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SENATE BILL 6091

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State of Washington

56th Legislature

1999 Regular Session

By Senators Fraser and Swecker

Read first time 04/02/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to the beneficial use of water under a water code  
2 permit by public water systems; amending RCW 90.03.330; and adding new  
3 sections to chapter 90.03 RCW.

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

5 **Sec. 1.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read  
6 as follows:

7 (1) Upon a showing satisfactory to the department that any  
8 appropriation has been perfected in accordance with the provisions of  
9 this chapter, it shall be the duty of the department to issue to the  
10 applicant a certificate stating such facts in a form ((to be))  
11 prescribed by ((him)) the department, and such certificate shall  
12 ((thereupon)) be recorded with the department. Upon the request of a  
13 public water system, the department shall evaluate and issue if  
14 appropriate, incremental certificates of water right, not more than  
15 once every six years, that reflect either instantaneous or annual  
16 quantities of water, or both, perfected by actual beneficial use. The  
17 beneficial use of water must be demonstrated by pumping or diversion  
18 records, meter data, or other reasonable information showing the extent  
19 of actual beneficial use of water. Any original water right

1 certificate issued, as provided by this chapter, shall be recorded with  
2 the department and thereafter, at the expense of the party receiving  
3 the (~~same~~) certificate, be transmitted by the department  
4 (~~transmitted~~) to the county auditor of the county or counties where  
5 the distributing system or any part thereof is located(~~(, and)~~). The  
6 certificate shall be recorded in the office of such county auditor, and  
7 thereafter be transmitted to the (~~owner thereof~~) certificate holder.

8 (2) Certificates of water right held by public water systems that  
9 document a combination of water that has been put to beneficial use and  
10 water that has never been put to beneficial use, that have department  
11 of health approval for the source associated with the right, and for  
12 which the entity holding the certificate has constructed facilities in  
13 place to use the water authorized by the water right, shall be  
14 administered in the following manner:

15 (a) Any instantaneous or annual quantity of water that has been  
16 perfected by actual beneficial use of water before the effective date  
17 of this section shall remain a certificated right in good standing.

18 (b) Any instantaneous or annual quantity of water not perfected by  
19 beneficial use before the effective date of this section will be  
20 reinstated as a water right permit within the meaning of this chapter  
21 and the holder of the permit is authorized to continue development and  
22 use of water under the permit. The reinstated permit shall be  
23 administered by the department as an inchoate water right permit in  
24 good standing, with a priority date as of the original application,  
25 subject to the requirements of sections 3 and 4 of this act.

26 (3) For a permit held by a public water system reinstated by this  
27 section that has a department of health-approved number of connections  
28 and for which the original water right application filing was for a  
29 discrete number of connections, water use up to the department of  
30 health-approved number of connections as of the effective date of this  
31 section is allowed within the existing water service area of the public  
32 water system. If the public water system does not have an existing  
33 service area established under chapter 43.20 or 70.116 RCW, the place  
34 of use as authorized under the original certificate shall be the place  
35 of use for water that is reinstated to permit status under this  
36 section.

37 (4) For a permit held by a public water system reinstated by this  
38 section that has a department of health-approved number of equivalent  
39 residential units and for which the original water right application

1 filing was made for a discrete number of connections, or for then-  
2 current population and future requirements of the municipality or  
3 community, water service shall be allowed up to the number of  
4 equivalent residential units approved by the department of health as of  
5 the effective date of this section for the existing service area of the  
6 public water system as established under chapter 43.20 or 70.116 RCW.  
7 Water service provided through interties must comply with RCW  
8 90.03.383.

9 (5) For a permit held by a public water system reinstated by this  
10 section that has an unspecified number of connections in its department  
11 of health-approved water system plan and for which the original  
12 application filing was made for then-current population and future  
13 requirements of the municipality or community, water service shall be  
14 allowed to satisfy the water requirements of the existing service area  
15 as established under chapter 43.20 or 70.116 RCW. Water service  
16 provided through interties must comply with RCW 90.03.383.

