
SENATE BILL 5517

State of Washington

68th Legislature

2023 Regular Session

By Senators Warnick and Van De Wege

1 AN ACT Relating to enacting recommendations from the joint
2 legislative task force on water resource mitigation; amending RCW
3 90.44.030, 90.03.247, 90.44.060, 70A.125.170, 90.03.015, and
4 90.54.020; adding a new section to chapter 90.03 RCW; creating a new
5 section; and declaring an emergency.

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

7 **Sec. 1.** RCW 90.44.030 and 1945 c 263 s 2 are each amended to
8 read as follows:

9 (1) The rights to appropriate the surface waters of the state and
10 the rights acquired by the appropriation and use of surface waters
11 shall not be affected or impaired by any of the provisions of this
12 supplementary chapter and, to the extent that any underground water
13 is part of or tributary to the source of any surface stream or lake,
14 or that the withdrawal of groundwater may affect the flow of any
15 spring, water course, lake, or other body of surface water, the right
16 of an appropriator and owner of surface water shall be superior to
17 any subsequent right hereby authorized to be acquired in or to
18 groundwater.

19 (2) Hydraulic continuity between groundwater and a surface water
20 source with unmet minimum flows or that is closed to further

1 appropriation is not, in and of itself, a basis on which to deny an
2 application to withdraw groundwater.

3 (3) When the department considers a proposed appropriation of
4 public groundwater, it must determine whether such a groundwater
5 withdrawal would impair surface water rights or adversely affect
6 surface water sources closed to further appropriations, utilizing the
7 procedures and standards in this act.

8 (4) If the department relies on a groundwater model in
9 considering a proposed appropriation of public groundwater, the
10 creation and use of the model must comply with the provisions of RCW
11 90.44.060 and the rule adopted by the department under section 4 of
12 this act.

13 (5) If the department determines that any proposed groundwater
14 withdrawal would impair a minimum surface water flow or level set by
15 rule or adversely affect a surface water source closed to further
16 appropriation, the department may authorize such a groundwater
17 withdrawal in reliance upon water resource mitigation measures under
18 the following mitigation sequence:

19 (a) Avoiding impacts by: (i) Complying with mitigation required
20 in adopted rules that set forth minimum flows, levels, or closures;
21 or (ii) making the groundwater withdrawal subject to applicable
22 minimum flows or levels;

23 (b) Where avoidance of adverse impacts is not reasonably
24 attainable, minimizing impacts by providing permanent replacement
25 water supply resulting in no net annual increase in the quantity of
26 water withdrawn from the surface water body and no net detrimental
27 impacts to fish and related aquatic resources; or

28 (c) Where avoidance and minimization are not reasonably
29 attainable, compensating for adverse impacts by providing in-kind or
30 out-of-kind mitigation that improves the function and productivity of
31 affected fish populations and related aquatic habitat in the water
32 resource inventory area. Out-of-kind mitigation may include instream
33 or out-of-stream measures that improve or enhance existing water
34 quality, riparian habitat, or other instream functions and values for
35 which minimum instream flows or closures were established in the
36 water resource inventory area.

37 (6) If an applicant is defined as a municipal water supplier
38 under RCW 90.03.015 and proposes mitigation under subsection (5)(b)
39 or (c) of this section, prior to the department's evaluation the
40 applicant shall obtain a determination from the department of health

1 that the water system for which additional water rights are being
2 sought is in compliance with or is exercising appropriate effort to
3 achieve all applicable water conservation requirements under RCW
4 70A.125.170 and rules adopted by the department of health.

5 (7) The mitigation sequence in subsection (5) of this section
6 applies to mitigation relating to minimum surface water flows or
7 levels set by rule or of a surface water source closed to further
8 appropriation. Nothing in this section is intended to affect or
9 modify impairment or mitigation standards for impacts to
10 appropriative water rights.

