
SENATE BILL 5775

State of Washington

54th Legislature

1995 Regular Session

By Senator Fraser

Read first time 02/06/95. Referred to Committee on Senate Select
Committee on Water Policy.

1 AN ACT Relating to water resource management; amending RCW
2 90.03.015, 90.03.040, 90.03.290, 90.54.020, 90.03.380, 90.03.390,
3 90.44.070, and 90.14.140; adding new sections to chapter 90.03 RCW; and
4 creating a new section.

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

6 **BENEFICIAL USE**

7 **Sec. 1.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
8 as follows:

9 As used in this chapter:

10 (1) "Beneficial use" means the type and quantity of use provided in
11 section 2 of this act;

12 (2) "Department" means the department of ecology;

13 ((+2)) (3) "Director" means the director of ecology; and

14 ((+3)) (4) "Person" means any firm, association, water users'
15 association, corporation, irrigation district, or municipal
16 corporation, as well as an individual.

1 NEW SECTION. **Sec. 2.** APPLICATION TO BENEFICIAL USE. (1) The

2 existence and measure of all existing rights to withdraw waters of the
3 state, and all future rights that might be acquired, shall be
4 determined based upon the beneficial use of water. All uses of water
5 that are efficient and in the public interest are beneficial uses of
6 water, except that no misuse of water shall be considered beneficial.

7 (2) The efficient use of water is that use that does not exceed the
8 rate and amount that will provide the duty of water for the type of use
9 involved plus a reasonable transportation loss where applicable. In
10 the case of existing rights, what constitutes efficient use shall be
11 adjusted to take into account any beneficial effects of return flows,
12 where alternative means of achieving the effects are not readily
13 available. The department shall adopt rules by July 1, 1996, providing
14 methods to test the efficiency of uses, including:

15 (a) The method by which the duty of water for any locality shall be
16 determined, having due regard for local differences in soil, climate,
17 topography, and other relevant factors;

18 (b) The method by which reasonable transportation losses for any
19 locality shall be determined, having due regard for the customary
20 practices in the area, and current technology available at a reasonable
21 cost; and

22 (c) Guidelines for identification of the beneficial effects of
23 return flows and for the determination on a case-by-case basis of the
24 rates and amounts of water to be allocated to the maintenance of such
25 effects, which shall be considered an efficient use. The guidelines
26 shall include criteria to determine whether alternative means of
27 achieving such beneficial effects are readily available.

28 (3) Misuse of water occurs when its use degrades water quality of
29 the source waters or waters receiving return flows below applicable
30 state water quality standards.

31 NEW SECTION. **Sec. 3.** PUBLIC INTEREST CONSIDERATIONS. In

32 evaluating whether applications for a new water right, a transfer of a
33 water right, or a modification of the use or point of diversion are in
34 the public interest, the department shall consider the following:

35 (1) The economic net benefits to the state and local region,
36 including the consideration of the opportunity costs of alternative
37 foregone uses of the water;

1 (2) The cost-effectiveness of the proposed use in comparison with
2 alternative sources of water, including costs and benefits external to
3 the applicant or transferee;

4 (3) Effects on public uses of water, including the in-stream uses
5 enumerated in RCW 90.22.010 and 90.54.020;

6 (4) Water resource plans and local comprehensive growth management
7 plans applicable to the area of the water source;

8 (5) Effects on public land and facilities and other water-related
9 public resources;

10 (6) Effects of proposed water transfers to another location upon
11 the local communities in the area of origin;

12 (7) Effects on water quality, public health, and safety;

13 (8) The extent to which the proposal maximizes water conservation
14 and efficient use;

15 (9) Effects upon public access to navigable and other waters of the
16 state; and

17 (10) Consistency with applicable water resource fundamental
18 principles of RCW 90.54.020.

19 **Sec. 4.** RCW 90.03.040 and 1917 c 117 s 4 are each amended to read
20 as follows:

21 The beneficial use of water is hereby declared to be a public use,
22 and any person may exercise the right of eminent domain to acquire any
23 property or rights now or hereafter existing when found necessary for
24 the storage of water for, or the application of water to, any
25 beneficial use, including the right to enlarge existing structures
26 employed for the public purposes mentioned in this chapter and use the
27 same in common with the former owner, and including the right and power
28 to condemn an inferior use of water for a superior use. In
29 condemnation proceedings the court shall determine (~~what use will be~~
30 ~~for the greatest public benefit, and that use shall be deemed a~~
31 ~~superior one: PROVIDED, That no property right in water or the use of~~
32 ~~water shall be acquired hereunder by condemnation for irrigation~~
33 ~~purposes, which shall deprive any person of such quantity of water as~~
34 ~~may be reasonably necessary for the irrigation of his land then under~~
35 ~~irrigation to the full extent of the soil, by the most economical~~
36 ~~method of artificial irrigation applicable to such land according to~~
37 ~~the usual methods of artificial irrigation employed in the vicinity~~
38 ~~where such land is situated. In any case, the court shall determine~~

