
HOUSE BILL 2860

State of Washington 59th Legislature 2006 Regular Session

By Representatives Grant, Newhouse, Hankins, Haler, Walsh and McCune

Read first time 01/16/2006. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to water resource management in the Columbia river
2 basin; reenacting and amending RCW 43.84.092; adding a new chapter to
3 Title 90 RCW; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that:

6 (1) Water resources are needed to meet present and foreseeable
7 future needs for uninterrupted irrigation and municipal water
8 requirements in the counties adjacent to the mainstem, to be allocated
9 under this chapter;

10 (2) Through the implementation of best management practices,
11 hydropower mitigation fees, and the purchase of additional conservation
12 measures within mainstem tributaries, waters in the mainstem should be
13 used to meet present and foreseeable future irrigation and municipal
14 water requirements, while protecting instream resources;

15 (3) A program that provides incentives to water right holders to
16 adopt best management practices and irrigation best management
17 practices for the purpose of achieving water savings and water use
18 efficiency on the mainstem is sound public policy that will provide

1 significant environmental and economic benefits, including the
2 availability for instream purposes of waters not appropriated from the
3 mainstem for consumptive use purposes; and

4 (4) The adoption and implementation of a hydropower mitigation fee
5 program will establish a reliable long-term revenue source to fund
6 needed new water conservation projects in the Yakima river basin or
7 other tributary basins.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

11 (1) "Appropriation" means the process of legally acquiring the
12 right to specific amounts of water resources for application to
13 irrigation use or municipal use under this chapter and RCW 90.03.250
14 through 90.03.340 and 90.44.060.

15 (2) "Best management practices" means any practice or combination
16 of practices involving the diversion, distribution, and application or
17 use of water resources that is both cost-effective and practicable,
18 including technological, economical, and higher value crop rotation
19 considerations, adopted for the purpose of achieving greater water use
20 efficiency.

21 (3) "Department" means the department of ecology.

22 (4) "Hydropower mitigation fee" means the per acre foot hydropower
23 mitigation fee established in section 7 of this act.

24 (5) "Irrigation best management practices" means any irrigation
25 management practice or combination of practices including, without
26 limitation, irrigation scheduling, equipment replacement or
27 modification, crop-related water management, screening of diversions,
28 proper tillage, residue management, water management research,
29 development, and demonstration projects, and any other irrigation
30 practice that is both cost-effective and practicable, including
31 technological, economical, and higher value crop rotation
32 considerations, adopted at any time after the applicable water right
33 was issued for the purpose of achieving greater irrigation water use
34 efficiency.

35 (6) "Irrigation use" means the use of water resources withdrawn
36 from the mainstem for the purpose of irrigating crops, agricultural
37 commercial applications, and other horticultural and agricultural

1 purposes. Irrigation use includes, without limitation, the use waters
2 from the reservation source of supply to modify the terms of an
3 irrigation water right that was conditioned to be interruptible for the
4 purpose of eliminating and removing the interruptible condition.

5 (7) "Mainstem" means the main stem of the Columbia river from the
6 Bonneville dam to the upper limits of the wells dam pool, the main stem
7 of the Snake river from the confluence of the Snake and Columbia rivers
8 to the upper limits of the ice harbor dam pool, and any ground water
9 determined by the department to be in direct hydraulic continuity with
10 the mainstem for management purposes.

11 (8) "Municipal use" means a beneficial use of water: (a) For
12 residential purposes through fifteen or more residential service
13 connections or for providing residential use of water for a
14 nonresidential population that is on average, at least twenty-five
15 people for at least sixty days a year; (b) for governmental or
16 governmental proprietary purposes by a city, town, public utility
17 district, county, or water-sewer district; or (c) indirectly for the
18 purposes in (a) or (b) of this subsection through the delivery of
19 treated or raw water to a public water system for such use. If water
20 is beneficially used under a water right for the purposes listed in
21 (a), (b), or (c) of this subsection, any other beneficial use of water
22 under the right generally associated with the use of water within a
23 municipality is also for municipal water supply purposes, including,
24 but not limited to, beneficial use for commercial, industrial,
25 irrigation of parks and open spaces, institutional, landscaping, fire
26 flow, water system maintenance and repair, or related purposes. If a
27 governmental entity holds a water right that is for the purposes listed
28 in (a), (b), or (c) of this subsection, its use of water or its
29 delivery of water for any other beneficial use generally associated
30 with the use of water within a municipality is also for municipal water
31 supply purposes, including, but not limited to, beneficial use for
32 commercial, industrial, irrigation of parks and open spaces,
33 institutional, landscaping, fire flow, water system maintenance and
34 repair, or related purposes.