11 **Sec. 2.** RCW 90.03.247 and 2018 c 1 s 302 are each amended to
12 read as follows:

13 (1) Whenever an application for a permit to make beneficial use
14 of public waters is approved relating to a stream or other water body
15 for which minimum flows or levels have been adopted and are in effect
16 at the time of approval, the permit shall be conditioned to: (a)
17 Protect the levels or flows; (~~(b)~~) (b) require water resource
18 mitigation of impacts to instream flows and closed surface water
19 bodies for water resource mitigation pilot projects authorized under
20 RCW 90.94.090; or (c) require water resource mitigation of impacts to
21 instream flows or closed surface water bodies under the procedures
22 and standards in RCW 90.44.030.

23 (2) No agency may establish minimum flows and levels or similar
24 water flow or level restrictions for any stream or lake of the state
25 other than the department of ecology whose authority to establish is
26 exclusive, as provided in this chapter (~~(90.03—RCW)~~) and RCW
27 90.22.010 and 90.54.040. The provisions of other statutes, including
28 but not limited to chapter 43.21C RCW, may not be interpreted in a
29 manner that is inconsistent with this section. In establishing such
30 minimum flows, levels, or similar restrictions, the department shall,
31 during all stages of development by the department of ecology of
32 minimum flow proposals, consult with, and carefully consider the
33 recommendations of, the department of fish and wildlife, the
34 department of commerce, the department of agriculture, and
35 representatives of the affected Indian tribes. Nothing herein shall
36 preclude the department of fish and wildlife, the department of
37 commerce, or the department of agriculture from presenting its views
38 on minimum flow needs at any public hearing or to any person or
39 agency, and the department of fish and wildlife, the department of

1 commerce, and the department of agriculture are each empowered to
2 participate in proceedings of the federal energy regulatory
3 commission and other agencies to present its views on minimum flow
4 needs.

5 **Sec. 3.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
6 read as follows:

7 (1) Applications for permits for appropriation of underground
8 water shall be made in the same form and manner provided in RCW
9 90.03.250 through 90.03.340, as amended, the provisions of which
10 sections are hereby extended to govern and to apply to groundwater,
11 or groundwater right certificates and to all permits that shall be
12 issued pursuant to such applications, and the rights to the
13 withdrawal of groundwater acquired thereby shall be governed by RCW
14 90.03.250 through 90.03.340, inclusive: PROVIDED, That each
15 application to withdraw public groundwater by means of a well or
16 wells shall set forth the following additional information:

17 ~~((1) the)~~ (a) The name and post office address of the
18 applicant;

19 ~~((2) the)~~ (b) The name and post office address of the owner of
20 the land on which such well or wells or works will be located;

21 ~~((3) the)~~ (c) The location of the proposed well or wells or
22 other works for the proposed withdrawal;

23 ~~((4) the)~~ (d) The groundwater area, sub-area, or zone from
24 which withdrawal is proposed, provided the department has designated
25 such area, sub-area, or zone in accord with RCW 90.44.130;

26 ~~((5) the)~~ (e) The amount of water proposed to be withdrawn, in
27 gallons a minute and in acre feet a year, or millions of gallons a
28 year;

29 ~~((6) the)~~ (f) The depth and type of construction proposed for
30 the well or wells or other works; and

31 (g) The new, existing, or modified groundwater model, if any,
32 proposed for evaluating the effects of the proposed withdrawal on
33 surface water flows and levels: AND PROVIDED FURTHER, That any permit
34 issued pursuant to an application for constructing a well or wells to
35 withdraw public groundwater may specify an approved type and manner
36 of construction for the purposes of preventing waste of said public
37 waters and of conserving their head.

1 (2) The department shall consider the use of new analytical or
2 numerical models in the groundwater application process under the
3 rule adopted pursuant to section 4 of this act.

4 (3) Before the department uses an existing regional groundwater
5 model for predicting the effects of a proposed groundwater withdrawal
6 on surface water flows and levels, the department shall review the
7 model and determine that the model's:

8 (a) Boundaries, vertical and horizontal discretization, scope,
9 and purpose are suitable for determining the effects of the proposed
10 withdrawal on surface water flows and levels; and

11 (b) Accuracy for its intended use, which may be defined as the
12 model's margin of error, is clearly identified by the model creator
13 or a licensed hydrogeologist familiar with the model.

