

SENATE BILL REPORT

SB 5478

As of February 4, 1999

Title: An act relating to water flows.

Brief Description: Promoting adequate stream and lake levels.

Sponsors: Senators Fraser, Spanel and Winsley.

Brief History:

Committee Activity: Environmental Quality & Water Resources: 2/5/99.

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

Staff: Genevieve Pisarski (786-7488)

Background: Since 1949, the Department of Ecology has been required to consult with the Department of Fish and Wildlife before approving water rights applications and has had discretion to condition water rights to protect instream flows. In 1969, the Legislature provided additional authority to protect instream flows through the Minimum Water Flows and Levels Act. In 1971, in the Water Resources Act, the Legislature articulated policies for instream flows and affirmed the provisions of the Minimum Flows Act. Minimum flows and levels are intended to protect fish and other wildlife resources, recreational or aesthetic values, and water quality. Uses of water that would conflict with the policy of maintaining flows in perennial rivers and streams and levels in lakes and ponds are permitted only if such use would serve overriding considerations of the public interest.

The Department of Ecology has sole authority to establish flows and levels, in consultation with other departments. The department may establish minimum flows or levels by administrative rule. These flows or levels are water rights, and their priority date is the effective date of the adoption of the rule. Establishment of instream flows and lake levels may not affect existing rights, including rights relating to hydroelectric dams, water storage reservoirs, or related facilities. The adopted minimum flows and levels may not be affected by any subsequent diversion or storage rights, including groundwater withdrawals, if their effect on surface water can be demonstrated.

Summary of Bill: The terms "base" and "minimum," where used in statute to define the flow or level to be maintained in a water body, are replaced by the term "adequate" and made consistent. Flows and levels adequate to support sustainable populations of salmon and trout are made a high priority for planning and management of water resources.

Establishing adequate flows and levels is made mandatory. The Department of Ecology must incorporate best available science and develop and update methodologies, in consultation with the Department of Fish and Wildlife and the state's independent science panel for salmon recovery.

Between July 1, 1999, and June 30, 2003, the Department of Ecology must place the highest priority on establishing adequate flows and levels for recovery of depressed salmon and trout populations and must adopt a schedule, with the goal of establishing or revising flows and levels by June 30, 2001, where populations are listed or proposed for listing under the federal Endangered Species Act and flows or levels are a limiting factor for recovery. The priority date of flows or levels adopted after January 1, 1999, is the date of the notice of rule making or the effective date of an emergency rule. When necessary to avoid unlawful taking of listed salmon or trout species under the federal Endangered Species Act, the Governor may assign an earlier priority date, effective for up to 180 days and renewable as needed. The Governor must minimize impacts on existing senior water rights, provide notice, hold a public hearing and consider public comment, and must seek recommendations that would make an earlier priority date unnecessary from the responsible watershed planning unit. Where fish stocks are listed or proposed for listing under the federal Endangered Species Act and flow or level is a limiting factor for recovery and an adequate flow or level has not been established, no permits for water rights can be issued before July 1, 2001.

The Department of Ecology must notify the Office of Salmon Recovery, as well as the Department of Fish and Wildlife, regarding applications for permits, changes, and transfers affecting designated critical habitat, where fish stocks are listed or proposed for listing under the federal Endangered Species Act. The Department of Ecology may condition permits to protect flows.

Any person or government may hold water rights for instream purposes. Temporary or permanent transfers of water rights for instream purposes are authorized, retain their original priority date, and are administered as trust water rights. The stream reaches to which they apply must be identified. The state may contract for the acquisition of water rights for instream purposes. Relinquished water rights become trust water rights, if needed to protect or restore streamflows.

The Department of Ecology reports annually on implementation of this act. Previous requirements for a schedule of rule making for instream flows are repealed.

Appropriation: None.

Fiscal Note: Requested on January 26, 1999.

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