

PROPOSED ALLOCATION OF WATER RIGHTS
FOR IRRIGATION OF BIO-FUEL AND ORGANIC CROPS

SB _____

AN ACT relating to water resource management on the main stem of the Columbia and Snake Rivers, adding a new section 90.90.035 to chapter 90.90 RCW; allocating waters for irrigation of Bio-Fuel and Organic Crops, and for other purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** A new section 90.90.035 is added to chapter 90.90 RCW to read as follows:

Section 1. Allocation of Water Rights for Irrigation of Bio-Fuel and Organic Crops.

- (1) **Definitions.** For purposes of this section, the following definitions shall apply:
- (a) “Department” means the Department of Ecology or its successor.
 - (b) “Bio-Fuel Irrigation” means the use of water for the purpose of irrigating crops that are grown as feed stocks for the production of ethanol, bio-diesel, or other types of engine, heating, or power generation fuels.
 - (c) “Organic Crop Irrigation” means the use of water for the purpose of irrigating crops that are certified under USDA or WADA standards as “organically grown” fruits or vegetables.
 - (d) For purposes of this section, “Columbia river main stem” and “Lower Snake river main stem” has the same meaning as defined in RCW 90.90.030(12).
 - (e) “Person” means any firm, association, water users' association, corporation, limited liability company, irrigation district, municipal corporation, or other legal entity as well as an individual.
- (2) **Purpose and Findings.** The Legislature finds that:
- (a) There are sufficient waters in the Columbia river main stem and the Lower Snake river main stem to establish an allocation of

100,000 acre feet of water annually to be available pursuant to this section for appropriation for Bio-Fuel Irrigation and Organic Crop Irrigation without harming instream resources, and

- (b) A program that makes water available for irrigation of Bio-Fuel Irrigation and for Organic Crop Irrigation will provide significant environmental and economic benefits for the State of Washington.
 - (c) At such time as authorized water withdrawals for the bio-fuel/organically grown water rights reach 100,000 acre feet, but no later than 2013, the Legislature should review the economic and environmental benefits resulting from this authorization and determine whether there is a need to increase the amount of water allocated under this section, taking into account cumulative withdrawals from water rights issued under other sections of RCW 90.90, and the broader water code.
- (3) **Allocation of Waters for Bio-Fuel Irrigation and Organic Crop Irrigation.** Notwithstanding any other provision in Title 90 RCW, this Chapter or any other applicable law, an allocation of an annual aggregate of 100,000 acre feet of water from the Columbia river main stem and the Lower Snake river main stem is hereby established in perpetuity. The waters allocated under this section shall be available for appropriation and use for Bio-Fuel Irrigation and Organic Crop Irrigation. The Department is authorized and directed to issue permits and certificates for the uninterrupted appropriation and use of the water allocated under this section, but solely for the purpose of Bio-Fuel Irrigation and Organic Crop Irrigation.
- (4) **Terms and Conditions Applicable to Permits and Certificates.** For the avoidance of doubt, no application, permit or certificate to appropriate and use waters pursuant to this section shall be denied or conditioned to be interruptible on the grounds that such denial or condition is necessary to satisfy the instream flow or “no net loss” requirements, or any other state law or regulation. In addition, except as specifically provided in this section, water allocated under the provisions of this new section and permits and certificates issued pursuant to this section are deemed as not requiring any further mitigation and the allocation of water under this section and permits and certificates issued pursuant to this section are deemed to satisfy all consultation requirements under state law related to the issuance of new water rights.
- (5) **Applications for Appropriations and Conditions Applicable to Permits and Certificates Issued Pursuant to this Section.** Any Person may apply for a permit to appropriate waters allocated under

this section. The following terms and conditions shall be applicable to permits and certificates issued pursuant to this section:

- (a) Water withdrawal locations included in permits and certificates issued pursuant to this section shall be within the Columbia river main stem or the Lower Snake river main stem as defined in 90.90.030 (12).
- (b) Waters appropriated under this section shall be for Bio-Fuel Irrigation or Organic Crop Irrigation use within the Columbia Basin Project area.
- (c) Except as modified and limited by this section, water rights issued under the bio-fuels/organic crop irrigation designation shall be subject to existing provisions required under the current water code.
- (d) Permits for the use of waters for Bio-Fuel Irrigation and Organic Crop Irrigation shall include a specific designation of the acreage where the water is to be used and the number of acres to be irrigated. Changes in the place of use shall be approved, provided, that the number of irrigated acres may not be increased and the change does not impair any existing senior water right. No change to a use other than Bio-Fuel Irrigation or Organic Crop Irrigation may be approved.
- (e) The total water duty for the Bio-Fuel and Organic crops grown using an appropriation under this section shall be limited to no more than 2.9 acre-ft. per acre (for a single seasonal crop).
- (f) The new water rights issued pursuant to this section may be used with other water rights to establish suitable, multi-year crop rotations for long-term production needs.
- (g) Except as modified and limited by this section, standard provisions included in permits and certificates such as provisions requiring water measuring and fish screens shall be included in permits and certificates issued pursuant to this section.
- (h) Applicants for a Bio-Fuel or Organic Crop irrigation water right under this section must agree, as a condition of the Department issuing the new water right, that the total water duty for all existing water rights owned by the applicant shall be re-calibrated using methodologies jointly agreed upon by Ecology and the state's Water Conservancy Boards, and consistent with the current water code. This re-calibration shall be initiated upon issuance of the new Bio-Fuel/Organic irrigation water rights. Data and technical information for re-calibration of existing water rights shall be

submitted to Ecology by the applicant within one year after the applicant's receipt of the new water right(s) issued pursuant to this section. Re-calibrated water rights shall be re-issued after the existing (30-day) appeal period for Ecology water orders, with existing public/agency notification standards in place.

- (6) The implementation of this section is not limited to, but may be directly included under, Voluntary Regional Agreements per section 90.90.030.