
SENATE BILL 5003

State of Washington

65th Legislature

2017 Regular Session

By Senators Honeyford and Warnick

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1 AN ACT Relating to clarifying the authority of the department of
2 ecology regarding minimum flows; amending RCW 90.54.020, 90.22.010,
3 and 90.22.030; adding a new section to chapter 90.54 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the
7 department of ecology has been given the responsibility to approve
8 certain uses of water. The legislature also recognizes that the state
9 has enacted policies providing for the preservation of fish through
10 the establishment of minimum flows. This act is intended to ensure
11 that both of these broad objectives may be met by providing increased
12 flexibility to allow for the use of water and preservation of fish.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.54
14 RCW to read as follows:

15 (1) The department may approve a use of water that will impair a
16 minimum flow or other similar policy or standard established by the
17 department if the water user and the department agree to the
18 implementation of a mitigation plan that mitigates for the impact of
19 the approval on fish. A mitigation plan need not be limited to
20 measures that require water to be replaced, and may include other or

1 different measures designed to mitigate the impact of uses of water
2 on fish without requiring the replacement of water. The department
3 may not require the water user to implement a mitigation plan that
4 accounts for impacts that do not result from the water user's use of
5 water. However, the water user may volunteer to implement a
6 mitigation plan that enhances conditions for fish beyond what is
7 necessary for mitigation.

8 (2) This section does not affect the ability of any person to
9 pursue any lawful action for the protection of any water right that
10 is not a minimum flow or other similar policy or standard established
11 by the department.

12 **Sec. 3.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
13 read as follows:

14 Utilization and management of the waters of the state shall be
15 guided by the following general declaration of fundamentals:

16 (1) Uses of water for domestic, stock watering, industrial,
17 commercial, agricultural, irrigation, hydroelectric power production,
18 mining, fish and wildlife maintenance and enhancement, recreational,
19 and thermal power production purposes, and preservation of
20 environmental and aesthetic values, and all other uses compatible
21 with the enjoyment of the public waters of the state, are declared to
22 be beneficial.

23 (2) Allocation of waters among potential uses and users shall be
24 based generally on the securing of the maximum net benefits for the
25 people of the state. Maximum net benefits shall constitute total
26 benefits less costs including opportunities lost.

27 (3) The quality of the natural environment shall be protected
28 and, where possible, enhanced as follows:

29 (a) Perennial rivers and streams of the state shall be retained
30 with base flows necessary to provide for preservation of wildlife,
31 fish, scenic, aesthetic and other environmental values, and
32 navigational values. Lakes and ponds shall be retained substantially
33 in their natural condition. Permanent or temporary withdrawals of
34 water which would conflict therewith ((shall)) may be authorized
35 ((only in those situations)) where it is clear that overriding
36 considerations of the public interest will be served. The department
37 may determine if overriding considerations of the public interest
38 will be served based on an analysis of benefits and costs, including

1 economic benefits resulting from the use of water for out-of-stream
2 uses.

3 (b) Waters of the state shall be of high quality. Regardless of
4 the quality of the waters of the state, all wastes and other
5 materials and substances proposed for entry into said waters shall be
6 provided with all known, available, and reasonable methods of
7 treatment prior to entry. Notwithstanding that standards of quality
8 established for the waters of the state would not be violated, wastes
9 and other materials and substances shall not be allowed to enter such
10 waters which will reduce the existing quality thereof, except in
11 those situations where it is clear that overriding considerations of
12 the public interest will be served. Technology-based effluent
13 limitations or standards for discharges for municipal water treatment
14 plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit
15 river shall be adjusted to reflect credit for substances removed from
16 the plant intake water if:

17 (i) The municipality demonstrates that the intake water is drawn
18 from the same body of water into which the discharge is made; and

19 (ii) The municipality demonstrates that no violation of receiving
20 water quality standards or appreciable environmental degradation will
21 result.

