

SB 5491 - S AMD 481

By Senator Parlette

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.54
4 RCW to read as follows:

5 (1) Reservations of water for certain future uses included in
6 rules establishing minimum levels and flows that were adopted or
7 amended pursuant to this chapter or chapter 90.03 or 90.22 RCW are
8 consistent with legislative intent and are specifically authorized to
9 be maintained and implemented by the department if the following
10 conditions are satisfied:

11 (a) The rule was adopted or amended prior to the supreme court of
12 Washington's October 3, 2013, opinion in *Swinomish Indian Tribal*
13 *Community v. Washington State Department of Ecology*; and

14 (b) The rule applies to a water resource inventory area in which
15 a plan, as defined in RCW 90.82.020, was adopted as of the effective
16 date of this section.

17 (2) This section does not apply to the amended rule at issue in
18 the supreme court of Washington's October 3, 2013, opinion in
19 *Swinomish Indian Tribal Community v. Washington State Department of*
20 *Ecology*.

21 (3) Nothing in this section shall be construed to affect or alter
22 the department's authority to adopt, amend, or repeal rules
23 establishing minimum instream levels and flows.

24 (4) Nothing in this section shall be construed to affect or alter
25 the department's authority to authorize withdrawals of water in those
26 situations where it is clear that overriding considerations of the
27 public interest will be served under RCW 90.54.020.

28 (5) Nothing in this section shall be construed to prejudice any
29 reservations of water included in any rule that does not satisfy the
30 conditions listed in subsection (1) of this section."

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1 On page 1, line 2 of the title, after "uses;" strike the
2 remainder of the title and insert "and adding a new section to
3 chapter 90.54 RCW."

EFFECT: (1) Preserves water reservations for certain future uses included in rules establishing minimum levels and flows if the reservations (a) were adopted prior to October 3, 2013; and (b) apply to a water resource inventory area with a plan adopted by the date of the act.

(2) Clarifies that this act does not apply to the amended rule considered in the October 2013 *Swinomish* opinion; or affect or alter the department's rule-making authority as to instream levels and flows and water withdrawals in situations of overriding considerations of the public interest.

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