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**Agriculture & Natural Resources  
Committee**

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**HB 1394**

**Brief Description:** Concerning WAC 173-563-020(4) and 173-531A-060 regarding the processing of applications for Columbia river water right permits to clarify legislative intent to ensure that the rules can be implemented as written.

**Sponsors:** Representatives Chandler, Blake, Dent, Lytton and Dye; by request of Department of Ecology.

**Brief Summary of Bill**

- States that certain agency rules governing instream flows and the water resources program for the Columbia River Basin are consistent with legislative intent.

**Hearing Date:** 1/31/17

**Staff:** Rebecca Lewis (786-7339).

**Background:**

Instream Flows.

The Department of Ecology (Department) has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. These levels, commonly called "instream flows," essentially function as water rights with a priority date set at the adoption date of the corresponding rule. An instream flow may not affect an existing water right with a senior priority date. Likewise, the Department may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serve to satisfy an overriding consideration of the public interest.

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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.*

The Department has used the administrative rule-making process to identify specific instances when a defined amount of water may be reserved in specific basins for future domestic uses. The water reserved for future uses may be used regardless of that water use's effect on established instream flows. The Department has found, in rule, that the reservation of water for future uses is necessary to satisfy overriding considerations of public interest.

#### Columbia River Basin Water Supply.

At the direction of the Legislature, the Department adopted instream flow rules and a water resources program for the Columbia River Basin in 1997. The rules apply to the John Day and McNary Pools of the Columbia River and the Lower Snake River, including WRIA 31 and parts of WRIsAs 32, 33, 36, and 37, all in south central Washington. By rule, any water right application considered for approval is evaluated for possible impacts on fish and existing water rights by the Department and in consultation with applicable local, state, and federal agencies and Indian tribes. Approved permits are subject to instream flow protection or mitigation conditions on a case-by-case basis.

In 2006 the Department was directed to aggressively pursue the development of water supplies using tools such as storage, conservation, and voluntary regional water management agreements to benefit both instream and out-of-stream uses. The Department established the Office of the Columbia River, composed of representatives from federal, state, local, and tribal governments, business and environmental groups, and water users, to develop new water supplies.

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

Department rules governing instream flows and the water resources program for the Columbia River Basin are considered to be consistent with legislative intent and are specifically authorized to be maintained and implemented by the Department. The Department may act on water right applications that conform with the process and requirements in the Columbia River Basin rules even if they are not associated with the development of new water supplies.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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