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**HOUSE BILL 2105**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Fitzgibbon, Tharinger, Chapman, Doglio, and Reeves

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

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

**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. ((~~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.~~)) Permanent withdrawals of water that would conflict therewith may be authorized only: (i) If associated with an application to address a public health emergency due to either water quality contamination or a water supply interruption; or (ii) for applications submitted and approved pursuant to RCW 90.03.247(3).

(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 90.03.247 and 2018 c 1 s 302 are each amended to read as follows:

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

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

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

(a) The department determines that any adverse impact on minimum instream flows resulting from the issuance of the water right permit will be fully offset through the implementation of out-of-time water resource mitigation, out-of-place water resource mitigation, or both. Out-of-kind water resource mitigation may not be employed as a means to offset the impact of the issuance of a water right permit on minimum instream flows;

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

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

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

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