

SENATE BILL REPORT

SB 5269

As Reported by Senate Committee On:
Agriculture, Water, Trade & Economic Development, February 14, 2017

Title: An act relating to 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.

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: Senators Warnick, Honeyford, Takko and Chase; by request of Department of Ecology.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 2/02/17, 2/14/17 [DP, w/oRec].

Brief Summary of Bill

- Authorizes Department of Ecology to also act on water right applications requesting water right permits that are not associated with water supplies secured through the development of new storage facilities under the Columbia River Basin Water Supply Act.
- Declares that the standards and procedures for processing applications for Columbia River water right permits as established in rule, are consistent with legislative intent.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Wellman, Assistant Ranking Minority Member; Brown, Honeyford, Pearson, Short and Takko.

Minority Report: That it be referred without recommendation.

Signed by Senators Chase, Ranking Minority Member; McCoy and Van De Wege.

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.

Staff: Karen Epps (786-7424)

Background: In 2006, the Legislature enacted the Columbia River Basin Water Supply Act (Act) relating to water resource management in the Columbia River Basin (Basin). A priority of this Act is the development 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. Water supplies that are developed and secured through projects funded from the Basin accounts must be used in specified ways. Two-thirds of this water must be dedicated to out-of-stream uses, while one-third must be used by the Department of Ecology (Ecology) to enhance instream flows. The one-third/two-thirds allocation of water resources between instream and out-of-stream uses does not apply to applications for changes or transfers of existing water rights in the Basin.

The Act required Ecology to establish the Columbia River Basin Water Management Program (Program). The Legislature instructed the Program to focus its efforts to develop water supplies for the Basin on the following needs:

- secure alternatives to groundwater for agricultural users in the Odessa subarea aquifer;
- find sources of water supply for pending water right applications;
- find a new uninterrupted supply of water for the holders of interruptible water rights on the Columbia River mainstem; and
- develop water sources for new municipal, domestic, industrial, and irrigation water needs within the Basin

Ecology, in consultation with stakeholders, must develop a Columbia River Water Supply Inventory (Inventory) every year. The Inventory must identify potential conservation and storage projects in the Basin, as well as estimate the costs and benefits of the projects. The Inventory must also rank the identified projects in a number of different ways, including ranking the projects in order of expense, benefits to fish, and benefits to out-of-stream needs.

Summary of Bill: Ecology may also act on water right applications requesting permits for the use of water that is not associated with water supplies secured through the development of new storage facilities. The Legislature declares that the standards and procedures for processing applications for Columbia River water right permits as established in rule, are consistent with legislative intent and are specifically authorized to be maintained and implemented by Ecology. Ecology's authority to lawfully adopt, amend, or repeal any rule is not affected by this legislation.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill will allow Ecology to continue to issue permits out of the mainstem of the Columbia River. Recent Supreme Court decisions,

specifically the Foster Decision, have created uncertainty associated with Ecology's rules to issue water right permits from the Columbia River because there is not specific legislative intent and authority to implement them. The bill amends the statutes to clearly state that the existing rules are consistent with legislative intent and authorized to be maintained and implemented. The referenced rules have been serving the people and the environment of the Columbia Basin for more than 20 years and were adopted through extensive public process and review as directed by the Legislature in 1997. Through these rules, Ecology is directed to consult with local, federal, tribal, and other stakeholder interests before approving water right applications. Maintaining the standards, procedures, and flexibility allowed by rules will help to ensure that productive working relationships forged by Ecology, through the Office of the Columbia River, will continue into the future and that more multiple-benefit water management actions will move ahead in the future. There is a need for this bill. The rules provide for a very careful discussion with all parties to make sure that the river and the natural resources come out ahead over whatever permits are processed.

CON: The concern with this bill is that the rules allow a small committee to meet and determine whether future development can be allowed to impair instream flows. There was opposition to this provision when the rules were adopted because it was felt that the rules were not sufficient to protect endangered species on the Columbia River. The Supreme Court recently ruled that this approach is illegal and violates the state Water Code, which prevents impairment of senior water rights.

Persons Testifying: PRO: Tom Tebb, Ecology; Kiza Gates, WA Dept. of Fish and Wildlife; Evan Sheffels, WA Farm Bureau.

CON: Bruce Wishart, CELP, Sierra Club.

Persons Signed In To Testify But Not Testifying: No one.