
HOUSE BILL 2105

State of Washington

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By Representatives Fitzgibbon and Tharinger

Prefiled 01/03/24.

1 AN ACT Relating to ensuring the protection of instream resources
2 in connection with the issuance of water right permits in water
3 resource inventory areas in which minimum instream flows are not
4 being met; and amending RCW 90.54.020 and 90.03.247.

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

6 **Sec. 1.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
7 read as follows:

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

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

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

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

3 (a) Perennial rivers and streams of the state shall be retained
4 with base flows necessary to provide for preservation of wildlife,
5 fish, scenic, aesthetic and other environmental values, and
6 navigational values. Lakes and ponds shall be retained substantially
7 in their natural condition. (~~Withdrawals of water which would~~
8 ~~conflict therewith shall be authorized only in those situations where~~
9 ~~it is clear that overriding considerations of the public interest~~
10 ~~will be served.~~) Permanent withdrawals of water that would conflict
11 therewith may be authorized only: (i) If associated with an
12 application to address a public health emergency due to either water
13 quality contamination or a water supply interruption; or (ii) for
14 applications submitted and approved pursuant to RCW 90.03.247(3).

15 (b) Waters of the state shall be of high quality. Regardless of
16 the quality of the waters of the state, all wastes and other
17 materials and substances proposed for entry into said waters shall be
18 provided with all known, available, and reasonable methods of
19 treatment prior to entry. Notwithstanding that standards of quality
20 established for the waters of the state would not be violated, wastes
21 and other materials and substances shall not be allowed to enter such
22 waters which will reduce the existing quality thereof, except in
23 those situations where it is clear that overriding considerations of
24 the public interest will be served. Technology-based effluent
25 limitations or standards for discharges for municipal water treatment
26 plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit
27 river shall be adjusted to reflect credit for substances removed from
28 the plant intake water if:

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

31 (ii) The municipality demonstrates that no violation of receiving
32 water quality standards or appreciable environmental degradation will
33 result.

34 (4) The development of multipurpose water storage facilities
35 shall be a high priority for programs of water allocation, planning,
36 management, and efficiency. The department, other state agencies, and
37 local governments (~~(, and planning units formed under section 107 or~~
38 ~~108 of this act)) shall evaluate the potential for the development of
39 new storage projects and the benefits and effects of storage in
40 reducing damage to stream banks and property, increasing the use of~~

1 land, providing water for municipal, industrial, agricultural, power
2 generation, and other beneficial uses, and improving streamflow
3 regimes for fisheries and other instream uses.

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

6 (6) Multiple-purpose impoundment structures are to be preferred
7 over single-purpose structures. Due regard shall be given to means
8 and methods for protection of fishery resources in the planning for
9 and construction of water impoundment structures and other artificial
10 obstructions.

11 (7) Federal, state, and local governments, individuals,
12 corporations, groups and other entities shall be encouraged to carry
13 out practices of conservation as they relate to the use of the waters
14 of the state. In addition to traditional development approaches,
15 improved water use efficiency, conservation, and use of reclaimed
16 water shall be emphasized in the management of the state's water
17 resources and in some cases will be a potential new source of water
18 with which to meet future needs throughout the state. Use of
19 reclaimed water shall be encouraged through state and local planning
20 and programs with incentives for state financial assistance
21 recognizing programs and plans that encourage the use of conservation
22 and reclaimed water use, and state agencies shall continue to review
23 and reduce regulatory barriers and streamline permitting for the use
24 of reclaimed water where appropriate.

25 (8) Development of water supply systems, whether publicly or
26 privately owned, which provide water to the public generally in
27 regional areas within the state shall be encouraged. Development of
28 water supply systems for multiple domestic use which will not serve
29 the public generally shall be discouraged where water supplies are
30 available from water systems serving the public.

31 (9) Full recognition shall be given in the administration of
32 water allocation and use programs to the natural interrelationships
33 of surface and groundwaters.

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

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

1 **Sec. 2.** RCW 90.03.247 and 2018 c 1 s 302 are each amended to
2 read as follows:

3 (1) Whenever an application for a permit to make beneficial use
4 of public waters is approved relating to a stream or other water body
5 for which minimum flows or levels have been adopted and are in effect
6 at the time of approval, the permit shall be conditioned to: (a)
7 Protect the levels or flows; or (b) require water resource mitigation
8 of impacts to instream flows and closed surface water bodies for
9 water resource mitigation pilot projects authorized under RCW
10 90.94.090.

11 (2) No agency may establish minimum flows and levels or similar
12 water flow or level restrictions for any stream or lake of the state
13 other than the department of ecology whose authority to establish is
14 exclusive, as provided in this chapter (~~90.03—RCW~~) and RCW
15 90.22.010 and 90.54.040. The provisions of other statutes, including
16 but not limited to chapter 43.21C RCW, may not be interpreted in a
17 manner that is inconsistent with this section. In establishing such
18 minimum flows, levels, or similar restrictions, the department shall,
19 during all stages of development by the department of ecology of
20 minimum flow proposals, consult with, and carefully consider the
21 recommendations of, the department of fish and wildlife, the
22 department of commerce, the department of agriculture, and
23 representatives of the affected Indian tribes. Nothing herein shall
24 preclude the department of fish and wildlife, the department of
25 commerce, or the department of agriculture from presenting its views
26 on minimum flow needs at any public hearing or to any person or
27 agency, and the department of fish and wildlife, the department of
28 commerce, and the department of agriculture are each empowered to
29 participate in proceedings of the federal energy regulatory
30 commission and other agencies to present its views on minimum flow
31 needs.

32 (3) The department may issue a surface water right or groundwater
33 right permit in a water resource inventory area in which minimum
34 instream flows adopted pursuant to chapter 90.22 or 90.54 RCW are not
35 being met, or in a water body closed to further appropriation, only
36 if:

37 (a) The department determines that any adverse impact on minimum
38 instream flows resulting from the issuance of the water right permit
39 will be fully offset through the implementation of out-of-time water
40 resource mitigation, out-of-place water resource mitigation, or both.

1 Out-of-kind water resource mitigation may not be employed as a means
2 to offset the impact of the issuance of a water right permit on
3 minimum instream flows;

4 (b) The department, after carefully considering the
5 recommendation of the department of fish and wildlife, determines
6 that there would be neither a net detrimental impact to fish and
7 related aquatic resources nor a reduction of streamflow during
8 periods of flow critical to the survival of fish and related aquatic
9 resources; and

10 (c) The department has consulted with all federally recognized
11 Indian tribes with treaty fishing rights at usual and accustomed
12 places within the water resource inventory area.

13 (4) For the purposes of this section, "out-of-kind water resource
14 mitigation" means measures to offset the impacts of new water use,
15 such as instream or out-of-stream measures that improve or enhance
16 existing water quality, riparian habitat, or other instream functions
17 and values, but that do not replace the total quantity of new water
18 use.

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