35 (9) "Nameplate" means the face of a water right.

36 (10) "Person" means any firm, association, water users'
37 association, corporation, limited liability company, irrigation

1 district, municipal corporation, or other legal entity as well as an
2 individual.

3 (11) "Public body" means the state of Washington or any irrigation
4 district, agency, county, city or town, other political subdivision,
5 municipal corporation or quasi-municipal corporation, and those Indian
6 tribes now or hereafter recognized as such by the federal government.

7 (12) "Saved water" means the difference between the quantity and/or
8 instantaneous amount of water shown on the nameplate of the water right
9 and the quantity and instantaneous amount of water actually withdrawn
10 after the water right holder becomes certified under the best
11 management practices certification program established by this chapter.

12 (13) "Water right" means the quantity and instantaneous amount of
13 water that a water right holder is entitled to withdraw from the
14 mainstem for any out-of-stream beneficial use as shown on the nameplate
15 of the water right.

16 (14) "Water conservation project" means any project or program
17 located in the Yakima river basin, including water storage, that will
18 contribute to relieving water shortages, provide for presently unmet
19 needs, and assist in meeting future water needs, or that achieves
20 physical or operational improvements that provide for increased water
21 use efficiency in any systems of diversion, conveyance, application, or
22 use of water under water rights.

23 (15) "Water conservation project revolving fund" or "revolving
24 fund" means the revolving fund established in section 8 of this act.

25 NEW SECTION. **Sec. 3.** WATER FOR FUTURE BENEFICIAL USE. (1) Water
26 for future beneficial use consists of waters contained within the
27 mainstem Columbia-Snake river system. Such waters are allocated for:

28 (a) Appropriation for irrigation use, which means that any person
29 may apply to appropriate such waters for irrigation use at any location
30 along the mainstem system;

31 (b) Appropriation for municipal use, which means that any person
32 may apply to appropriate such waters for municipal use at any location
33 along the mainstem system.

34 (2) This chapter is intended to supersede and replace chapter 173-
35 531A WAC. Beginning on the effective date of this section, chapter
36 173-531A WAC is void and the terms of this chapter shall govern future
37 allocations.

1 (3) Except as expressly provided in this chapter, this chapter may
2 not be construed to lessen, enlarge, or modify rights acquired before
3 the effective date of this section by appropriation or by other means.

4 (4) Waters not appropriated and removed from the mainstem for
5 consumptive use purposes remain available for instream flows.

6 NEW SECTION. **Sec. 4.** APPROPRIATION OF MAINSTEM WATERS. Any
7 person may apply for an appropriation of water from the mainstem.
8 Applications may be for a new water right or for an appropriation that
9 will be used to modify, amend, or supplement an existing water right.
10 The terms and conditions in this section are applicable to applications
11 for an appropriation of waters from the mainstem:

12 (1) Future mainstem water allocations shall not exceed an
13 additional three hundred thousand acre-feet of water, through 2015,
14 with legislative authorization required to extend further water
15 allocations after 2015.

16 (2) It shall be a condition of any new permit or certificate or any
17 amendment to an existing permit or certificate issued after the
18 effective date of this section for the use of waters from the mainstem
19 that the applicant must be certified under the best management
20 practices program established under section 5 of this act.

21 (3) It shall be a condition of any new permit or certificate or any
22 amendment to an existing permit or certificate issued after the
23 effective date of this section involving a new appropriation of waters
24 from the mainstem that the water right holder shall pay the hydropower
25 mitigation fee established in section 7 of this act for the right to
26 beneficially use waters newly appropriated from the mainstem. However,
27 the hydropower mitigation fee does not apply to waters that a water
28 right holder is entitled to withdraw under an existing permit or
29 certificate except saved water to the extent the saved water is
30 actually withdrawn.

31 (4) Any permit issued after the effective date of this section
32 involving a new appropriation of waters from the mainstem that the
33 water right holder is subject to a fifteen-year development schedule
34 for putting the waters to beneficial use. Saved water is subject to a
35 fifteen-year development schedule for putting waters to beneficial use
36 from the date the water right holder becomes certified under the best
37 management practices program.

