

HOUSE BILL NO. 636

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Bill Status

H0636.....by RESOURCES AND CONSERVATION
CLEARWATER RIVER - Adds to existing law to establish a minimum stream flow water right for that stretch of the North Fork of the Clearwater River immediately below Dworshak Dam to the confluence with the Clearwater River to be held by the Idaho Water Resource Board in trust for the people of the state of Idaho.

02/10 House intro - 1st rdg - to printing

02/13 Rpt prt - to Res/Con

02/22 Rpt out - rec d/p - to 2nd rdg

02/23 2nd rdg - to 3rd rdg

02/27 3rd rdg - PASSED - 65-1-4

AYES -- Andrus, Barraclough, Barrett, Bastian, Bayer, Bedke, Bell, Bilbao, Black, Block, Boe, Brackett, Cannon, Chadderdon, Clark, Collins, Crow, Deal, Denney, Edmunson, Ellsworth, Eskridge, Field(18), Field(23), Garrett, Hart, Harwood, Henbest, Henderson, Jaquet, Kemp, Lake, LeFavour, Loertscher, Martinez, Mathews, McGeachin, McKague, Miller, Mitchell, Nielsen, Nonini, Pasley-Stuart, Pence, Raybould, Ring, Ringo, Roberts, Rusche, Rydalch, Sali(Sali), Sayler, Schaefer, Shepherd(2), Shepherd(8), Shirley, Skippen, Smith(30), Smith(24), Smylie, Stevenson, Trail, Wills, Wood, Mr. Speaker

NAYS -- Snodgrass

Absent and excused -- Anderson, Bolz, Bradford, Moyle

Floor Sponsor - Raybould

Title apvd - to Senate

02/28 Senate intro - 1st rdg - to Res/Env

03/14 Rpt out - rec d/p - to 2nd rdg

03/15 2nd rdg - to 3rd rdg

03/16 3rd rdg - PASSED - 35-0-0

AYES -- Andreason, Brandt, Broadsword, Bunderson, Burkett, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce, Richardson, Schroeder, Stegner, Stennett, Sweet, Werk, Williams

NAYS -- None

Absent and excused -- None

Floor Sponsor - Williams

Title apvd - to House

03/17 To enrol

03/20 Rpt enrol - Sp signed
 03/21 Pres signed - To Governor
 03/22 Governor signed
 Session Law Chapter 112
 Effective: Contingent on Governor's
 Proclamation stating that all conditions of
 the Snake River Water Rights Agreement of
 2004 have been met

83-11966

Bill Text

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
 Fifty-eighth Legislature Second Regular Session - 2006

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 636

BY RESOURCES AND CONSERVATION COMMITTEE

1 AN ACT
 2 RELATING TO WATER; TO ESTABLISH A MINIMUM STREAM FLOW WATER RIGHT FOR A
 3 DEFINED STRETCH OF THE NORTH FORK OF THE CLEARWATER RIVER IMMEDIATELY
 4 BELOW DWORSHAK DAM TO THE CONFLUENCE WITH THE CLEARWATER RIVER TO BE HELD
 5 BY THE IDAHO WATER RESOURCE BOARD IN TRUST FOR THE PEOPLE OF THE STATE OF
 6 IDAHO; DECLARING AN EMERGENCY AND PROVIDING A CONTINGENT EFFECTIVE DATE.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. The Legislature hereby establishes a minimum stream flow water
 9 right for that stretch of the North Fork of the Clearwater River immediately
 10 below Dworshak Dam to the confluence with the Clearwater River, to be held by
 11 the Idaho Water Resource Board in trust for the people of the state of Idaho.
 12 The elements of the minimum stream flow water right, including subordination
 13 to other uses of water, subordination to operations of the Dworshak Project,
 14 and other remarks, are as follows:

15 Priority Date: April 1, 2005.

16 Reach: A single point of reference near the confluence with the
 17 mainstem Clearwater River, below Dworshak Dam and just
 18 above the Highway 7 bridge, located approximately in the
 19 SW1/4NE1/4SW1/4, Section 34, T37N, R01E, B.M., Clearwater
 20 County.

