
HOUSE BILL 2407

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Ogden, Mitchell, Morris, Prince, H. Myers, Cooper and Peery

Read first time 01/16/92. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to water rights for counties with water
2 reservations; amending RCW 90.03.345 and 75.20.050; and reenacting and
3 amending RCW 90.03.247.

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

5 **Sec. 1.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended to
6 read as follows:

7 The establishment of reservations of water for agriculture,
8 hydroelectric energy, municipal, industrial, and other beneficial uses
9 under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010
10 or 90.54.040 shall constitute appropriations within the meaning of this
11 chapter with priority dates as of the effective dates of their
12 establishment. Whenever an application for a permit to make beneficial
13 use of public waters embodied in a reservation, established after
14 September 1, 1979, is filed with the department of ecology after the

1 effective date of such reservation, the priority date for a permit
2 issued pursuant to an approval by the department of ecology of the
3 application shall be the effective date of the reservation.

4 The establishment of a reservation of water expressly constitutes
5 the affirmative findings required by RCW 90.03.290 and 90.44.060 to
6 issue a permit with respect to availability of water for the proposed
7 beneficial use, the use is the highest feasible development of waters
8 of the public, and the proposed use will not in the aggregate impair
9 existing water rights, or be detrimental to the public welfare. For
10 any pending of future application for a water permit to make beneficial
11 use of public waters embodied in an existing or future reservation, the
12 water permit shall issue specifically conditioned to protect senior
13 water rights from impairment no later than one hundred twenty days from
14 receipt of a complete application as set forth in RCW 90.03.260 and
15 90.44.060; and duplicative submission of information embodied in the
16 reservation shall not be required.

17 **Sec. 2.** RCW 90.03.247 and 1987 c 506 s 95 and 1987 c 505 s 81 are
18 each reenacted and amended to read as follows:

19 Whenever an application for a permit to make beneficial use of
20 public waters is approved relating to a stream or other water body for
21 which minimum flows or levels have been adopted and are in effect at
22 the time of approval, the permit shall be conditioned to protect the
23 levels or flows; provided that permits issued relating to waters
24 reserved pursuant to RCW 90.54.050(1), with a priority senior to
25 established minimum flows of levels, shall not be so conditioned. No
26 agency may establish minimum flows and levels or similar water flow or
27 level restrictions for any stream or lake of the state other than the
28 department of ecology whose authority to establish is exclusive, as
29 provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The

1 provisions of other statutes, including but not limited to RCW
2 75.20.100 and chapter 43.21C RCW, may not be interpreted in a manner
3 that is inconsistent with this section. In establishing such minimum
4 flows, levels, or similar restrictions, the department shall, during
5 all stages of development by the department of ecology of minimum flow
6 proposals, consult with, and carefully consider the recommendations of,
7 the department of fisheries, the department of wildlife, the state
8 energy office, the department of agriculture, and representatives of
9 the affected Indian tribes. Nothing herein shall preclude the
10 department of fisheries, the department of wildlife, the energy office,
11 or the department of agriculture from presenting its views on minimum
12 flow needs at any public hearing or to any person or agency, and the
13 department of fisheries, the department of wildlife, the energy office,
14 and the department of agriculture are each empowered to participate in
15 proceedings of the federal energy regulatory commission and other
16 agencies to present its views on minimum flow needs.

17 **Sec. 3.** RCW 75.20.050 and 1988 c 36 s 32 are each amended to read
18 as follows:

19 It is the policy of this state that a flow of water sufficient to
20 support game fish and food fish populations be maintained at all times
21 in the streams of this state.

22 The director of ecology shall give the director of fisheries and
23 the director of wildlife notice of each application for a permit to
24 divert or store water. The director of fisheries and director of
25 wildlife have thirty days after receiving the notice to state their
26 objections to the application. The permit shall not be issued until
27 the thirty-day period has elapsed.

28 The director of ecology may refuse to issue a permit if, in the
29 opinion of the director of fisheries or director of wildlife, issuing

1 the permit might result in lowering the flow of water in a stream below
2 the flow necessary to adequately support food fish and game fish
3 populations in the stream.

4 The provisions of this section shall in no way affect existing
5 water rights, including those water reservations established pursuant
6 to RCW 90.54.050(1).