1 ~~what is the most economical method of irrigation. Such property or~~
2 ~~rights shall be acquired in the manner provided by law for the taking~~
3 ~~of private property for public use by private corporations)) whether~~
4 ~~the use proposed by the condemnor is superior to that of the condemnee~~
5 ~~by applying the public interest consideration in section 3 of this act.~~

6 **Sec. 5.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
7 as follows:

8 (1) When an application complying with the provisions of this
9 chapter and with the rules and regulations of the department has been
10 filed, the same shall be placed on record with the department, and it
11 shall be its duty to investigate the application, and determine what
12 water, if any, is available for appropriation, and find and determine
13 to what beneficial use or uses it can be applied. If it is proposed to
14 appropriate water for irrigation purposes, the department shall
15 investigate, determine and find what lands are capable of irrigation by
16 means of water found available for appropriation. If it is proposed to
17 appropriate water for the purpose of power development, the department
18 shall investigate, determine and find whether the proposed development
19 is (~~likely to prove detrimental to~~) in the public interest, (~~having~~
20 ~~in mind the highest feasible use of the waters belonging to the~~
21 ~~public~~) considering the factors set forth in section 3 of this act.

22 (2) If the application does not contain, and the applicant does not
23 promptly furnish sufficient information on which to base such findings,
24 the department may issue a preliminary permit, for a period of not to
25 exceed three years, requiring the applicant to make such surveys,
26 investigations, studies, and progress reports, as in the opinion of the
27 department may be necessary. However, construction of any works for
28 the diversion of water may not be authorized under a preliminary
29 permit. If the applicant fails to comply with the conditions of the
30 preliminary permit, it and the application or applications on which it
31 is based shall be automatically canceled and the applicant so notified.
32 If the holder of a preliminary permit shall, before its expiration,
33 file with the department a verified report of expenditures made and
34 work done under the preliminary permit, which, in the opinion of the
35 department, establishes the good faith, intent and ability of the
36 applicant to carry on the proposed development, the preliminary permit
37 may, with the approval of the governor, be extended, but not to exceed

1 a maximum period of five years from the date of the issuance of the
2 preliminary permit.

3 (3) Following its investigation and the receipt of all necessary
4 information in the application, the department shall make and file as
5 part of the record in the matter, written findings of fact concerning
6 all ((things)) issues and facts investigated((, and if it shall find
7 that there is water available for appropriation for a beneficial use,
8 and the appropriation thereof as proposed in the application will not
9 impair existing rights or be detrimental to the public welfare, it
10 shall issue a permit stating the amount of water to which the applicant
11 shall be entitled and the beneficial use or uses to which it may be
12 applied: PROVIDED, That where)). The department may issue the permit
13 if it determines that:

14 (a) There is water available for appropriation for a beneficial use
15 as defined in section 2 of this act;

16 (b) The appropriation as proposed in the application will not
17 impair existing rights, including rights to the discharge of wastewater
18 in compliance with a permit issued under chapter 90.48 RCW; and

19 (c) The appropriation is consistent with the public interest,
20 considering the factors set forth in section 3 of this act.

21 (4) Where the water applied for is to be used for irrigation
22 purposes, it shall become appurtenant only to such land as may be
23 reclaimed thereby to the full extent of the soil for agricultural
24 purposes. ((But where there is no unappropriated water in the proposed
25 source of supply, or where the proposed use conflicts with existing
26 rights, or threatens to prove detrimental to the public interest,
27 having due regard to the highest feasible development of the use of the
28 waters belonging to the public, it shall be duty of the department to
29 reject such application and to refuse to issue the permit asked for.))

30 (5) If the permit is refused because of conflict with existing
31 rights and such applicant shall acquire same by purchase or
32 condemnation under RCW 90.03.040, the department may thereupon grant
33 such permit.