1 (5) It shall be a condition of any amendment or modification to a
2 permit or certificate that supplements a water right existing on the
3 effective date of this section with an appropriation of waters from the
4 mainstem that the hydropower mitigation fee established in section 7 of
5 this act applies to the portion of the water right, as amended,
6 modified, or supplemented that represents a right to use waters newly
7 appropriated from the mainstem. In the case of an amendment that
8 supplements a water right existing on the effective date of this
9 section to eliminate a condition of interruptibility, the hydropower
10 mitigation fee shall apply to the extent waters are actually withdrawn
11 that could not have been withdrawn under the applicable condition.

12 (6) Applications for appropriations from the mainstem shall be made
13 in the same form and manner provided in RCW 90.03.250 through
14 90.03.340, the provisions of which govern applications to appropriate
15 waters from the mainstem: PROVIDED, That this chapter prevails in the
16 event that any provision is determined to be inconsistent with or to
17 conflict with RCW 90.03.250 through 90.03.340 and 90.44.060 or to be
18 inconsistent with or to conflict with any other applicable provision of
19 law.

20 (7) No application, permit, or certificate to appropriate and use
21 waters under this chapter may be denied or conditioned to be
22 interruptible on the grounds that the denial or condition is necessary
23 to satisfy the instream flow requirements in chapter 173-563 WAC or any
24 other state law or rule.

25 (8) Waters represented by canceled or relinquished applications,
26 permits, and certificates will be considered as returned to the
27 mainstem and available either for appropriation by a subsequent
28 applicant or the waters shall be available for instream flow.

29 NEW SECTION. **Sec. 5.** BEST MANAGEMENT PRACTICES PROGRAM. (1) The
30 department shall by rule, after consultation with industry groups and
31 other interested parties, develop and from time-to-time update a
32 schedule of measures and practices that constitute best management
33 practices and irrigation best management practices.

34 (2) The department shall by rule, after consultation with industry
35 groups and other interested parties, develop a certification program to
36 certify any appropriator from the mainstem that applies for

1 certification, whose water use methods and practices substantially
2 comply with the measures and practices identified by rule as best
3 management practices and/or irrigation best management practices.

4 NEW SECTION. **Sec. 6.** SAVED WATER. Saved water shall be deemed to
5 have been at all times beneficially used by the holder of the water
6 right and the water right shall be deemed to include the quantity and
7 amount of saved water up to the face amount and quantity shown on the
8 permit or certificate: PROVIDED, That the holder of the permit or
9 certificate must: (1) Become certified under the department's best
10 management practices certification program, and (2) commencing the year
11 after the effective date of this section, pay the annual hydropower
12 mitigation fee established in section 7 of this act based on the
13 quantity and amount of saved water actually withdrawn.

14 NEW SECTION. **Sec. 7.** HYDROPOWER MITIGATION FEE. (1) There is
15 hereby established a hydropower mitigation fee which shall initially be
16 ten dollars per acre-foot. The amount of the hydropower mitigation fee
17 shall be adjusted every five years beginning January 1, 2011, based on
18 the increase or decrease in the implicit price deflator as published by
19 the United States bureau of economic statistics. The hydropower
20 mitigation fee shall apply as provided in this section.

21 (2) The holder of any water right for the use of waters
22 appropriated from the mainstem issued after the effective date of this
23 section shall pay the hydropower mitigation fee annually based on the
24 amount and quantity of water that the holder is entitled to withdraw
25 from the mainstem up to the amount shown on the face of the water right
26 based on actual measured water withdrawal.

27 (3) The holder of any water right issued before the effective date
28 of this section who applies for an additional or supplemental right to
29 use waters from the mainstem to amend, modify, or supplement the
30 existing water right shall pay the hydropower mitigation fee annually
31 based on actual measured water withdrawal from the mainstem as
32 authorized under the amendment or modification.

33 (4) The holder of any water right may elect to pay the hydropower
34 mitigation fee for the purpose of being deemed to have beneficially
35 used saved water not actually withdrawn and the other treatment
36 available under section 7 of this act.

1 NEW SECTION. **Sec. 8.** WATER CONSERVATION PROJECT REVOLVING FUND.

2 (1) The water conservation project revolving fund is hereby established
3 in the state treasury for the purpose of making loans, grants, and
4 other financial assistance as authorized in this chapter to finance or
5 pay for water conservation projects. Moneys in the revolving fund may
6 be spent only in a manner consistent with this chapter.

7 (2) The water conservation project revolving fund shall be
8 specifically used to offset the flow impacts of new waters appropriated
9 from the mainstem, as provided for in section 4 of this act. Water
10 conservation projects shall provide water savings and tributary
11 instream flow contributions, equal to or greater than the amounts of
12 water allocated under section 4 of this act.

