

# HOUSE BILL REPORT

## HB 1334

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

**Title:** An act relating to water resource management on the mainstem of the Columbia and lower Snake rivers.

**Brief Description:** Concerning water resource management on the Columbia and Snake rivers.

**Sponsors:** Representatives Blake, Chandler, Haler, Van De Wege, Ericks, Hinkle, Warnick, Schmick, Condotta, Kretz, Ormsby, Smith, Kessler, Newhouse, Walsh, Nelson, Pearson, Moeller and Short.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/29/09, 2/20/09 [DPS].

**Brief Summary of Substitute Bill**

- Defines "conservation operation and maintenance savings" to include certain present or future water savings.
- Allows a point of diversion, place of use, and purpose of use to be seasonally changed and transferred to any other land or place of use without loss of priority.
- Exempts water rights, or portions of water rights, from relinquishment if the right or portion of the right consists of reduced annual diversions or withdrawals of irrigation water from the Columbia River mainstem or the Lower Snake River mainstem as a result of conservation operation and maintenance savings.
- Requires the Department of Ecology to aggressively pursue the development of storage, conservation, and other actions to provide water supplies to benefit both instream and out-of-stream uses.

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**HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES**

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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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Lias, Ormsby, Pearson and Warnick.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Jacks, Vice Chair; McCoy, Nelson and Van De Wege.

**Staff:** Jaclyn Ford (786-7339)

**Background:**

State Water Law.

Washington water law is based on the Prior Appropriation Doctrine (Doctrine). The Doctrine, known as "first in time is first in right," creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent while use of water under more junior rights may be reduced or prohibited.

A water right has several elements that define the right or place limits on water use under the right. These elements include the water right's priority, quantity, time of the year that water may be withdrawn, point of diversion, purpose of use, and place of use. State statutes include requirements for specifying each of these elements in a water right permit or certificate and provide a process for changing certain elements of the water right, such as the place or purpose of use.

Water users may make a seasonal or temporary change of point of diversion or place of use of water when the change can be made without detriment to existing rights. Such a seasonal or temporary change requires the permission of the Department of Ecology (DOE) or the local water master. With such approval, water users who own the land to which the water rights are attached may also rotate the use of the water when the rotation can be accomplished without detriment to other existing water rights.

The DOE may allow modification of the point of diversion to a downstream intake structure when a modification will provide both environmental and water supply benefits. The structure must also be located downstream, have an existing approved intake structure with capacity to transport the additional diversion, and have the same ownership, purpose of use, season of use, and place of use.

Columbia River Basin Water Supply Act.

In 2006 the Legislature enacted the Columbia River Basin Water Supply Act (Act) relating to water resource management in the Columbia River basin. A priority of the 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.

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**Summary of Substitute Bill:**

The DOE must aggressively pursue the development of storage, conservation, and other actions to provide water supplies to benefit both instream and out-of-stream uses.

A point of diversion, place of use, and purpose of use may be seasonally changed and transferred to any other land or place of use without loss of priority. If withdrawals prior to the effective date of the Act would result in detriment or injury to existing rights, the priority of changes and transfers must be modified to prevent impairment.

Water rights, or portions of water rights, are not subject to relinquishment if the right or portion of the right consists of reduced annual diversions or withdrawals of irrigation water from the Columbia River mainstem or the Lower Snake River mainstem as a result of conservation operation and maintenance savings.

"Conservation operation and maintenance savings" includes any present or future water savings, including savings achieved under voluntary regional agreements, use of soil moisture and monitoring probes; weather forecast and crop use data; irrigation scheduling; and other seasonal water management practices. However, savings do not include those savings achieved through fixed capital investments, such as higher efficiency irrigation systems, canal linings, pipe conversions, or modifications.

Conservation operation and maintenance savings are deemed to save 17 percent of usage. Fifty percent of such conservation operation and maintenance savings, or 8.5 percent of usage, must be available for change and transfer, and the remaining 50 percent of the savings must be placed in trust. Changes and transfers of conservation operation and maintenance savings are deemed to have no negative impact.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill adds:

- If withdrawals prior to the effective date of the Act would result in detriment or injury to existing rights, the priority of changes and transfers must be modified to prevent impairment.
- Conservation operation and maintenance savings are deemed to save 17 percent of usage. Fifty percent of such conservation operation and maintenance savings, or 8.5 percent of usage, must be available for change and transfer, and the remaining 50 percent of the savings must be placed in trust. Changes and transfers of conservation operation and maintenance savings are deemed to have no negative impact.

The substitute bill deletes:

- Water savings must be measured by the real-time reduction in water withdrawals from the water saving techniques, as long as the water savings are no less than 10 percent of the pre-practice usage.
- "Conservation operation and maintenance savings" includes any past, present, or future water savings.
- The emergency clause is deleted.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 20, 2009.

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

**Staff Summary of Public Testimony:**

(In support) This bill allows investors to use water on additional land and maximize their water usage. This bill will give incentives to farmers. These changes are seasonal investments. There has to be a way to keep seasonal investments. This bill does not require public dollars. Past conservation measures should be recognized. This bill will allow for more conservation.

(With concerns) A water right change of purpose is problematic.

(Opposed) This bill unilaterally amends agreed-upon language; that undermines the spirit of the compromise. This bill is retroactive, which creates legal problems and increases overall consumptive use. This is a water-spreading bill. This would contradict the intent of the legislation to allow water to stay in the rivers during critical times. This bill could impact people downstream. All users should be at the table when making these decisions. This bill would be inconsistent with the Act and would affect Columbia River flows.

**Persons Testifying:** (In support) Representative Blake, prime sponsor; Jack Field, Washington Cattlemen's Association; Wade King, Cattle Producers of Washington; Craig Grub, Spokane County Cattlemen; L.D. Green; John Stuhlmiller, Washington Farm Bureau; Jim Jesernig, Washington Association of Conservation Districts; Tim Boyd, Washington State Potato Commission; Pat Boss, Columbia Snake River Irrigators Association; and Ben George.

(With concerns) Ken Slatterly, Department of Ecology.

(Opposed) Patricia Sumption, Sierra Club; Mo McBroom, Washington Environmental Council; Darcy Nonemacher, American Rivers; Martin Durkan, Jr., Muckleshoot Tribe; Dawn Vyvyan, Yakama Nation; and Terry Williams, Tulalip Tribes.

**Persons Signed In To Testify But Not Testifying:** Evan Sheffels, Department of Ecology.