21 Rate of flow: Changing monthly as follows: January - 2,108 cfs; February
 22 - 2,625 cfs; March - 4,250 cfs; April - 10,560 cfs; May -
 23 16,560 cfs; June - 9,790 cfs; July - 2,730 cfs; August -
 24 1,380 cfs; September - 1,131 cfs; October - 1,404 cfs;
 25 November - 2,059 cfs; December - 2,368 cfs.

26 Purpose: Minimum stream flow to preserve fish, wildlife, scenic, and
 27 recreational values and to protect and enhance water qual-
 28 ity and is equivalent to the unimpaired monthly fifty per-
 29 cent (50%) exceedence flows.

30 This water right is subordinated to future non-domestic-commercial-
31 municipal-industrial ("non-DCMI") development in an amount up to 283 cfs based
32 on twenty-five percent (25%) of the lowest unimpaired median monthly flow or
33 the amount available above a base flow which is equivalent to the unimpaired
34 monthly eighty percent (80%) exceedence flow, whichever is less.

35 The unimpaired monthly eighty percent (80%) exceedence flows are: January
36 - 1,364 cfs; February - 1,540 cfs; March - 2,550 cfs; April - 6,600 cfs; May -
37 11,520 cfs; June - 5,500 cfs; July - 1,680 cfs; August - 1,050 cfs; September
38 - 871 cfs; October - 954 cfs; November - 1,305 cfs; and December - 1,480 cfs.

39 This water right shall be subordinated to all future DCMI uses.

2

1 While the instream flow and the future allocation for non-DCMI uses and
2 base flows are to be decreed in cubic feet per second (cfs), such quantities
3 are intended to reflect the percentages of the unimpaired exceedence flows at
4 the quantification point described in this water right. The unimpaired
5 exceedence flows were estimated using regional regression equations developed
6 by the United States Geological Service. Upon further finding and order of the
7 director of the Department of Water Resources that gaging stations are
8 required to maintain the approved minimum flows under this right, such measur-
9 ing devices shall be permanently installed and maintained as specified by the
10 director. If actual flow data become available, the quantities in this water
11 right will be adjusted as necessary to give effect to the exceedence assump-
12 tion stated above. Such adjustments do not result in a material change to the
13 water right and are not subject to the notice and hearing requirements set
14 forth in the partial decree, but shall comply with the notice and consultation
15 requirements of Section 42-1507(4), Idaho Code.

16 Use of water under this right shall recognize and allow the continued ben-
17 eficial diversion of water under any prior existing water right established by
18 diversions and application to beneficial use or by an application, permit or
19 license on file or issued by the director under the provisions of Chapter 2,
20 Title 42, Idaho Code, with a priority of water right date earlier than the
21 date of priority of this right.

22 There are no diversions associated with this minimum stream flow water
23 right. The quantification point for this instream flow water right is at the
24 following location: T37N R01E S34 SWNESW End of Stream Flow Within Clearwater
25 County.

26 The Idaho Water Resource Board, upon receiving a request, or upon its own
27 initiative, may petition the director for an amendment to this water right
28 after complying with the notice and consultation procedures of Section
29 42-1507(4), Idaho Code. The petition must set forth any significant change in
30 circumstances and evidence of the public interest supporting the proposed
31 amendment. The director will notify the general public and specific persons or
32 notify interested parties of the proposed change, and conduct a hearing for
33 the purpose of determining whether the water right should be amended in the
34 public interest.

35 This instream flow water right is subordinated to all present and future
36 operations of the Dworshak Project. The term "operations" as used herein means
37 the timing and rate of discharge, including water storage and release of
38 stored water, from Dworshak Dam.