13 (3) Water conservation projects shall be approved for funding based
14 on department review and approval.

15 (4) The revolving fund shall consist of:

16 (a) All of the hydropower mitigation fee payments received by the
17 department under this chapter;

18 (b) State matching funds appropriated or authorized by the
19 legislature;

20 (c) Any loans or grants provided by the federal government;

21 (d) Any other revenues derived from gifts or bequests pledged to
22 the revolving fund for the purpose of providing financial assistance to
23 water conservation projects;

24 (e) All repayments of moneys borrowed from the revolving fund;

25 (f) All interest payments made by borrowers from the revolving
26 fund; and

27 (g) Any fee or charge levied in conjunction with the administration
28 of the revolving fund.

29 (5) The state treasurer may invest and reinvest moneys in the
30 revolving fund in the manner provided by law. All earnings from such
31 investment and reinvestment shall be credited to the revolving fund.

32 NEW SECTION. **Sec. 9.** ADMINISTRATION AND USE OF MONEYS IN THE

33 REVOLVING FUND. (1) The department shall administer the revolving fund
34 and shall use the moneys in the revolving fund to provide loans,
35 grants, and other financial or technical assistance for the purpose of
36 paying for construction or implementation of water conservation
37 projects.

1 (2) The department shall allocate funds for loans, grants, and
2 other financial or technical assistance as provided in this section in
3 accordance with an annual project priority list of feasible and cost-
4 effective projects developed by the department in consultation with the
5 Yakama Indian Nation and other resource agencies.

6 (3) The department may make loans at or below market interest
7 rates, including interest-free loans to public bodies to finance water
8 conservation projects. The recipient of a loan must establish a
9 dedicated source of revenue for repayment of loans. The revolving fund
10 shall be credited with all payments of principal and interest on all
11 loans.

12 (4) The department may make grants and provide other financial or
13 technical assistance to public bodies to finance, construct, or
14 implement water conservation projects.

15 **Sec. 10.** RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005
16 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are
17 each reenacted and amended to read as follows:

18 (1) All earnings of investments of surplus balances in the state
19 treasury shall be deposited to the treasury income account, which
20 account is hereby established in the state treasury.

21 (2) The treasury income account shall be utilized to pay or receive
22 funds associated with federal programs as required by the federal cash
23 management improvement act of 1990. The treasury income account is
24 subject in all respects to chapter 43.88 RCW, but no appropriation is
25 required for refunds or allocations of interest earnings required by
26 the cash management improvement act. Refunds of interest to the
27 federal treasury required under the cash management improvement act
28 fall under RCW 43.88.180 and shall not require appropriation. The
29 office of financial management shall determine the amounts due to or
30 from the federal government pursuant to the cash management improvement
31 act. The office of financial management may direct transfers of funds
32 between accounts as deemed necessary to implement the provisions of the
33 cash management improvement act, and this subsection. Refunds or
34 allocations shall occur prior to the distributions of earnings set
35 forth in subsection (4) of this section.

36 (3) Except for the provisions of RCW 43.84.160, the treasury income
37 account may be utilized for the payment of purchased banking services

1 on behalf of treasury funds including, but not limited to, depository,
2 safekeeping, and disbursement functions for the state treasury and
3 affected state agencies. The treasury income account is subject in all
4 respects to chapter 43.88 RCW, but no appropriation is required for
5 payments to financial institutions. Payments shall occur prior to
6 distribution of earnings set forth in subsection (4) of this section.

7 (4) Monthly, the state treasurer shall distribute the earnings
8 credited to the treasury income account. The state treasurer shall
9 credit the general fund with all the earnings credited to the treasury
10 income account except:

11 (a) The following accounts and funds shall receive their
12 proportionate share of earnings based upon each account's and fund's
13 average daily balance for the period: The capitol building
14 construction account, the Cedar River channel construction and
15 operation account, the Central Washington University capital projects
16 account, the charitable, educational, penal and reformatory
17 institutions account, the common school construction fund, the county
18 criminal justice assistance account, the county sales and use tax
19 equalization account, the data processing building construction
20 account, the deferred compensation administrative account, the deferred
21 compensation principal account, the department of retirement systems
22 expense account, the developmental disabilities community trust
23 account, the drinking water assistance account, the drinking water
24 assistance administrative account, the drinking water assistance
25 repayment account, the Eastern Washington University capital projects
26 account, the education construction fund, the education legacy trust
27 account, the election account, the emergency reserve fund, The
28 Evergreen State College capital projects account, the federal forest
29 revolving account, the freight mobility investment account, the health
30 services account, the public health services account, the health system
31 capacity account, the personal health services account, the state
32 higher education construction account, the higher education
33 construction account, the highway infrastructure account, the high-
34 occupancy toll lanes operations account, the industrial insurance
35 premium refund account, the judges' retirement account, the judicial
36 retirement administrative account, the judicial retirement principal
37 account, the local leasehold excise tax account, the local real estate
38 excise tax account, the local sales and use tax account, the medical