34 (6) Any application may be approved for a less amount of water than
35 that applied for, if there exists substantial reason therefor, and in
36 any event shall not be approved for more water than can be applied to
37 beneficial use for the purposes named in the application. ((In
38 determining whether or not a permit shall issue upon any application,

1 ~~it shall be the duty of the department to investigate all facts~~
2 ~~relevant and material to the application.))~~

3 (7) After the department approves said application in whole or in
4 part and before any permit shall be issued thereon to the applicant,
5 such applicant shall pay the fee provided in RCW 90.03.470(~~(: PROVIDED~~
6 ~~FURTHER, That))~~).

7 (8) In the event a permit is issued by the department upon any
8 application, it shall be its duty to notify the director of fish and
9 wildlife of such issuance.

10 NEW SECTION. **Sec. 6.** WATER RIGHTS FOR INSTREAM PURPOSES.
11 Notwithstanding any provision in this chapter or chapter 90.54 RCW, a
12 right to the beneficial use of water may be maintained without a
13 physical diversion of water and such right may be held by any person as
14 defined by RCW 90.03.015 or by a unit of state or federal government.

15 **Sec. 7.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read
16 as follows:

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

19 (1) All uses of water ((for domestic, stock watering, industrial,
20 commercial, agricultural, irrigation, hydroelectric power production,
21 mining, fish and wildlife maintenance and enhancement, recreational,
22 and thermal power production purposes, and preservation of
23 environmental and aesthetic values, and all other uses compatible with
24 the enjoyment of the public waters of the state,)) consistent with the
25 limitations of section 2 of this act and the public interest factors
26 set forth in section 3 of this act are declared to be beneficial.

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

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

33 (a) Perennial rivers and streams of the state shall be retained
34 with base flows necessary to provide for preservation of wildlife,
35 fish, scenic, aesthetic and other environmental values, and
36 navigational values. Lakes and ponds shall be retained substantially
37 in their natural condition. Withdrawals of water which would conflict

1 therewith shall be authorized only in those situations where it is
2 clear that overriding considerations of the public interest will be
3 served.

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

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

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

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

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

30 (6) Federal, state, and local governments, individuals,
31 corporations, groups and other entities shall be encouraged to carry
32 out practices of conservation as they relate to the use of the waters
33 of the state. In addition to traditional development approaches,
34 improved water use efficiency and conservation shall be emphasized in
35 the management of the state's water resources and in some cases will be
36 a potential new source of water with which to meet future needs
37 throughout the state.

38 (7) Development of water supply systems, whether publicly or
39 privately owned, which provide water to the public generally in

1 regional areas within the state shall be encouraged. Development of
2 water supply systems for multiple domestic use which will not serve the
3 public generally shall be discouraged where water supplies are
4 available from water systems serving the public.

5 (8) Full recognition shall be given in the administration of water
6 allocation and use programs to the natural interrelationships of
7 surface and ground waters.

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

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

13 **WATER TRANSFERS**

14 NEW SECTION. **Sec. 8.** LEGISLATIVE FINDING. The legislature finds
15 that water transfers meeting the standards and procedural requirements
16 of this chapter are an important means of satisfying existing and
17 future water demands in the state. While allowed under state law for
18 decades, the state previously has not adopted an affirmative policy
19 encouraging water transfers and providing assistance in accomplishing
20 such transfers. To this end the legislature declares that it is the
21 policy of the state to facilitate water transfers through the provision
22 of information on water transfers and the timely processing of water
23 transfer applications.

24 NEW SECTION. **Sec. 9.** PROCESSING PRIORITY. To further the policy
25 set forth in section 8 of this act, the department shall accord
26 priority to the processing of applications for transfers and changes
27 under RCW 90.03.380 and 90.03.390. The department shall adopt a goal
28 of making decisions upon applications for seasonal changes within sixty
29 days of receipt and other changes within ninety days of receipt. In no
30 event shall a decision be made later than one hundred eighty days of
31 receipt of a complete application. As among applications within the
32 same watershed area, the department shall provide processing priority
33 to applications that are consistent with any water resource plan
34 adopted under chapter 90.54 RCW applicable to such watershed.

1 NEW SECTION. **Sec. 10.** DATA COMPILATION. (1) The department shall
2 compile data on water transfers and changes, including the
3 consideration paid, for the purpose of making such information
4 available to prospective sellers, purchasers, brokers, and others
5 participating in water marketing transactions. Other state and local
6 agencies receiving information pertinent to such transactions, such as
7 tax affidavits, are directed to cooperate with the department in
8 compiling such information and making such information available
9 locally to prospective water marketing participants.

10 (2) This section is intended to make accessible information which
11 is otherwise in the public domain and does not require the disclosure
12 of proprietary information which is protected from disclosure under any
13 other law or authority.