39 SECTION 2. An emergency existing therefor, which emergency is hereby
40 declared to exist, this act shall be in full force and effect upon issuance of
41 a proclamation by the governor certifying that all conditions for the effec-
42 tiveness of the Snake River Water Rights Agreement of 2004 have been satis-
43 fied.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 15995C1

This legislation creates a Minimum Streamflow water right on segments of the North Fork of the Clearwater River immediately below Dworshak Dam to the confluence with the Clearwater River to be held by the Idaho Water Resource Board. This Minimum Streamflow was inadvertently omitted from the list of Minimum Streamflows agreed to as part of the Snake River Water Rights Agreement of 2004. The Minimum Streamflow is subordinated to all existing water rights, the operation of Dworshak Reservoir, future domestic, commercial, municipal and industrial uses and up to 283 c.f.s. of other future uses.

Approval of this instream flow will expedite the implementation of the Snake River Water Rights Agreement of 2004. This water right will become effective only upon the Governor's issuance of a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

FISCAL NOTE

This legislation imposes no fiscal burden on any agency or unit of government.

Contact

Name: Representative John A. Stevenson
Phone: (208) 332-1000
Representative Dell Raybould

STATEMENT OF PURPOSE/FISCAL NOTE

H 636



Executive Department
State of Idaho

The Office of the Governor Proclamation

State Capitol
Boise

WHEREAS, on May 15, 2004, the United States, the State of Idaho, the Nez Perce Tribe and other stakeholders announced a proposed settlement agreement of certain claims asserted by the Nez Perce Tribe in the Snake River Basin Adjudication ("SRBA") by releasing the "Mediator's Team Sheet" dated April 20, 2004 ("Agreement"); and

WHEREAS, pursuant to the Snake River Water Rights Act of 2004, Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004), the purpose of the settlement is to "resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, and the citizens of the State [of Idaho];" and

WHEREAS, pursuant to the Snake River Water Rights Act of 2004, Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004) and the Agreement, the Secretary of Interior, Chairman of the Nez Perce Tribe, and Governor of Idaho shall all signify that the requirements of the Agreement have been met; and

WHEREAS, pursuant to Idaho House of Representatives Bill No. 152, Section 4, in 2005 Idaho Session Laws, Chapter 148, the approval, ratification, and confirmation of the Agreement by the Idaho Legislature would not be in full force and effect until such time as the Governor issues a proclamation certifying that all conditions for the effectiveness of the Agreement have been satisfied; and

WHEREAS, pursuant to Idaho Code Section 42-1763B, as amended by House of Representatives Bill No. 399, Section 1, in 2005 Idaho Session Laws, Chapter 400, the interim authority for renting water to augment flows for listed anadromous fish is to not become effective until such time as the Governor issues a proclamation certifying that the biological opinions required by the Agreement have been issued; and

WHEREAS, pursuant to Idaho Code Section 42-1507, as enacted by House of Representatives Bill No. 154, Section 1, in 2005 Idaho Session Laws, Chapter 150, the state minimum stream flows held in trust for the people of the State of Idaho, as described in the resolution of the Idaho Water Resource Board dated December 17, 2004, are not to become effective until such time as the Governor issues a proclamation certifying that all conditions for the effectiveness of the Agreement have been satisfied;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, do hereby proclaim that the following requirements under the Agreement have been met:

1. The necessary component documents that make up the Agreement have been executed;
2. Congress has approved and ratified the Agreement and authorized all federal expenditures required by the Agreement;
3. The Idaho Legislature has approved and ratified the Agreement and enacted all required state legislation;
4. The Nez Perce Tribe has approved and ratified the Agreement;
5. The SRBA District Court has entered a final judgment and decree incorporating the Agreement;
6. The Biological Opinion for the action described in the Snake River Flow Component of the Agreement has been issued.



Ben Ysursa

BEN YSURSA
SECRETARY OF STATE

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at Boise, Idaho, on this 27th day of April in the year of our Lord two-thousand and seven and of the Independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

C.L. Butch Otter
C.L. "BUTCH" OTTER
GOVERNOR