H-0747.1

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**HOUSE BILL 1348**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Taylor, Shea, Buys, Short, and Koster

AN ACT Relating to the priority in the state water code assigned to various beneficial uses; amending RCW 90.03.345, 90.22.030, and 90.54.020; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that a foundational principle of Washington water law, enshrined in Article XXI of the state Constitution, establishes that the use of state waters for irrigation, mining, and manufacturing purposes are deemed to be public uses of those waters. In spite of the bedrock support in the state Constitution for these beneficial public uses of state waters, subsequent statutory and case law has established a schema of water use prioritization that departs from the state's constitutional intent, and instead inequitably prioritizes instream flow rights above the constitutionally protected beneficial public uses of these waters. Therefore, it is the intent of the legislature to rectify the divergence of state law from its constitutional underpinnings, and instead establish a prioritization in the state water code that assigns instream flow rights as junior to water rights that are applied to beneficial uses of potable water supply, water for agriculture and irrigation, and water for commercial and industrial purposes.

**Sec.**  RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended to read as follows:

The establishment of reservations of water for agriculture, hydroelectric energy, municipal, industrial, and other beneficial uses under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010 or 90.54.040 shall constitute appropriations within the meaning of this chapter with priority dates as of the effective dates of their establishment. However, regardless of the priority date established in this section, base or minimum flows or levels under chapter 90.22 or 90.54 RCW have an inferior priority relative to water rights applied to beneficial use for irrigation, commercial, industrial, or potable water purposes. Whenever an application for a permit to make beneficial use of public waters embodied in a reservation, established after September 1, 1979, is filed with the department of ecology after the effective date of such reservation, the priority date for a permit issued pursuant to an approval by the department of ecology of the application shall be the effective date of the reservation.

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

The establishment of levels and flows pursuant to RCW 90.22.010 shall in no way affect existing water and storage rights and the use thereof, including but not limited to rights relating to the operation of any hydroelectric or water storage reservoir or related facility. No right to divert or store public waters shall be granted by the department of ecology which shall conflict with regulations adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or levels. Regulations adopted pursuant to RCW 90.22.010 and 90.22.020 have a priority as determined under RCW 90.03.345. All regulations establishing flows or levels shall be filed in a "Minimum Water Level and Flow Register" of the department of ecology.

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

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

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

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost. Consistent with the principle established in this subsection, the priority of base flows protected under subsection (3) of this section must be determined as determined under RCW 90.03.345.

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

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

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

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

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

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

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

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

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

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

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

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

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

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