17 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW  
18 to read as follows:

19 (1) Any public water system asserting that it holds a certificate  
20 of water right that documents a combination of water put to beneficial  
21 use and water not yet put to beneficial use shall provide evidence to  
22 the department demonstrating that the criteria in RCW 90.03.330(2) are  
23 met such that a superseding certificate and water right permit should  
24 be issued. A demonstration of meeting the criteria of RCW 90.03.330  
25 shall be through existing planning programs and processes of the  
26 department of health or ecology to the extent practicable. All class  
27 A public water systems asserting they hold a certificate of water right  
28 water that documents a combination of water put to beneficial use and  
29 water not yet put to beneficial use shall initially document compliance  
30 with RCW 90.03.330 not less than two years and not more than eight  
31 years from the effective date of this section. All other public water  
32 systems asserting they hold a certificate of water right water that  
33 documents a combination of water put to beneficial use and water not  
34 yet put to beneficial use shall initially document compliance with RCW  
35 90.03.330 not less than four years from the effective date of this  
36 section, unless requested by the department to do so sooner. If the  
37 department, upon reviewing a public water system plan or other  
38 applicable information, determines that the system has an inchoate

1 water right as provided in RCW 90.03.330, the department shall issue a  
2 superseding certificate for the portion of the right that has been put  
3 to beneficial use and shall issue a permit for the inchoate portion of  
4 the water right that is reinstated to permit status. The permit shall  
5 have a development schedule and be conditioned with the performance  
6 standards created by section 3 of this act. The development schedule  
7 shall be twenty years from the effective date of this section with the  
8 option to extend if good cause is shown under RCW 90.03.320, except  
9 that the department may:

10 (a) Authorize a development schedule longer than twenty years, but  
11 not more than fifty years, if a planned need is demonstrated, and (i)  
12 a withdrawal facility with a hydraulic capacity beyond that needed for  
13 twenty years was constructed, or (ii) debt service requirements extend  
14 for such a period;

15 (b) Authorize a development schedule of less than twenty years if  
16 the permittee, with reasonable diligence, can perfect the permit in a  
17 shorter period of time; or

18 (c) Deny any time for further development if there is no  
19 demonstrated need for the water based on the water system plan or other  
20 applicable information.

21 (2) Upon any determination of noncompliance with the performance  
22 standards created by section 3 of this act, the permittee shall be  
23 granted, by written notice, a reasonable period of time to comply. If  
24 the permittee receiving such a notification disagrees with the  
25 department's determination of a reasonable time for compliance, it may,  
26 at its election, initiate nonbinding mediation with the department to  
27 resolve the dispute. After mediation, if the dispute is not resolved,  
28 the state shall issue an order to effect the performance standards.  
29 The order is appealable to the pollution control hearings board.

30 (3) At the end of the construction schedule authorized in the  
31 permit, the permittee may request an extension of time only as provided  
32 in RCW 90.03.320.

33 (4) The department shall process requests made under this section  
34 generally in the order in which received.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW  
36 to read as follows:

37 (1) Any permittee with a water right permit reinstated under RCW  
38 90.03.330 must meet the performance standards of this section.

1 Demonstration of compliance with performance standards shall be through  
2 existing planning programs and processes of the department of health or  
3 ecology to the extent practicable. All class A public water systems  
4 asserting they hold a certificate of water right water that documents  
5 a combination of water put to beneficial use and water not yet put to  
6 beneficial use shall initially document compliance with RCW 90.03.330  
7 not less than two years and not more than eight years from the  
8 effective date of this section. All other public water systems  
9 asserting they hold a certificate of water right water that documents  
10 a combination of water put to beneficial use and water not yet put to  
11 beneficial use shall initially document compliance with RCW 90.03.330  
12 not less than four years from the effective date of this section,  
13 unless requested by the department to do so sooner. If the permittee  
14 complies with the performance standards, it will be in compliance with  
15 RCW 90.03.320. The performance standards are:

16 (a) Evidence demonstrating a need for the water within the  
17 development schedule specified by the permit consistent with demand  
18 forecasts prepared in accordance with the demand forecasting methods  
19 specified by the departments of ecology and health;

20 (b) Evidence that the water system's use of water is fully  
21 consistent with approved local land use planning within the constraints  
22 of water availability and cost;

23 (c) Evidence that water use meets state conservation and water use  
24 efficiency requirements existing at the time the documentation is  
25 submitted;

26 (d) Current information on how the utility's recent and proposed  
27 beneficial use of water under the permit is consistent with state and  
28 federal laws legally applicable to water use under the permit;

29 (e) Evidence of participation by the permittee, to the extent  
30 practicable, in watershed planning under chapter 90.82 RCW, coordinated  
31 water system planning under chapter 70.119 RCW, or other collaborative  
32 watershed planning efforts, if initiated; and

33 (f) Evidence of participation in and implementation of agreements  
34 under section 4 of this act, as required.