14 (4) The department's determination of model suitability must be
15 included in any preliminary permit issued under RCW 90.03.290(2) and
16 must reflect any model revisions proposed on behalf of the applicant
17 by a licensed hydrogeologist in order to make an existing regional
18 groundwater model perform in a scientifically suitable manner for
19 evaluation of the proposed withdrawals.

20 (5) A modeled effect on surface water shall not be considered an
21 impairment of a minimum instream flow set by rule or an adverse
22 impact to a surface water source closed to further appropriation if
23 the modeled effect is within the model's uncertainty or margin of
24 error.

25 NEW SECTION. Sec. 4. A new section is added to chapter 90.03
26 RCW to read as follows:

27 (1) The department shall adopt a rule establishing requirements
28 for the creation, modification, and use of groundwater models used in
29 groundwater application decisions. The rule must incorporate the
30 standard that a modeled effect on surface water may not be considered
31 an impairment of a minimum instream flow set by rule or an adverse
32 impact to a surface water source closed to further appropriation if
33 it is within the model uncertainty or its margin of error. The rule
34 must include:

35 (a) A list of alternative model types and their appropriate
36 hydrogeologic settings;

37 (b) Guidance on the use and application of various types of
38 modeling applications and calculation of margin of error;

1 (c) Professional license and experience requirements for
2 modelers;

3 (d) A process for public input and transparency for the creation
4 and application of models through the posting of preliminary permit
5 decisions on the department's website in the same manner as draft and
6 final reports of examination.

7 (2) As part of the rule-making process, the department shall
8 convene a technical advisory committee. The technical advisory
9 committee consists of individuals with expertise in developing and
10 applying groundwater models in the water right permitting and
11 mitigation process. A majority of the members of the technical
12 advisory committee must be licensed hydrogeologists employed by firms
13 that are on the department's list of prequalified firms for cost-
14 reimbursement work under RCW 90.03.265.

15 **Sec. 5.** RCW 70A.125.170 and 2010 1st sp.s. c 7 s 121 are each
16 amended to read as follows:

17 (1) It is the intent of the legislature that the department
18 establish water use efficiency requirements designed to ensure
19 efficient use of water while maintaining water system financial
20 viability, improving affordability of supplies, and enhancing system
21 reliability.

22 (2) The requirements of this section shall apply to all municipal
23 water suppliers and shall be tailored to be appropriate to system
24 size, forecasted system demand, and system supply characteristics.

25 (3) For the purposes of this section:

26 (a) Water use efficiency includes conservation planning
27 requirements, water distribution system leakage standards, and water
28 conservation performance reporting requirements; and

29 (b) "Municipal water supplier" and "municipal water supply
30 purposes" have the meanings provided by RCW 90.03.015.

31 (4) To accomplish the purposes of this section, the department
32 shall adopt rules necessary to implement this section by December 31,
33 2005. The department shall:

34 (a) Develop conservation planning requirements that ensure
35 municipal water suppliers are: (i) Implementing programs to integrate
36 conservation with water system operation and management; and (ii)
37 identifying how to appropriately fund and implement conservation
38 activities. Requirements shall apply to the conservation element of
39 water system plans and small water system management programs

1 developed pursuant to chapter 43.20 RCW. In establishing the
2 conservation planning requirements the department shall review the
3 current department conservation planning guidelines and include those
4 elements that are appropriate for rule. Conservation planning
5 requirements shall include but not be limited to:

6 (A) Selection of cost-effective measures to achieve a system's
7 water conservation objectives. Requirements shall allow the municipal
8 water supplier to select and schedule implementation of the best
9 methods for achieving its conservation objectives;

10 (B) Evaluation of the feasibility of adopting and implementing
11 water delivery rate structures that encourage water conservation;

