
SENATE BILL 5299

State of Washington

61st Legislature

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By Senators Hatfield, Delvin, Holmquist, Marr, Morton, Schoesler, Ranker, Sheldon, Murray, and Shin

Read first time 01/20/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to water resource management on the mainstem of the
2 Columbia and lower Snake rivers; amending RCW 90.90.005, 90.03.380, and
3 90.90.030; reenacting and amending RCW 90.14.140; and declaring an
4 emergency.

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

6 **Sec. 1.** RCW 90.90.005 and 2006 c 6 s 1 are each amended to read as
7 follows:

8 (1) The legislature finds that a key priority of water resource
9 management in the Columbia river basin is the development of new water
10 supplies that includes storage and conservation in order to meet the
11 economic and community development needs of people and the instream
12 flow needs of fish.

13 (2) The legislature finds that uncertainty as to existing law may
14 discourage water conservation in the Columbia river basin through
15 relinquishment of conservation savings and that avoiding such
16 relinquishment and facilitating transfer of such conservation water
17 savings can assist in meeting the water supply needs of irrigated
18 agriculture while protecting Columbia and Snake river streamflows.

1 (3) The legislature therefore declares that a Columbia river basin
2 water supply development program is needed, and directs the department
3 of ecology to aggressively pursue the development of storage,
4 conservation, and other actions to provide water supplies to benefit
5 both instream and out-of-stream uses.

6 **Sec. 2.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
7 as follows:

8 (1) The right to the use of water which has been applied to a
9 beneficial use in the state shall be and remain appurtenant to the land
10 or place upon which the same is used: PROVIDED, HOWEVER, That the
11 right may be transferred to another or to others and become appurtenant
12 to any other land or place of use without loss of priority of right
13 theretofore established if such change can be made without detriment or
14 injury to existing rights. The point of diversion of water for
15 beneficial use or the purpose of use may be changed, if such change can
16 be made without detriment or injury to existing rights. A change in
17 the place of use, point of diversion, and/or purpose of use of a water
18 right to enable irrigation of additional acreage or the addition of new
19 uses may be permitted if such change results in no increase in the
20 annual consumptive quantity of water used under the water right. For
21 purposes of this section, "annual consumptive quantity" means the
22 estimated or actual annual amount of water diverted pursuant to the
23 water right, reduced by the estimated annual amount of return flows,
24 averaged over the two years of greatest use within the most recent
25 five-year period of continuous beneficial use of the water right.
26 Before any transfer of such right to use water or change of the point
27 of diversion of water or change of purpose of use can be made, any
28 person having an interest in the transfer or change, shall file a
29 written application therefor with the department, and the application
30 shall not be granted until notice of the application is published as
31 provided in RCW 90.03.280. If it shall appear that such transfer or
32 such change may be made without injury or detriment to existing rights,
33 the department shall issue to the applicant a certificate in duplicate
34 granting the right for such transfer or for such change of point of
35 diversion or of use. The certificate so issued shall be filed and be
36 made a record with the department and the duplicate certificate issued

1 to the applicant may be filed with the county auditor in like manner
2 and with the same effect as provided in the original certificate or
3 permit to divert water.

4 (2) If an application for change proposes to transfer water rights
5 from one irrigation district to another, the department shall, before
6 publication of notice, receive concurrence from each of the irrigation
7 districts that such transfer or change will not adversely affect the
8 ability to deliver water to other landowners or impair the financial
9 integrity of either of the districts.

10 (3) A change in place of use by an individual water user or users
11 of water provided by an irrigation district need only receive approval
12 for the change from the board of directors of the district if the use
13 of water continues within the irrigation district, and when water is
14 provided by an irrigation entity that is a member of a board of joint
15 control created under chapter 87.80 RCW, approval need only be received
16 from the board of joint control if the use of water continues within
17 the area of jurisdiction of the joint board and the change can be made
18 without detriment or injury to existing rights.

