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**SENATE BILL 5003**

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

**By** Senators Honeyford and Warnick

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

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

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

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

(1) The department may approve a use of water that will impair a minimum flow or other similar policy or standard established by the department if the water user and the department agree to the implementation of a mitigation plan that mitigates for the impact of the approval on fish. A mitigation plan need not be limited to measures that require water to be replaced, and may include other or different measures designed to mitigate the impact of uses of water on fish without requiring the replacement of water. The department may not require the water user to implement a mitigation plan that accounts for impacts that do not result from the water user's use of water. However, the water user may volunteer to implement a mitigation plan that enhances conditions for fish beyond what is necessary for mitigation.

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

**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.

(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. Permanent or temporary withdrawals of water which would conflict therewith ((~~shall~~)) may be authorized ((~~only in those situations~~)) where it is clear that overriding considerations of the public interest will be served. The department may determine if overriding considerations of the public interest will be served based on an analysis of benefits and costs, including economic benefits resulting from the use of water for out-of-stream uses.

(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.

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

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology ((~~shall~~)) may, when requested by the department of fish and wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder. Any action by the department of ecology under this section may be made subject to an analysis of benefits and costs, including economic benefits resulting from the use of water for out-of-stream uses.

**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, unless the department determines that granting such right is consistent with an analysis of benefits and costs, including economic benefits resulting from the use of water for out-of-stream uses. All regulations establishing flows or levels shall be filed in a "Minimum Water Level and Flow Register" of the department of ecology.

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

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