the Department of Ecology for deposit into water supply account. The account may also receive direct appropriations from the Legislature and receipts of payments made by water users that are based on viable share of construction, operation, and maintenance costs of water supply projects. Expenditures from the account may be used to assess, plan, and develop new storage, improve or alter existing storage facilities, and implement conservation project or other actions designed to provide access to new water supplies in the Columbia for both instream and out of stream uses.

New water supplies that are developed and secured through new storage are to be allocated as follows: 2/3 to out of stream use; 1/3 to instream flows through the state trust water rights program to benefit fish and wildlife. The development of water supplies is to focus on the following areas: the Odessa subarea aquifer; municipal water supply; water for interruptible rights and new municipal, domestic, industrial and irrigation needs; and water for the Yakima basin.

Voluntary Regional Agreement can be used to establish conditions under which water may be withdrawn. Voluntary agreement can be used as an alternative track for receiving water.

Conditions are removed to allow the ten million dollars that was appropriated in last year's budget to be spent on water supply development. Other provisions include:

- The definition, use, and allocation of conserved water;
- Consideration of, and ways to address, issues related to regional equities and de-watering; and
- The collection and publication of data related to current water use in the mainstem of the Columbia.

Second Substitute Bill Compared to Substitute Bill: Provides strong legislative direction that the state must pursue a program of developing new water supplies for a balanced set of needs, including meeting growing water demands by farmers and cities, as well as securing sufficient river flows during the periods that are critical for restoring salmon runs. Water supplies secured through the development of new storage with funding from the newly created Columbia river basin water supply account is allocated two-thirds for out of stream appropriations and one-third to be used to enhance instream flows.

The second substitute bill authorizes voluntary regional agreements that set conditions for granting new water withdrawals from the Columbia river. These agreements must ensure that there is "no negative impact" on mainstem flows during July and August, a season critical for fish passage, and that these regional efforts be harmonized with locally-based watershed planning in the area.

During 2006, the Department of Ecology is to convene stakeholder groups to review and provide recommendations to the Legislature on two topics: (1) addressing whether interregional water transfers undermine the economic health of the water-sending areas; and (2) exploring the use of water "banks" to facilitate meeting changing water use needs.

The biennial capital budget prohibition on spending the ten million appropriation is modified to allow the department to fund projects.

Substitute Bill Compared to Original Bill: Deletes all provisions of the original bill, including:

- All of the new definitions relating to the appropriation of water in the mainstem of the Columbia River;
- The requirement that the Department of Ecology undertake rule making for a best management practices (BPM) standards and certification program;
- A hydropower mitigation fee of \$10.00 per acre foot of water; and
- A water conservation project revolving fund to fund conservation projects and to offset the flow impacts resulting from new waters appropriated from the mainstem.

Appropriation: Yes (substitute bill). No (second substitute bill).

Fiscal Note: Requested February 3, 2006.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2006.

Testimony For (Water, Energy & Environment): (For Substitute) This proposal could break the stalemate that has existing in the Columbia for 25 years. Like the concepts set out in the proposal but specifics need to be worked on more. (For Original) The bill focuses on three main areas: Best Management Practices, Hydropower Mitigation Fee, and Purchase of Conservation Measures. Proposal has a high deal of technical integrity and optimizes use of both existing water rights and new water permits. Proposal is not dependent on large scale capital funding and adopts a methodology that addresses the no net loss water policy. While the bill needs some tweaking, it provides certainty with respect to mitigation because users can pay the state instead of finding water to mitigate withdrawals of water. The voluntary regional agreements in the proposal, as well as storage, are necessary components to address water issues.

Testimony Against: (Water, Energy & Environment) (For Substitute) None. (For Original) This bill is not the solution to the problems currently facing the Columbia. Proposal ignores the recommendations of the National Association of Science Columbia River panel regarding impacts of withdrawals to salmon resources. Fish and Wildlife would like to continue to work with Columbia River Task Force to address all of the issues, including mitigation to offset the impacts to fishery resources. One should not have to pay for what one already owns through the hydropower mitigation fee; relinquishment needs to be addressed first. The bill allows one to use all of the amount of a water right, regardless of whether some or all of that right has been relinquished, and fails to address the fact that the river is currently in a deficit during peak withdraws. The hydropower mitigation fee is not adequate to secure access to new water. There is no requirement that mitigation actually benefit the mainstem. The department should be directed to collect data on all water use in the Columbia basin, including inchoate rights.

Testimony Other (Water, Energy & Environment): (For Substitute) Language regarding no reduction to instream flows needs to be clarified to provide for no reduction of instream flow during those periods that are critical to fish. WDFW should be involved in looking at instream flow needs. Conserved water provisions should be clarified so that it "remains" with the user. Mitigation should be tied to direct impact of withdrawal and inventory in section 2 should include "economic development." Before money is expended on storage there needs to be a comprehensive look at other possibilities as well. Storage inventory should also include environmental issues and impact. Data collection should include the number of un-metered users. The term "cost effective" with respect to storage prejudices outcome. There should be no need for consultation if requirement is "no reduction of stream flows." Conserved water restrictions should only be for the life of the project then it should be protected from relinquishment. Voluntary agreements should only apply to the mainstem of the Columbia and should not have any precedential effect. If meet streamflows for fish there is no way to stop the 2/3 to 1/3 apportionment. (For Original) Possible due process issue involved because the proposal allows those that use less than the current "name plate" on their water right to use all of the paper right which could harm other existing users or applicants. There is concern about raising the relinquishment issue in this short session. A more direct role of private individuals for conservation may be the best approach.

Who Testified: (Water, Energy & Environment) (For Substitute) PRO: Jay Manning, Director Department of Ecology. (For Original) PRO: Daryll Olsen, Columbia Snake River

Irrigators Association (CSRIA), Kinnewick Irrigation District and Kinnewick Hospital District; Bob Alberts, City of Pasco; John Stuhlmiller, WA Farm Bureau; Pat Boss; CSRIA.

(For Substitute) CON: None. (For Original) CON: Carl Samuelson, WDFW; Jack Fields, WA Cattlemen's Association; Jack Fields, WA Cattlemen's Association; McBroom, Washington Environmental Council and American Rivers; Dawn Vyvyan Yakima Nation.

(For Substitute) OTHER: Pat Boss, CSRIA; Shirley Nixon, Center for Environmental Law and Policy (CELP); Carl Samuelson, WDFW; Mike Schwisow, WA Water Resources Assn; Tom Davis, WDFW; Craig Engelking, Sierra Club; Kathleen Collins, WA Water Policy Alliance; Chris McCabe, A.W.B.; John Stuhlmiller, WA Farm Bureau; Mo McBroom, Washington Environmental Council. (For Original) OTHER: Gerry O'Keefe, DOE.

Testimony For (Ways & Means): This bill is important to Eastern Washington and for fish. The substitute bill contains proposals from both the Democrats and the Republicans. The group hopes to have a striking amendment by tomorrow. The amendment to the existing capital budget proviso is already being put to use.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): PRO: Erik Poulsen, Senator; Mike Schwisow, WA Water Resources Assn.