
SENATE BILL 6084

State of Washington

59th Legislature

2005 Regular Session

By Senators Honeyford, Mulliken and Hewitt

Read first time 03/10/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to extent and validity determinations of temporary
2 water rights changes during drought conditions; and amending RCW
3 43.83B.410.

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

5 **Sec. 1.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to read
6 as follows:

7 Upon the issuance of an order under RCW 43.83B.405, the department
8 of ecology is empowered to:

9 (1)(a) Authorize emergency withdrawal of public surface and ground
10 waters, including dead storage within reservoirs, on a temporary basis
11 and authorize associated physical works which may be either temporary
12 or permanent. The termination date for the authority to make such an
13 emergency withdrawal may not be later than the termination date of the
14 order issued under RCW 43.83B.405 under which the power to authorize
15 the withdrawal is established. The department of ecology may issue
16 such withdrawal authorization when, after investigation and after
17 providing appropriate federal, state, and local governmental bodies an
18 opportunity to comment, the following are found:

1 (i) The waters proposed for withdrawal are to be used for a
2 beneficial use involving a previously established activity or purpose;

3 (ii) The previously established activity or purpose was furnished
4 water through rights applicable to the use of a public body of water
5 that cannot be exercised due to the lack of water arising from natural
6 drought conditions; and

7 (iii) The proposed withdrawal will not reduce flows or levels below
8 essential minimums necessary (A) to assure the maintenance of fisheries
9 requirements, and (B) to protect federal and state interests including,
10 among others, power generation, navigation, and existing water rights;

11 (b) All withdrawal authorizations issued under this section shall
12 contain provisions that allow for termination of withdrawals, in whole
13 or in part, whenever withdrawals will conflict with flows and levels as
14 provided in (a)(iii) of this subsection. Domestic and irrigation uses
15 of public surface and ground waters shall be given priority in
16 determining "beneficial uses." As to water withdrawal and associated
17 works authorized under this subsection, the requirements of chapter
18 43.21C RCW and public bidding requirements as otherwise provided by law
19 are waived and inapplicable. All state and local agencies with
20 authority to issue permits or other authorizations for such works
21 shall, to the extent possible, expedite the processing of the permits
22 or authorizations in keeping with the emergency nature of the requests
23 and shall provide a decision to the applicant within fifteen calendar
24 days of the date of application. All state departments or other
25 agencies having jurisdiction over state or other public lands, if such
26 lands are necessary to effectuate the withdrawal authorizations issued
27 under this subsection, shall provide short-term easements or other
28 appropriate property interest upon the payment of the fair market
29 value. This mandate shall not apply to any lands of the state that are
30 reserved for a special purpose or use that cannot properly be carried
31 out if the property interest were conveyed;

32 (2) Approve a temporary change in purpose, place of use, or point
33 of diversion, consistent with existing state policy allowing transfer
34 or lease of waters between willing parties, as provided for in RCW
35 90.03.380, 90.03.390, and 90.44.100. However, (a) any determination of
36 the extent and validity of a water right required under these sections;
37 or (b) compliance with any requirements of ((+a+)) (i) notice of
38 newspaper publication of these sections; or ((+b+)) (ii) the state

1 environmental policy act, chapter 43.21C RCW, is not required when such
2 changes are necessary to respond to drought conditions as determined by
3 the department of ecology. An approval of a temporary change of a
4 water right as authorized under this subsection is not admissible as
5 evidence in either supporting or contesting the validity of water
6 claims in *State of Washington, Department of Ecology v. Acquavella*,
7 Yakima county superior court number 77-2-01484-5 or any similar
8 proceeding where the existence of a water right is at issue.

9 (3) Employ additional persons for specified terms of time,
10 consistent with the term of a drought condition, as are necessary to
11 ensure the successful performance of the activities associated with
12 implementing the emergency drought program of this chapter.

13 (4) Revise the drought contingency plan previously developed by the
14 department; and

15 (5) Acquire needed emergency drought-related equipment.

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