35 (2) For the performance standards in subsection (1) of this  
36 section, the department of health is responsible for ensuring  
37 compliance with subsection (1)(a) through (c) of this section and the  
38 department of ecology is responsible for ensuring compliance with  
39 subsection (1)(d) through (f) of this section when compliance with the

1 performance standards is identified in a water system plan. If no  
2 water system plan is required, the department of ecology is responsible  
3 for ensuring compliance with all performance standards.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW  
5 to read as follows:

6 (1) Where the source of water authorized for diversion under a  
7 permit reinstated by section 2 of this act is either a surface water  
8 source or a ground water source that is interconnected with a surface  
9 water body that provides habitat for salmon or trout populations listed  
10 or proposed for listing under the federal endangered species act or  
11 determined by the department of fish and wildlife to be depressed or  
12 critical, and where water can be used to protect and restore  
13 streamflows that are needed by such species and stocks, the public  
14 water system shall enter into and implement a binding agreement with  
15 the departments of ecology and fish and wildlife to specify how  
16 inchoate water is developed concurrently with the restoration and  
17 protection of streamflow necessary for the recovery of such fish  
18 species.

19 (2) In developing binding agreements with permittees under this  
20 section, the departments of fish and wildlife and ecology shall give  
21 priority to water systems having more than one thousand service  
22 connections. Agreements with water systems having fewer than one  
23 thousand service connections shall be a priority, if the system's water  
24 source is identified as a priority by the department of fish and  
25 wildlife in consultation with other concerned state agencies. Public  
26 water systems are encouraged to join together for purposes of  
27 concluding agreements under this section and to do so on a watershed or  
28 multiwatershed basis to promote the recovery of fish stocks and  
29 efficient delivery of public water supply.

30 (3) The purpose of the binding agreement is to identify and make  
31 mutual commitments to:

32 (a) Take immediate actions to arrest the further decline in fish  
33 stocks;

34 (b) Establish, protect, and restore an instream flow that is  
35 sufficient to restore and maintain properly functioning habitat  
36 conditions to support a harvestable supply of fish. Any instream flows  
37 that are established in connection with a binding agreement for a water  
38 resource inventory area, as defined by chapter 173-500 WAC, overlaying

1 the same geographic areas that received a grant from the department  
2 under chapter 90.82 RCW shall be interim unless and until such planning  
3 for instream flow, if applicable, is complete under chapter 90.82 RCW.  
4 Interim instream flows established shall be conservative with regard to  
5 preserving instream values. Before establishing an instream flow under  
6 this section, the department shall engage in government-to-government  
7 consultation with affected tribes regarding the setting of such flows;

8 (c) Define a strategy to restore streamflows to the established  
9 instream flow;

10 (d) Establish benchmarks or milestones that can be used to  
11 objectively measure the success in the recovery and maintenance of the  
12 listed salmonid stocks; and

13 (e) Establish provisions for an adaptive management approach to  
14 modify the binding agreement to effect its goal.

15 (4) If a binding agreement is not developed and signed by the  
16 departments of ecology and fish and wildlife and the permittee within  
17 two years of the effective date of this section, the permittee's use of  
18 water from the effective date of this section under the permit shall be  
19 subject to applicable source instream flows created by rule existing as  
20 of the effective date of this section. If instream flows have not been  
21 established by rule or the rule's instream flow is insufficient, an  
22 instream flow shall be specified by the department in consultation with  
23 the department of fish and wildlife under RCW 75.20.050 by permit  
24 proviso, and the permit shall be subject to any future instream flows  
25 adopted or amended by the department.

26 (5) Within four years of the effective date of this section and  
27 every three years thereafter, the department, in consultation with the  
28 department of fish and wildlife, shall review the binding agreement and  
29 its implementation to determine its effectiveness in contributing to  
30 the recovery and maintenance of the listed salmonid stocks. The review  
31 shall also assess the actions of all parties to implement the  
32 agreement. If the department of ecology determines by written findings  
33 that a permittee who is party to the binding agreement has failed to  
34 abide by the agreement, it shall condition the use of water under the  
35 permit, from the effective date of this section, to applicable instream  
36 flows created by rule existing as of the effective date of this  
37 section. If instream flows have not been established by rule or the  
38 rule's instream flow is insufficient, an instream flow shall be  
39 specified by the department in consultation with the department of fish

1 and wildlife under RCW 75.20.050 by permit proviso, and the permit  
2 shall be subject to any future instream flows adopted or amended by the  
3 department.

4 (6) If any permittee who is party to a binding agreement disagrees  
5 with any determinations made by the department under this section, the  
6 permittee may elect to initiate nonbinding mediation with the  
7 department to resolve a dispute. After mediation, if the dispute is  
8 not resolved, the permittee may appeal any findings made by the  
9 department to the pollution control hearings board.

10 (7) This section does not waive any other requirement of the law  
11 related to the use of water.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW  
13 to read as follows:

14 Nothing in this act, including decisions made under the authority  
15 of this act, may impair any existing water right.

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