1 aid account, the mobile home park relocation fund, the multimodal
2 transportation account, the municipal criminal justice assistance
3 account, the municipal sales and use tax equalization account, the
4 natural resources deposit account, the oyster reserve land account, the
5 perpetual surveillance and maintenance account, the public employees'
6 retirement system plan 1 account, the public employees' retirement
7 system combined plan 2 and plan 3 account, the public facilities
8 construction loan revolving account beginning July 1, 2004, the public
9 health supplemental account, the public works assistance account, the
10 Puyallup tribal settlement account, the real estate appraiser
11 commission account, the regional transportation investment district
12 account, the resource management cost account, the rural Washington
13 loan fund, the site closure account, the small city pavement and
14 sidewalk account, the special wildlife account, the state employees'
15 insurance account, the state employees' insurance reserve account, the
16 state investment board expense account, the state investment board
17 commingled trust fund accounts, the supplemental pension account, the
18 Tacoma Narrows toll bridge account, the teachers' retirement system
19 plan 1 account, the teachers' retirement system combined plan 2 and
20 plan 3 account, the tobacco prevention and control account, the tobacco
21 settlement account, the transportation infrastructure account, the
22 transportation partnership account, the tuition recovery trust fund,
23 the University of Washington bond retirement fund, the University of
24 Washington building account, the volunteer fire fighters' and reserve
25 officers' relief and pension principal fund, the volunteer fire
26 fighters' and reserve officers' administrative fund, the Washington
27 fruit express account, the Washington judicial retirement system
28 account, the Washington law enforcement officers' and fire fighters'
29 system plan 1 retirement account, the Washington law enforcement
30 officers' and fire fighters' system plan 2 retirement account, the
31 Washington public safety employees' plan 2 retirement account, the
32 Washington school employees' retirement system combined plan 2 and 3
33 account, the Washington state health insurance pool account, the
34 Washington state patrol retirement account, the Washington State
35 University building account, the Washington State University bond
36 retirement fund, the water conservation project revolving fund, the
37 water pollution control revolving fund, and the Western Washington
38 University capital projects account. Earnings derived from investing

1 balances of the agricultural permanent fund, the normal school
2 permanent fund, the permanent common school fund, the scientific
3 permanent fund, and the state university permanent fund shall be
4 allocated to their respective beneficiary accounts. All earnings to be
5 distributed under this subsection (4)(a) shall first be reduced by the
6 allocation to the state treasurer's service fund pursuant to RCW
7 43.08.190.

8 (b) The following accounts and funds shall receive eighty percent
9 of their proportionate share of earnings based upon each account's or
10 fund's average daily balance for the period: The aeronautics account,
11 the aircraft search and rescue account, the county arterial
12 preservation account, the department of licensing services account, the
13 essential rail assistance account, the ferry bond retirement fund, the
14 grade crossing protective fund, the high capacity transportation
15 account, the highway bond retirement fund, the highway safety account,
16 the motor vehicle fund, the motorcycle safety education account, the
17 pilotage account, the public transportation systems account, the Puget
18 Sound capital construction account, the Puget Sound ferry operations
19 account, the recreational vehicle account, the rural arterial trust
20 account, the safety and education account, the special category C
21 account, the state patrol highway account, the transportation 2003
22 account (nickel account), the transportation equipment fund, the
23 transportation fund, the transportation improvement account, the
24 transportation improvement board bond retirement account, and the urban
25 arterial trust account.

26 (5) In conformance with Article II, section 37 of the state
27 Constitution, no treasury accounts or funds shall be allocated earnings
28 without the specific affirmative directive of this section.

29 NEW SECTION. **Sec. 11.** Captions used in this act are not any part
30 of the law.

31 NEW SECTION. **Sec. 12.** Sections 1 through 9 and 11 of this act
32 constitute a new chapter in Title 90 RCW.

33 NEW SECTION. **Sec. 13.** Section 10 of this act takes effect July 1,

1 2006.

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