

# HOUSE BILL REPORT

## HB 3309

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**As Reported by House Committee On:**  
Agriculture & Natural Resources  
Appropriations

**Title:** An act relating to the Columbia river water delivery account.

**Brief Description:** Regarding the Columbia river water delivery account.

**Sponsors:** Representatives Ormsby, Kretz, Blake, Linville and Kenney; by request of Governor Gregoire.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/4/08, 2/5/08 [DPS];  
Appropriations: 2/8/08, 2/11/08 [DP2S(w/o sub AGNR)].

**Brief Summary of Second Substitute Bill**

- Creates the Columbia River Water Delivery Account to facilitate agreements between Washington State and the Confederated Tribes of the Colville Nation and between Washington State and the Spokane Tribe of Indians regarding Lake Roosevelt water use.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Kristiansen, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

**Staff:** Colleen Kerr (786-7168).

**Background:**

In 2006 the Legislature enacted the Columbia River Basin Water Supply Act relating to water resource management in the Columbia River basin. A priority of this act is the development

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

of new water supplies that includes storage and conservation for the economic and community development needs of people, as well as the instream flow needs of fish.

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### **Summary of Substitute Bill:**

#### Agreements Between Washington State and the Tribes

The Governor and the Legislature are in the agreement with the Confederated Tribes of the Colville Nation and the Spokane Tribe of Indians to jointly support the additional releases of water from Lake Roosevelt by the Bureau of Reclamation. The state intends to share a portion of the benefits derived from the Lake Roosevelt water releases and to mitigate for any impacts such releases may have on the tribes.

The new releases of water from Lake Roosevelt will provide:

- new surface water supplies for farmers to replace diminishing ground water supplies in the Odessa aquifer;
- new water for municipalities with pending water right applications;
- enhanced certainty for agricultural water users with interruptible water rights during times of drought; and
- increase instream flows for fish.

#### Columbia River Water Delivery Account

The Columbia River Water Delivery Account (Account) is created in the State Treasury. Funds appropriated from the Account are provided pursuant to the agreement between the State of Washington and the Confederated Tribes of the Colville Nation (Colville Nation) and the Spokane Tribe of Indians to support additional releases of water from Lake Roosevelt. The State Treasurer shall transfer funds from the General Fund on July 1, 2008, and on each July 1 thereafter in amounts to satisfy the following provisions:

- On July 1, 2008, \$3,775,000 shall be distributed to the Colville Nation. On July 1, 2009, \$3,625,000 shall be distributed to the Colville Nation. Each July 1 thereafter for the duration of the agreement, an amount equal to the previous year's distribution as adjusted for inflation shall be distributed to the Colville Nation.
- On July 1, 2008, \$2,250,000 shall be distributed to the Spokane Tribe of Indians. Each July 1 thereafter for the duration of the agreement, an amount equal to the previous year's distribution as adjusted for inflation shall be distributed to the Spokane Tribe of Indians.

Amounts may not be distributed from the Account unless the Director of Ecology (DOE) has certified in writing to the State Treasurer that the agreement is still in effect.

#### Provisions Regarding Affected Counties

Because the potential impacts of these water releases to affected counties are unknown, the DOE is required to:

- conduct an assessment of the potential impacts, including recommendations for mitigation, and report to appropriate committees of the Legislature by November 15, 2007;

- establish a process for identifying and reporting on future impacts on the affected counties, and for making recommendations for mitigation; and
- aggressively pursue the development of new water supplies in affected counties to benefit both instream and out-of-stream uses.

"Affected counties" means those counties east of the crest of the Cascade mountains with an international border, or those counties east of the crest of the Cascade mountains that border both a county with an international border and a county with 400,000 or more residents.

**Substitute Bill Compared to Original Bill:**

The substitute clarifies that the tribes have sovereign and proprietary interests in Lake Roosevelt water levels, removing references to Grand Coulee Dam; provides that nothing in the Act expands, impairs, or otherwise impacts the tribes existing status and sovereignty; requires the DOE to: (1) conduct an assessment of impacts to affected counties and report to the Legislature by November 15, 2009; (2) establish a process for identifying and reporting on future impacts on the affected counties, including making recommendations for mitigation; and (3) aggressively pursue the development of new water supplies in affected counties to benefit both instream and out-of-stream uses; defines affected counties as those counties east of the crest of the Cascades with an international border, or those counties that border a county with an international border and a county with 400,000 or more residents; corrects references to price inflators; makes technical corrections.

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**Appropriation:**

\$2 million to the DOE for local governments.

\$150,000 to the DOE for independent analysis.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** This bill takes effect July 1, 2008.

**Staff Summary of Public Testimony:**

(In support) In December the Governor announced agreement with each of these tribal governments related to seasonal release of water from Lake Roosevelt. The Governor executed a formal agreement with the Colville Tribes in December, and she is scheduled to execute a formal agreement with the Spokane Tribe later today. Both agreements require the support of the Legislature for implementation, now and in the future.

These agreements, along with the bill, will allow the DOE to act on the federal Bureau of Reclamation's pending permit application to withdraw and release additional water from Lake Roosevelt. It is a remarkable achievement that the state will be acting on these permits with the support of both affected tribal governments.