19 (4) This section shall not apply to trust water rights acquired by
20 the state through the funding of water conservation projects under
21 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

22 (5)(a) Pending applications for new water rights are not entitled
23 to protection from impairment, injury, or detriment when an application
24 relating to an existing surface or ground water right is considered.

25 (b) Applications relating to existing surface or ground water
26 rights may be processed and decisions on them rendered independently of
27 processing and rendering decisions on pending applications for new
28 water rights within the same source of supply without regard to the
29 date of filing of the pending applications for new water rights.

30 (c) Notwithstanding any other existing authority to process
31 applications, including but not limited to the authority to process
32 applications under WAC 173-152-050 as it existed on January 1, 2001, an
33 application relating to an existing surface or ground water right may
34 be processed ahead of a previously filed application relating to an
35 existing right when sufficient information for a decision on the
36 previously filed application is not available and the applicant for the
37 previously filed application is sent written notice that explains what
38 information is not available and informs the applicant that processing

1 of the next application will begin. The previously filed application
2 does not lose its priority date and if the information is provided by
3 the applicant within sixty days, the previously filed application shall
4 be processed at that time. This subsection (5)(c) does not affect any
5 other existing authority to process applications.

6 (d) Nothing in this subsection (5) is intended to stop the
7 processing of applications for new water rights.

8 (6) No applicant for a change, transfer, or amendment of a water
9 right may be required to give up any part of the applicant's valid
10 water right or claim to a state agency, the trust water rights program,
11 or to other persons as a condition of processing the application.

12 (7) In revising the provisions of this section and adding
13 provisions to this section by chapter 237, Laws of 2001, the
14 legislature does not intend to imply legislative approval or
15 disapproval of any existing administrative policy regarding, or any
16 existing administrative or judicial interpretation of, the provisions
17 of this section not expressly added or revised.

18 (8) The development and use of a small irrigation impoundment, as
19 defined in RCW 90.03.370(8), does not constitute a change or amendment
20 for the purposes of this section. The exemption expressly provided by
21 this subsection shall not be construed as requiring a change or
22 transfer of any existing water right to enable the holder of the right
23 to store water governed by the right.

24 (9) Notwithstanding subsection (1) of this section, the point of
25 diversion, place of use, and purpose of use of conservation operation
26 and maintenance savings as defined in RCW 90.90.030 may be seasonally
27 changed and transferred to any other land or place of use without loss
28 of priority of right previously established.

29 **Sec. 3.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
30 2001 c 69 s 5 are each reenacted and amended to read as follows:

31 (1) For the purposes of RCW 90.14.130 through 90.14.180,
32 "sufficient cause" shall be defined as the nonuse of all or a portion
33 of the water by the owner of a water right for a period of five or more
34 consecutive years where such nonuse occurs as a result of:

35 (a) Drought, or other unavailability of water;

36 (b) Active service in the armed forces of the United States during
37 military crisis;

1 (c) Nonvoluntary service in the armed forces of the United States;

2 (d) The operation of legal proceedings;

3 (e) Federal or state agency leases of or options to purchase lands
4 or water rights which preclude or reduce the use of the right by the
5 owner of the water right;

6 (f) Federal laws imposing land or water use restrictions either
7 directly or through the voluntary enrollment of a landowner in a
8 federal program implementing those laws, or acreage limitations, or
9 production quotas;

10 (g) Temporarily reduced water need for irrigation use where such
11 reduction is due to varying weather conditions, including but not
12 limited to precipitation and temperature, that warranted the reduction
13 in water use, so long as the water user's diversion and delivery
14 facilities are maintained in good operating condition consistent with
15 beneficial use of the full amount of the water right;

16 (h) Temporarily reduced diversions or withdrawals of irrigation
17 water directly resulting from the provisions of a contract or similar
18 agreement in which a supplier of electricity buys back electricity from
19 the water right holder and the electricity is needed for the diversion
20 or withdrawal or for the use of the water diverted or withdrawn for
21 irrigation purposes;