14 NEW SECTION. **Sec. 11.** DELEGATION OF AUTHORITY. (1) The
15 department may delegate to the governing body of a county the authority
16 to approve transfers and changes under RCW 90.03.380 and 90.03.390
17 within a watershed resource inventory area as delineated by the
18 department, where such area lies wholly within the county. Where an
19 area lies in more than one county, the department may delegate such
20 authority jointly to all of the counties in which such watershed area
21 lies, and the exercise of such authority shall be conducted by
22 interlocal agreement of all of such counties.

23 (2) Such delegation may only be made when the department determines
24 that all of the following conditions exist:

25 (a) The county or counties will exercise such authority in
26 compliance with the requirements of this chapter, any rules adopted
27 under this chapter, and other applicable requirements of law;

28 (b) A regional water resource plan applicable to such watershed
29 area has been adopted pursuant to chapter 90.54 RCW;

30 (c) Minimum stream flows have been adopted by rule for all fish-
31 bearing stream segments within the watershed area; and

32 (d) The county or counties have sufficient personnel and resources
33 for timely and thorough processing of such applications.

34 (3) The department shall provide technical assistance to counties
35 obtaining delegated authority under this section, and shall provide all
36 available water resources information applicable to the watershed area,
37 including existing water rights and claimants.

1 (4) The term of the delegation shall be for a period not to exceed
2 two years. The delegation may thereafter be renewed upon two year
3 intervals upon a determination of the department as made for the
4 initial determination.

5 (5) Counties receiving delegated authority shall provide periodic
6 reports to the department, upon a schedule determined by the
7 department, regarding applications received and the disposition of such
8 applications.

9 **Sec. 12.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
10 read as follows:

11 (1) The right to the use of water which has been applied to a
12 beneficial use in the state shall be and remain appurtenant to the land
13 or place upon which the same is used~~((: PROVIDED, HOWEVER, That said))~~
14 except as provided in this section. The right may be transferred to
15 another or to others and become appurtenant to any other land or place
16 of use without loss of priority of right theretofore established if
17 ~~((such change can be made without detriment or injury to existing~~
18 ~~rights))~~ approved as provided in this section. The point of diversion
19 of water for beneficial use or the purpose of use may be changed~~((, if~~
20 ~~such change can be made without detriment or injury to existing~~
21 ~~rights))~~ as provided in this section.

22 (2) Before any transfer of such right to use water or change of the
23 point of diversion of water or change of purpose of use can be made,
24 any person having an interest in the transfer or change, shall file a
25 written application therefor with the department, and ((said))
26 application shall not be granted until notice of ((said)) the
27 application ((shall be)) is published as provided in RCW 90.03.280.
28 ~~((If it shall appear that such transfer or such change may be made~~
29 ~~without injury or detriment to existing rights, the department shall~~
30 ~~issue to the applicant a certificate in duplicate granting the right~~
31 ~~for such transfer or for such change of point of diversion or of use.))~~
32 The department may grant a certificate for the transfer or change if it
33 determines that:

34 (a) The transfer or change can be made without detriment or injury
35 to existing rights, considering the limitations of subsection (7) of
36 this section; and

37 (b) The transfer or change is consistent with the public interest,
38 considering the factors set forth in section 3 of this act. A transfer

1 or change consistent with a watershed plan adopted under chapter 90.54
2 RCW shall be accorded substantial weight by the department in making
3 such public interest determination.

4 (3) The certificate so issued shall be filed and be made a record
5 with the department and ((the)) a duplicate certificate issued to the
6 applicant ((may)) shall be filed with the county auditor in like manner
7 and with the same effect as provided in the original certificate or
8 permit to divert water.

9 (4) If an application for change proposes to transfer water rights
10 from one irrigation district to another, the department shall, before
11 publication of notice, receive concurrence from each of the irrigation
12 districts that such transfer or change will not adversely affect the
13 ability to deliver water to other landowners or impair the financial
14 integrity of either of the districts.

15 (5) A change in place of use by an individual water user or users
16 of water provided by an irrigation district need only receive approval
17 for the change from the board of directors of the district if the use
18 of water continues within the irrigation district.

19 (6) This section shall not apply to trust water rights acquired by
20 the state through the funding of water conservation projects under
21 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

22 (7) In determining whether a proposed change will cause an injury
23 or detriment to existing rights, the department may determine that none
24 will occur if the application contains enforceable provisions to fully
25 mitigate the impairment by the provision of substitute water or other
26 measures allowing maintenance of the full beneficial uses of existing
27 rights holders.