This action will provide new water for farmers in the Odessa who are struggling with their wells. It provides new water for many cities and towns, both up and down the river, that have

watched opportunity pass them by for years. During droughts, it provides water to avoid interruption of agricultural irrigators. And, consistent with the recommendations of the National Academy of Sciences, it provides dedicated water to improve streamflows for fish during the critical late summer season.

This bill delivers on the promise of the historic 2006 Columbia River Bill, and delivers significant new water in the Columbia Basin for the first time in decades. This water will not satisfy all the needs in the Basin. But it shows that the new approach – where all sides win – is much better for the economy, communities, and the environment than the old way – where interests were pitted against each other and no one won.

The agreements would mitigate the direct effects of additional lake drawdown on tribal resources and activities – partly by funding direct actions, such as protection of cultural resource sites and compensation for lost recreational business revenue, and partly by sharing the economic benefits that will come from the use of this water elsewhere in eastern Washington. The Bureau of Reclamation filed their permit applications with the understanding that the state would address the impacts of the lake drawdown on the tribes.

The state could have ignored the Bureau and issued needed water rights to an irrigation district, or to a city, as a first action. At that point, the state would then be taken to court by tribes and others adversely affected by that action. After many, many years, the courts would render a decision and/or the Legislature or Congress might have funded a settlement.

Instead, this time, Washington took a new path – first seeking agreement from the federal and tribal governments, and support from local governments and stakeholders. As a result, there is alignment of the sovereign governments, and the state is much closer to real water, much sooner. This is a true partnership between governments, founded on a commitment to mutual benefit.

The bill before you asks for support of these agreements. The state will issue permanent water rights authorizing the community, farming, and environmental use of the new water. As appropriate, the bill provides a long-term and highly certain funding mechanism in return. It was drafted to meet the important constitutional requirements for such commitments.

The bill also provides \$2 million for the northeast counties along Lake Roosevelt to offset the effects of lake level drops identified in the Supplemental Environmental Impact Statement currently being prepared by the DOE. It would also fund an independent study of options to address the growing challenge of water rights moving from north to south. The DOE will also look at what other states have tried, as well as new ideas here in Washington, to preserve the economic base of northeastern Washington.

The Governor's Office also supports budget language secured in the House General Government budget by Representative Kretz that will direct the DOE to ensure that the benefits of the Columbia River Program are shared across the entire basin, including the northeast counties. While those solutions are being crafted, by providing some water from Lake Roosevelt, the state will be able to relieve immediate pressure on those upstream

communities from downstream water buyers. The Governor will be meeting with legislators from northeast Washington soon to review and consider the adequacy of these steps.

This is only the first step. There are a large number of conservation and efficiency projects under consideration, including pump exchange projects. The DOE is working on enhancing existing storage facilities to deliver more water during critical periods. Further, there are both new underground storage and new off-channel surface storage projects in the works. All of these are designed to help meet both economic and environmental goals. The strategy is to identify timely, cost-effective, and environmentally appropriate projects for state funding.

The state is also in conversations with Canada, Oregon, and Idaho on possible cross-border water projects that would help us meet respective goals. Some of the best options may lie beyond the borders. The Governor encourages the Legislature's interest and active involvement in this program, stands ready to share the details of work and plans, and would welcome participation in implementation.

Mitigation for impacts to cultural resources and economic development interests is crucial to the tribes. The tribes first felt impacts with the construction of Grand Coulee Dam and in many respects this bill is the first type of real compensation. Importantly, it is an agreement that benefits both the state and the tribes.

(Opposed) None.

**Persons Testifying:** Representative Ormsby, prime sponsor; Keith Phillips, Office of the Governor; Rick Sherwood, Spokane Tribe of Indians; Steve Swagee, Confederated Tribes of the Colville Nation; Wes McCart, Stevens County Farm Bureau & Water Conservancy Board; Mike Schwisow, Columbia Basin Development League; Craig Smith, Northwest Food Processors Association; John Stuhlmiller, Washington Farm Bureau; Gary Chandler, Association of Washington Business; and Dave Williams, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 32 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Kagi, Kenney, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

**Staff:** Alicia Dunkin (786-7178).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:**

The Appropriations Committee recommended removal of the appropriations. A null and void clause was added, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect July 1, 2008. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) This is a Governor requested bill to support an agreement with tribes, which is the first step in delivering water to municipalities and current water right holders and to provide surface water to the Odessa. The bill would share the benefit of the Lake Roosevelt water with the tribes. The 2006 landmark legislation created a water supply program and this is the first part, which would supply 132 acre feet of water to existing water right holders. The tribes have entered into this agreement in good faith and are counting on the agreements being made to happen. We also think that the investment being made by the state is a good one. The agreement isn't in perpetuity because the state will look for other sources of water.

(Opposed) None.

**Persons Testifying:** Gerry O'Keefe, Department of Ecology; John Stuhlmiller, Washington Farm Bureau; Miguel Perez-Gibson, Confederated Tribes of the Colville Reservation; and Mike Schwisow, Columbia Basin Development League.

**Persons Signed In To Testify But Not Testifying:** None.