

SENATE BILL REPORT

SB 6378

As of January 22, 2010

Title: An act relating to exempting certain diversions of surface waters for agricultural purposes from the permit process.

Brief Description: Exempting certain diversions of surface waters for agricultural purposes from the permit process.

Sponsors: Senators Haugen, Hatfield, Swecker and Shin.

Brief History:

Committee Activity: Environment, Water & Energy: 1/22/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

Background: State law requires certain users of public waters to receive approval from the state prior to using water in the form of a water right permit or certificate. Any use of surface water which began after the state water code was enacted in 1917 requires a water right permit or certificate. A water right is a legal right to use a specified amount of water for a beneficial purpose. With the enactment of the state groundwater code, withdrawals of ground water require a water right permit or certificate unless the use is specifically exempt from state permitting requirements.

Specific information on the proposed use of water must be provided in an application for a permit to appropriate water. Once an application is received, the date of filing becomes the priority date. The applicant must publish notice of the application in a newspaper of general circulation published in the county or counties in which use is to be made. Other parties may file objections to the application.

Additionally, in considering permit applications, the Department of Ecology (Ecology) looks to four factors, the four part test:

1. Is there water available?
2. Is the application for a beneficial use?
3. Will granting the application adversely affect existing water rights?
4. Will granting the application be detrimental to the public interest?

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.

In reviewing an application, Ecology analyzes both the proposed type of use and the proposed quantity of that use to determine whether the water will be put to beneficial use. Additionally, an application for a water right cannot be granted unless Ecology finds that the use of the water would not impair existing water rights. In analyzing this, Ecology must make a tentative determination as to whether existing water rights may be impaired by the proposed use. In considering whether an application will be detrimental to the public interest, the statute requires allocation of water be based generally on securing the maximum net benefits for the people of the state.

Summary of Bill: An exemption from the application and permit process is authorized for a diversion of water from the Skagit River for agricultural purposes if the diversion is made within the tidally influenced portion of the river, from the confluence point of the river to the stream flow gauge located at river mile 15.7 near Mt. Vernon. The total amount of water diverted must not be more than one-tenth of one percent of the minimum instantaneous flow or river level established by preexisting rule.

The person requesting the diversion must notify Ecology of the intent to divert water, the location of the point of diversion, and the annual and instantaneous amount of water to be diverted. Ecology has seven days to provide a letter to that person confirming the diversion meets the requirements set forth in this bill. If Ecology does not respond within seven days, the diversion is deemed to be authorized and the person may begin to divert water. The right for diversion is equal to that established by a water right permit issued by Ecology.

Ecology must compile the information received under this section and make that information available upon request. Additionally, Ecology must evaluate the effects and effectiveness of diversions under this section and report its findings to the appropriate committees of the Legislature by January 1, 2014. This is designated as a pilot project in the Skagit River watershed.

Appropriation: None.

Fiscal Note: Requested on January 19, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Four years ago, farmers in the Skagit Valley were told they could use this water. Farming in the Skagit Valley is very fragile. Farmers in the Skagit Valley have been working together to do the right thing. This bill gives the farmers a tool with authorization from Ecology. For over 100 years, farmers have been using water out of the ditches in the Skagit Valley. Farmers have had applications pending for over 22 years. Every day 4.5 billion gallons of water leaves the Skagit River. The farmers want to use one-tenth of 1 percent of the minimum flow. They are not asking for a lot of water. This is limited to the tidally influenced portion of the river. The farmers want to take the water that would otherwise become salty and put it to beneficial use. Farmers in the Skagit Valley lease and trade land all over the valley. The water rights do not always follow the farm field that the farmer is using. They use the drainage system to move water. The farmers believed

that four years ago they were about to have a success story on the water issue, but that did not happen. This is designed as a pilot project with the water to be used at certain times of the year as supplemental irrigation. The bill provides for evaluation of the pilot project. The Skagit River is a large river and this is a minimal amount of water subject to curtailment under the instream flow rule. This meets all of the requirements of a normal water right.

CON: This bill is bad for salmon, bad for senior water rights, and bad for public policy. Skagit River flows are frequently well below the minimum instream flows determined by Ecology to be necessary to protect fish resources. This bill would allow for additional unpermitted and uncontrolled use of water. There is a need for this water to reach estuary areas, so it is important for the protection of salmon. The bill provides for no analysis of whether senior rights will be impaired in the nearly 16 miles of river affected. This bill is unfair to applicants. There are serious concerns about adding new exemptions to the Water Code. It is unclear in this bill whether this will be temporary or permanent. The area described in the bill is included in the instream flow rule. However, there is a measuring and monitoring gap in that rule since the last stream flow gauge is at river mile 15.7. It is unclear if this water will come out of the reservation contained in the instream flow rule. There is concern about permanent reliance on a temporary pilot project. There is concern about the impact on salmon. The state needs to take smart steps to protect both agricultural interests and water. Carving out exceptions is not good public policy.

OTHER: Ecology is willing to work with stakeholders. Ecology recently sent a letter to the drainage districts in the Skagit Valley about the possibility that drainage districts may already have the ability to use some of this water under current law.

Persons Testifying: PRO: Senator Mary Margaret Haugen, prime sponsor; John Roozen, Washington Bulb Co., Inc.; Curtis Johnson, Mike Shelby, Western Washington Agricultural Association; Bob Hart, La Conner Flats; John Stuhlmiller, Washington Farm Bureau.

CON: Debra Lekanuf, Swinomish Tribe; Darcy Nonemacher, American Rivers; Seth Ballhorn, Center for Environmental Law & Policy; Mo McBroom, Washington Environmental Council.

OTHER: Ken Slattery, Ecology.