28 **Sec. 13.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
29 as follows:

30 RCW 90.03.380 shall not be construed to prevent water users from
31 making a seasonal or temporary change of point of diversion or place of
32 use of water when such change can be made without detriment to existing
33 rights, considering the criteria in RCW 90.03.380(7), but in no case
34 shall such change be made without the permission of the water master of
35 the district in which such proposed change is located, or of the
36 department. Nor shall RCW 90.03.380 be construed to prevent
37 construction of emergency interties between public water systems to
38 permit exchange of water during short-term emergency situations, or

1 rotation in the use of water for bringing about a more economical use
2 of the available supply, provided however, that the department of
3 health in consultation with the department of ecology shall adopt rules
4 or develop written guidelines setting forth standards for determining
5 when a short-term emergency exists and the circumstances in which
6 emergency interties are permitted. The rules or guidelines shall be
7 consistent with the procedures established in RCW 43.83B.400 through
8 43.83B.420. Water users owning lands to which water rights are
9 attached may rotate in the use of water to which they are collectively
10 entitled, or an individual water user having lands to which are
11 attached water rights of a different priority, may in like manner
12 rotate in use when such rotation can be made without detriment to other
13 existing water rights, and has the approval of the water master or
14 department.

15 **Sec. 14.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to
16 read as follows:

17 (1) No permit shall be granted for the development or withdrawal of
18 public ground waters beyond the capacity of the underground bed or
19 formation in the given basin, district, or locality to yield such water
20 within a reasonable or feasible pumping lift in case of pumping
21 developments, or within a reasonable or feasible reduction of pressure
22 in the case of artesian developments.

23 (2) The department ((shall have the power to determine whether the
24 granting of any such permit will injure or damage any vested or
25 existing right or rights under prior permits and)) may grant the permit
26 if it determines that:

27 (a) No injury or damage to any vested or existing right or rights
28 under prior permits will occur;

29 (b) The permit is consistent with the public interest, considering
30 the factors set forth in section 3 of this act; and

31 (c) The permit will not cause a depletion of waters beyond the rate
32 of recharge of the underground bed or formation as measured over a
33 period of no less than five years.

34 (3) The department may in addition to the records of the
35 department, require further evidence, proof, and testimony before
36 granting or denying any such permits.

1 **Sec. 15.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
2 as follows:

3 (1) For the purposes of RCW 90.14.130 through 90.14.180,
4 "sufficient cause" shall be defined ~~((as))~~ to include either the
5 failure to beneficially use water as defined in section 2 of this act,
6 or the nonuse of all or a portion of the water by the owner of a water
7 right for a period of five or more consecutive years where ~~((such))~~ the
8 failure or nonuse occurs as a result of:

9 (a) Drought, or other unavailability of water;

10 (b) Active service in the armed forces of the United States during
11 military crisis;

12 (c) Nonvoluntary service in the armed forces of the United States;

13 (d) ~~((The operation of legal proceedings))~~ An administrative order
14 or court order that temporarily prevents the use of the right;

15 (e) Federal laws imposing land or water use restrictions either
16 directly or through the voluntary enrollment of a landowner in a
17 federal program implementing those laws, or acreage limitations, or
18 production quotas; or

19 (f) Compliance with a permit to discharge wastes issued under
20 chapter 90.48 RCW.

21 (2) Notwithstanding any other provisions of RCW 90.14.130 through
22 90.14.180, there shall be no relinquishment of any water right:

23 (a) If such right is claimed for power development purposes under
24 chapter 90.16 RCW and annual license fees are paid in accordance with
25 chapter 90.16 RCW, or

26 (b) If such right is used for a standby or reserve water supply to
27 be used in time of drought or other low flow period so long as
28 withdrawal or diversion facilities are maintained in good operating
29 condition for the use of such reserve or standby water supply, or

30 (c) ~~((If such right is claimed for a determined future development~~
31 ~~to take place either within fifteen years of July 1, 1967, or the most~~
32 ~~recent beneficial use of the water right, whichever date is later, or~~

33 ~~(d))~~ If such right is claimed for municipal water supply purposes
34 under chapter 90.03 RCW, or

35 ~~((e))~~ (d) If such waters are not subject to appropriation under
36 the applicable provisions of RCW 90.40.030 as now or hereafter amended.

37 NEW SECTION. **Sec. 16.** CAPTIONS. Subheadings and captions as used
38 in this act constitute no part of the law.

1 NEW SECTION. **Sec. 17.** CODIFICATION. Sections 2, 3, 6, and 8
2 through 11 of this act are each added to chapter 90.03 RCW.

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