22 (4) The development of multipurpose water storage facilities
23 shall be a high priority for programs of water allocation, planning,
24 management, and efficiency. The department, other state agencies, and
25 local governments (~~(, and planning units formed under section 107 or~~
26 ~~108 of this act)~~) shall evaluate the potential for the development of
27 new storage projects and the benefits and effects of storage in
28 reducing damage to stream banks and property, increasing the use of
29 land, providing water for municipal, industrial, agricultural, power
30 generation, and other beneficial uses, and improving streamflow
31 regimes for fisheries and other instream uses.

32 (5) Adequate and safe supplies of water shall be preserved and
33 protected in potable condition to satisfy human domestic needs.

34 (6) Multiple-purpose impoundment structures are to be preferred
35 over single-purpose structures. Due regard shall be given to means
36 and methods for protection of fishery resources in the planning for
37 and construction of water impoundment structures and other artificial
38 obstructions.

39 (7) Federal, state, and local governments, individuals,
40 corporations, groups and other entities shall be encouraged to carry

1 out practices of conservation as they relate to the use of the waters
2 of the state. In addition to traditional development approaches,
3 improved water use efficiency, conservation, and use of reclaimed
4 water shall be emphasized in the management of the state's water
5 resources and in some cases will be a potential new source of water
6 with which to meet future needs throughout the state. Use of
7 reclaimed water shall be encouraged through state and local planning
8 and programs with incentives for state financial assistance
9 recognizing programs and plans that encourage the use of conservation
10 and reclaimed water use, and state agencies shall continue to review
11 and reduce regulatory barriers and streamline permitting for the use
12 of reclaimed water where appropriate.

13 (8) Development of water supply systems, whether publicly or
14 privately owned, which provide water to the public generally in
15 regional areas within the state shall be encouraged. Development of
16 water supply systems for multiple domestic use which will not serve
17 the public generally shall be discouraged where water supplies are
18 available from water systems serving the public.

19 (9) Full recognition shall be given in the administration of
20 water allocation and use programs to the natural interrelationships
21 of surface and groundwaters.

22 (10) Expressions of the public interest will be sought at all
23 stages of water planning and allocation discussions.

24 (11) Water management programs, including but not limited to,
25 water quality, flood control, drainage, erosion control and storm
26 runoff are deemed to be in the public interest.

27 **Sec. 4.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read
28 as follows:

29 The department of ecology may establish minimum water flows or
30 levels for streams, lakes or other public waters for the purposes of
31 protecting fish, game, birds or other wildlife resources, or
32 recreational or aesthetic values of said public waters whenever it
33 appears to be in the public interest to establish the same. In
34 addition, the department of ecology (~~shall~~) may, when requested by
35 the department of fish and wildlife to protect fish, game or other
36 wildlife resources under the jurisdiction of the requesting state
37 agency, or if the department of ecology finds it necessary to
38 preserve water quality, establish such minimum flows or levels as are
39 required to protect the resource or preserve the water quality

1 described in the request or determination. Any request submitted by
2 the department of fish and wildlife shall include a statement setting
3 forth the need for establishing a minimum flow or level. When the
4 department acts to preserve water quality, it shall include a similar
5 statement with the proposed rule filed with the code reviser. This
6 section shall not apply to waters artificially stored in reservoirs,
7 provided that in the granting of storage permits by the department of
8 ecology in the future, full recognition shall be given to downstream
9 minimum flows, if any there may be, which have theretofore been
10 established hereunder. Any action by the department of ecology under
11 this section may be made subject to an analysis of benefits and
12 costs, including economic benefits resulting from the use of water
13 for out-of-stream uses.

14 **Sec. 5.** RCW 90.22.030 and 1988 c 127 s 81 are each amended to
15 read as follows:

16 The establishment of levels and flows pursuant to RCW 90.22.010
17 shall in no way affect existing water and storage rights and the use
18 thereof, including but not limited to rights relating to the
19 operation of any hydroelectric or water storage reservoir or related
20 facility. No right to divert or store public waters shall be granted
21 by the department of ecology which shall conflict with regulations
22 adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or
23 levels, unless the department determines that granting such right is
24 consistent with an analysis of benefits and costs, including economic
25 benefits resulting from the use of water for out-of-stream uses. All
26 regulations establishing flows or levels shall be filed in a "Minimum
27 Water Level and Flow Register" of the department of ecology.

28 NEW SECTION. **Sec. 6.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

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