



CLEAN, FLOWING WATERS FOR THE WEST

The Center for
Environmental Law & Policy

January 15, 2010

Senator Phil Rockefeller
Chair, Senate Environment, Water & Energy Committee
Washington State Legislature
Olympia, WA

Dear Sen. Rockefeller and Members of the Committee,

The Center for Environmental Law & Policy (CELP) expresses support, with concerns, for SB 6267, a bill relating to water rights processing, to be heard in Committee on January 15, 2010.

SB 6267 has several meritorious provisions and holds promise to solve the water right application backlog. However, there is another concept for funding water rights processing, now pending in the House Ag & Natural Resources Committee, that sets forth what we believe to be a better approach. HB 2591 would establish a set of cost recovery fees that requires water right applicants to reimburse the state for water right processing expenses. For more information about cost recovery and water resource program fees, please see CELP's 2005 report *Water is Worth It (Making the Case for a Water Management Fee)* for more information about why water resource fees are a great idea (on CELP's homepage at www.celp.org). To date, HB 2591 has no companion bill in the Senate.

That said, CELP supports SB 6267 with concerns. This bill would effectively privatize the Department of Ecology's water rights processing program. Historically the Legislature has had difficulty in fully funding the water rights program, leading to a substantial backlog of water right applications. This approach presented in this bill would provide a solution to the backlog problem. CELP prefers the cost recovery approach set forth in SB 6267, but this approach would work too.

CELP's first concern regarding SB 6267 relates to the need to provide adequate funding to the Department of Ecology to provide oversight of private contractors and fulfill other tasks as authorized in the bill (e.g., determining geographic limits of water resource areas). The waters of Washington state belong to the public, and decisions to allocate those waters can be extremely complex. Ecology must have sufficient resources to certify that private consultants are qualified to make these decisions, and to provide oversight on their final decisions – especially when those decisions involve mitigation projects that affect other water users and instream flows.

CELP's second concern regarding SB 6267 relates to the lack of discussion of instream flow protection in the bill. There are many streams in Washington where instream flow regulations have yet to be adopted. Further, for hundreds of regulated and unregulated

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streams around the state, instream flows are inadequate to support aquatic habitat, water quality and other public values. HB 2508 says nothing about the relationship between processing water right applications and the need to protect and restore streamflow. We urge you to amend the bill to include such protections.

Finally, we enthusiastically endorse Sections 4 and 6 of the bill, which provides a coherent and equitable method for making and applying water availability determinations in water short basins.

Thank you again for the opportunity to comment on the Committee's water resource bills.

Yours very truly,



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Sen. Jim Honeyford
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Sen. Karen Fraser
Sen. Janea Holmquist
Sen. Chris Marr
Sen. Bob Morton
Sen. Eric Oemig
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