12 (C) Evaluation of each system's water distribution system leakage
13 and, if necessary, identification of steps necessary for achieving
14 water distribution system leakage standards developed under (b) of
15 this subsection;

16 (D) Collection and reporting of water consumption and source
17 production and/or water purchase data. Data collection and reporting
18 requirements shall be sufficient to identify water use patterns among
19 utility customer classes, where applicable, and evaluate the
20 effectiveness of each system's conservation program. Requirements,
21 including reporting frequency, shall be appropriate to system size
22 and complexity. Reports shall be available to the public; and

23 (E) Establishment of minimum requirements for water demand
24 forecast methodologies such that demand forecasts prepared by
25 municipal water suppliers are sufficient for use in determining
26 reasonably anticipated future water needs;

27 (b) Develop water distribution system leakage standards to ensure
28 that municipal water suppliers are taking appropriate steps to reduce
29 water system leakage rates or are maintaining their water
30 distribution systems in a condition that results in leakage rates in
31 compliance with the standards. Limits shall be developed in terms of
32 percentage of total water produced and/or purchased and shall not be
33 lower than ten percent. The department may consider alternatives to
34 the percentage of total water supplied where alternatives provide a
35 better evaluation of the water system's leakage performance. The
36 department shall institute a graduated system of requirements based
37 on levels of water system leakage. A municipal water supplier shall
38 select one or more control methods appropriate for addressing leakage
39 in its water system;

1 (c) Establish minimum requirements for water conservation
2 performance reporting to assure that municipal water suppliers are
3 regularly evaluating and reporting their water conservation
4 performance. The objective of setting conservation goals is to
5 enhance the efficient use of water by the water system customers.
6 Performance reporting shall include:

7 (i) Requirements that municipal water suppliers adopt and achieve
8 water conservation goals. The elected governing board or governing
9 body of the water system shall set water conservation goals for the
10 system. In setting water conservation goals the water supplier may
11 consider historic conservation performance and conservation
12 investment, customer base demographics, regional climate variations,
13 forecasted demand and system supply characteristics, system financial
14 viability, system reliability, and affordability of water rates.
15 Conservation goals shall be established by the municipal water
16 supplier in an open public forum;

17 (ii) Requirements that the municipal water supplier adopt
18 schedules for implementing conservation program elements and
19 achieving conservation goals to ensure that progress is being made
20 toward adopted conservation goals;

21 (iii) A reporting system for regular reviews of conservation
22 performance against adopted goals. Performance reports shall be
23 available to customers and the public. Requirements, including
24 reporting frequency, shall be appropriate to system size and
25 complexity;

26 (iv) Requirements that any system not meeting its water
27 conservation goals shall develop a plan for modifying its
28 conservation program to achieve its goals along with procedures for
29 reporting performance to the department;

30 (v) If a municipal water supplier determines that further
31 reductions in consumption are not reasonably achievable, it shall
32 identify how current consumption levels will be maintained;

33 (d) Adopt rules that, to the maximum extent practical, utilize
34 existing mechanisms and simplified procedures in order to minimize
35 the cost and complexity of implementation and to avoid placing
36 unreasonable financial burden on smaller municipal systems.

37 (5) The department shall provide technical assistance upon
38 request to municipal water suppliers and local governments regarding
39 water conservation, which may include development of best management
40 practices for water conservation programs, conservation landscape

1 ordinances, conservation rate structures for public water systems,
2 and general public education programs on water conservation.

3 (6) To ensure compliance with this section, the department shall
4 establish a compliance process that incorporates a graduated approach
5 employing the full range of compliance mechanisms available to the
6 department.

7 (7) Prior to completion of rule making required in subsection (4)
8 of this section, municipal water suppliers shall continue to meet the
9 existing conservation requirements of the department and shall
10 continue to implement their current water conservation programs.