22 (i) Water conservation measures implemented under the Yakima river
23 basin water enhancement project, so long as the conserved water is
24 reallocated in accordance with the provisions of P.L. 103-434;

25 (j) Reliance by an irrigation water user on the transitory presence
26 of return flows in lieu of diversion or withdrawal of water from the
27 primary source of supply, if such return flows are measured or reliably
28 estimated using a scientific methodology generally accepted as reliable
29 within the scientific community; or

30 (k) The reduced use of irrigation water resulting from crop
31 rotation. For purposes of this subsection, crop rotation means the
32 temporary change in the type of crops grown resulting from the exercise
33 of generally recognized sound farming practices. Unused water
34 resulting from crop rotation will not be relinquished if the remaining
35 portion of the water continues to be beneficially used.

36 (2) Notwithstanding any other provisions of RCW 90.14.130 through
37 90.14.180, there shall be no relinquishment of any water right:

1 (a) If such right is claimed for power development purposes under
2 chapter 90.16 RCW and annual license fees are paid in accordance with
3 chapter 90.16 RCW;

4 (b) If such right is used for a standby or reserve water supply to
5 be used in time of drought or other low flow period so long as
6 withdrawal or diversion facilities are maintained in good operating
7 condition for the use of such reserve or standby water supply;

8 (c) If such right is claimed for a determined future development to
9 take place either within fifteen years of July 1, 1967, or the most
10 recent beneficial use of the water right, whichever date is later;

11 (d) If such right is claimed for municipal water supply purposes
12 under chapter 90.03 RCW;

13 (e) If such waters are not subject to appropriation under the
14 applicable provisions of RCW 90.40.030;

15 (f) If such right or portion of the right is leased to another
16 person for use on land other than the land to which the right is
17 appurtenant as long as the lessee makes beneficial use of the right in
18 accordance with this chapter and a transfer or change of the right has
19 been approved by the department in accordance with RCW 90.03.380,
20 90.03.383, 90.03.390, or 90.44.100;

21 (g) If such a right or portion of the right is authorized for a
22 purpose that is satisfied by the use of agricultural industrial process
23 water as authorized under RCW 90.46.150; (~~(or)~~)

24 If such a right or portion of the right consists of reduced
25 annual diversions or withdrawals of irrigation water from bodies of
26 water set forth in RCW 90.90.030(12) resulting from conservation
27 operation and maintenance savings as defined in RCW 90.90.030. For
28 purposes of clarity, this subsection is intended to apply to any past,
29 present, and future reductions in withdrawals resulting from such
30 conservation operation and maintenance savings; or

31 (i) If such right is a trust water right under chapter 90.38 or
32 90.42 RCW.

33 (3) In adding provisions to this section by chapter 237, Laws of
34 2001, the legislature does not intend to imply legislative approval or
35 disapproval of any existing administrative policy regarding, or any
36 existing administrative or judicial interpretation of, the provisions
37 of this section not expressly added or revised.

1 **Sec. 4.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as
2 follows:

3 (1) The department of ecology may enter into voluntary regional
4 agreements for the purpose of providing new water for out-of-stream
5 use, streamlining the application process, achieving conservation
6 operation and maintenance savings, and protecting instream flow.

7 (2) Such agreements shall ensure that:

8 (a) For water rights issued from the Columbia river mainstem, there
9 is no negative impact on Columbia river mainstem instream flows in the
10 months of July and August as a result of the new appropriations issued
11 under the agreement;

12 (b) For water rights issued from the lower Snake river mainstem,
13 there is no negative impact on Snake river mainstem instream flows from
14 April through August as a result of the new appropriations issued under
15 the agreement; and

16 (c) Efforts are made to harmonize such agreements with watershed
17 plans adopted under the authority of chapter 90.82 RCW that are
18 applicable to the area covered by the agreement.

19 (3) The protection of instream flow as set forth in subsection (2)
20 of this section is adequate for purposes of mitigating instream flow
21 impacts resulting from any appropriations for out-of-stream use made
22 under a voluntary regional agreement, and the only applicable
23 consultation provisions under state law regarding instream flow impacts
24 shall be those set forth in subsection (4) of this section.