11 (8) For a water right applicant that is a municipal water
12 supplier seeking to utilize mitigation under RCW 90.44.030(5) (b) or
13 (c), the department shall review and make a determination of whether
14 the water system for which additional water rights are being sought
15 is in compliance with or is exercising appropriate effort to achieve
16 the requirements of this subsection and of the rule adopted by the
17 department. Such a review and determination must be provided to the
18 applicant and the department of ecology. If the department determines
19 that the municipal water supplier is not in compliance with this
20 section or the appropriate rule, it shall identify any actions that
21 must be taken by the municipal water supplier to achieve compliance.

22 **Sec. 6.** RCW 90.03.015 and 2003 1st sp.s. c 5 s 1 are each
23 amended to read as follows:

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

26 (1) "Department" means the department of ecology.

27 (2) "Director" means the director of ecology.

28 (3) "Municipal water supplier" means an entity that supplies
29 water for municipal water supply purposes.

30 (4) "Municipal water supply purposes" means a beneficial use of
31 water: (a) For residential purposes through (~~fifteen~~) 15 or more
32 residential service connections or for providing residential use of
33 water for a nonresidential population that is, on average, at least
34 (~~twenty-five~~) 25 people for at least (~~sixty~~) 60 days a year; (b)
35 for governmental or governmental proprietary purposes by a city,
36 town, public utility district, county, sewer district, or water
37 district; or (c) indirectly for the purposes in (a) or (b) of this
38 subsection through the delivery of treated or raw water to a public
39 water system for such use. If water is beneficially used under a

1 water right for the purposes listed in (a), (b), or (c) of this
2 subsection, any other beneficial use of water under the right
3 generally associated with the use of water within a municipality is
4 also for "municipal water supply purposes," including, but not
5 limited to, beneficial use for commercial, industrial, irrigation of
6 parks and open spaces, institutional, landscaping, fire flow, water
7 system maintenance and repair, or related purposes. If a governmental
8 entity holds a water right that is for the purposes listed in (a),
9 (b), or (c) of this subsection, its use of water or its delivery of
10 water for any other beneficial use generally associated with the use
11 of water within a municipality is also for "municipal water supply
12 purposes," including, but not limited to, beneficial use for
13 commercial, industrial, irrigation of parks and open spaces,
14 institutional, landscaping, fire flow, water system maintenance and
15 repair, or related purposes.

16 (5) "Person" means any firm, association, water users'
17 association, corporation, irrigation district, or municipal
18 corporation, as well as an individual.

19 (6) "Withdrawal" means the appropriation of water for beneficial
20 use through withdrawal of groundwater authorized under RCW 90.44.060
21 or diversion of surface water authorized under RCW 90.03.290. A
22 withdrawal may be either temporary or permanent.

23 **Sec. 7.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
24 read as follows:

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

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

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

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

1 (a) Perennial rivers and streams of the state shall be retained
2 with base flows necessary to provide for preservation of wildlife,
3 fish, scenic, aesthetic and other environmental values, and
4 navigational values. Lakes and ponds shall be retained substantially
5 in their natural condition. (~~Withdrawals of water which would~~
6 ~~conflict therewith shall be authorized only in those situations~~
7 ~~where~~) Permanent or temporary appropriations of water that would
8 have adverse impacts on instream values protected by rules adopted
9 pursuant to chapter 90.54 or 90.22 RCW may be authorized only with
10 appropriate mitigation, or where it is clear that overriding
11 considerations of the public interest will be served.

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

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

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

31 (4) The development of multipurpose water storage facilities
32 shall be a high priority for programs of water allocation, planning,
33 management, and efficiency. The department, other state agencies, and
34 local governments (~~(, and planning units formed under section 107 or~~
35 ~~108 of this act~~)) shall evaluate the potential for the development of
36 new storage projects and the benefits and effects of storage in
37 reducing damage to stream banks and property, increasing the use of
38 land, providing water for municipal, industrial, agricultural, power
39 generation, and other beneficial uses, and improving streamflow
40 regimes for fisheries and other instream uses.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 8.** This act applies to applications for
37 withdrawals of groundwater filed both before and after the effective
38 date of this section. To this extent, this act applies retroactively,
39 but in all other respects it applies prospectively.

1 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

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