25 (4) Before executing a voluntary agreement under this section, the
26 department of ecology shall:

27 (a) Provide a sixty-day period for consultation with county
28 legislative authorities and watershed planning groups with jurisdiction
29 over the area where the water rights included in the agreement are
30 located, the department of fish and wildlife, and affected tribal
31 governments, and federal agencies. The department of fish and wildlife
32 shall provide written comments within that time period. The
33 consultation process for voluntary regional agreements developed under
34 the provisions of this section is deemed adequate for the issuance of
35 new water rights provided for in this section and satisfies all
36 consultation requirements under state law related to the issuance of
37 new water rights; and

1 (b) Provide a thirty-day public review and comment period for a
2 draft agreement, and publish a summary of any public comments received.
3 The thirty-day review period shall not begin until after the department
4 of ecology has concluded its consultation under (a) of this subsection
5 and the comments that have been received by the department are made
6 available to the public.

7 (5) The provisions of subsection (4) of this section satisfy all
8 applicable consultation requirements under state law.

9 (6) The provisions of this section and any voluntary regional
10 agreements developed under such provisions may not be relied upon by
11 the department of ecology as a precedent, standard, or model that must
12 be followed in any other voluntary regional agreements.

13 (7) Nothing in this section may be interpreted or administered in
14 a manner that precludes the processing of water right applications
15 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
16 regional agreement.

17 (8) Nothing in this section may be interpreted or administered in
18 a manner that impairs or diminishes a valid water right or a habitat
19 conservation plan approved for purposes of compliance with the federal
20 endangered species act.

21 (9) The department of ecology shall monitor and evaluate the water
22 allocated to instream and out-of-stream uses under this section,
23 evaluate the program, and provide an interim report to the appropriate
24 committees of the legislature by June 30, 2008. A final report shall
25 be provided to the appropriate committees of the legislature by June
26 30, 2011.

27 (10) If the department of ecology executes a voluntary agreement
28 under this section that includes water rights appropriated from the
29 lower Snake river mainstem, the department shall develop aggregate data
30 in accordance with the provisions of RCW 90.90.050 for the lower Snake
31 river mainstem.

32 (11) Any agreement entered into under this section shall remain in
33 full force and effect through the term of the agreement regardless of
34 the expiration of this section.

35 (12) The definitions in this subsection apply to this section and
36 RCW 90.90.050, and may only be used for purposes of implementing these
37 sections.

1 (a) "Columbia river mainstem" means all water in the Columbia river
2 within the ordinary high water mark of the main channel of the Columbia
3 river between the border of the United States and Canada and the
4 Bonneville dam, and all groundwater within one mile of the high water
5 mark.

6 (b) "Conservation operation and maintenance savings" includes any
7 past, present, or future water savings, with respect to water rights
8 issued from the Columbia river mainstem and the lower Snake river
9 mainstem, including water savings: Achieved under voluntary regional
10 agreements; arising from use of soil moisture and monitoring probes;
11 weather forecast and crop use data; irrigation scheduling; and other
12 seasonal water management practices. Water savings must be measured by
13 the real-time reduction in water withdrawals arising by reason of such
14 practices, provided that the water savings are deemed to be no less
15 than ten percent of the prepractice usage. "Conservation operation and
16 maintenance savings" does not include savings achieved through fixed
17 capital investments such as higher efficiency irrigation systems, canal
18 linings, and pipe conversions or modifications.

19 (c) "Lower Snake river mainstem" means all water in the lower Snake
20 river within the ordinary high water mark of the main channel of the
21 lower Snake river from the head of Ice Harbor pool to the confluence of
22 the Snake and Columbia rivers, and all groundwater within one mile of
23 the high water mark.

24 (13) This section expires June 30, 2012.

25 NEW SECTION. Sec. 5. This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately.

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