
SENATE BILL 6478

State of Washington 53rd Legislature 1994 Regular Session

By Senators Fraser, Sutherland, Morton, Moore and Winsley

Read first time 01/24/94. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to water resource management; amending RCW
2 90.03.010, 90.03.015, 90.03.040, 90.03.290, 90.03.380, 90.44.070,
3 90.54.020, 90.03.340, 90.14.140, and 90.22.010; reenacting and amending
4 RCW 90.03.247; adding new sections to chapter 90.03 RCW; and creating
5 new sections.

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

7 NEW SECTION. **Sec. 1.** FINDINGS--INTENT. The legislature finds
8 that the state's water resource management laws and institutions must
9 be capable of responding in the interest of all citizens of the state
10 to changing conditions, including increasing population, increasing
11 water use demands, both in-stream and off-stream, and changes in
12 natural conditions relating to water supply levels. The fundamental
13 principle underlying the state's appropriative system is that water be
14 applied to a beneficial use, a concept which has evolved since
15 statehood to address all public values in water use. The beneficial
16 use principle also determines the measure of each appropriative right,
17 which is further tested by a "reasonable use" test. The legislature
18 recognizes that this test in the context of the public's interest in
19 the state's water resources must include evaluation of many factors,

1 including growing water use demands, environmental protection needs,
2 changes in water use technology, and changes in natural conditions
3 affecting water supply levels.

4 For these reasons the legislature intends by this act to provide
5 additional statutory guidance on the consideration of the public
6 interest in the administration of the water resource laws, to improve
7 the integration of the appropriative system with minimum stream flow
8 protections, and to provide a means for the equitable reduction in
9 water withdrawals where necessary to avoid extreme hardship during
10 periods of critical water shortage.

11 **Sec. 2.** RCW 90.03.010 and 1917 c 117 s 1 are each amended to read
12 as follows:

13 The power of the state to regulate and control the waters within
14 the state shall be exercised as hereinafter in this chapter provided.
15 (~~Subject to existing rights~~) All waters within the state belong to
16 the public, and any right thereto, or to the use thereof, shall be
17 (~~hereafter~~) acquired only by appropriation for a beneficial use and
18 in the manner (~~provided and not otherwise~~) and subject to the
19 limitations of this chapter and chapters 90.44, 90.48, and 90.54 RCW;
20 and, as between appropriations, the first in time shall be the first in
21 right. Nothing contained in this chapter shall be construed to lessen,
22 enlarge, or modify the existing rights of any riparian owner, or any
23 existing right acquired by appropriation, or otherwise. They shall,
24 however, be subject to condemnation as provided in RCW 90.03.040, to
25 limitations during periods of critical water shortages as provided in
26 section 14 of this act, and the amount and priority thereof may be
27 determined by the procedure set out in RCW 90.03.110 through 90.03.240.

28 **Sec. 3.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
29 as follows:

30 As used in this chapter:

31 (1) "Beneficial use" means the type and quantity of use provided in
32 section 4 of this act;

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

34 (~~(+2)~~) (3) "Director" means the director of ecology; and

35 (~~(+3)~~) (4) "Person" means any firm, association, water users'
36 association, corporation, irrigation district, or municipal
37 corporation, as well as an individual.

1 NEW SECTION. **Sec. 4.** 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 the extent of the use determined to be beneficial
7 may be reduced during periods of critical water shortage as provided in
8 section 14 of this act, and that no misuse of water shall be considered
9 beneficial.

10 (2) The efficient use of water is that use that does not exceed the
11 rate and amount that will provide the duty of water for the type of use
12 involved plus a reasonable transportation loss where applicable. In
13 the case of existing rights, what constitutes efficient use shall be
14 adjusted to take into account any beneficial effects of return flows,
15 where alternative means of achieving the effects are not readily
16 available. The department shall adopt rules by July 1, 1995, providing
17 methods to test the efficiency of uses, including:

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

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

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

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

34 NEW SECTION. **Sec. 5.** EFFICIENCY REQUIREMENTS APPLIED TO EXISTING
35 PERMITS. (1) The department shall review all existing uses of state
36 waters through appropriative rights to ensure that the use complies
37 with the requirements of efficiency provided in section 4 of this act.
38 The department shall conduct its review on a state-wide basis with

1 consideration of all geographic regions of the state and all types of
2 uses. When it finds that a use is not efficient it shall so notify the
3 user, specifying the actions that must be taken to comply and providing
4 a reasonable compliance period. If the user fails to comply, the
5 department may issue a regulatory order under RCW 43.27A.190 requiring
6 that the efficiency measures be undertaken.

7 (2) A user failing to comply with a regulatory order requiring
8 efficiency measures to be implemented shall relinquish that quantity of
9 the user's water right that the measures would have achieved in water
10 savings. The department shall initiate an adjudicatory proceeding
11 before the pollution control hearings board pursuant to chapter 43.21B
12 RCW to enforce this subsection. The proceeding shall be a de novo
13 determination by the board, and appealable in such a manner as are
14 other water rights determinations by the board.

15 NEW SECTION. **Sec. 6.** PUBLIC INTEREST CONSIDERATIONS. In
16 evaluating whether applications for a new water right, a transfer of a
17 water right, or a modification of the use or point of diversion, are in
18 the public interest, the department shall consider the following:

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

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

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

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

29 (5) Effects on public land and facilities and other water-related
30 public resources;

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

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

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

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

1 (10) Consistency with applicable water resource fundamental
2 principles of RCW 90.54.020.

3 **Sec. 7.** RCW 90.03.040 and 1917 c 117 s 4 are each amended to read
4 as follows:

5 The beneficial use of water is hereby declared to be a public use,
6 and any person may exercise the right of eminent domain to acquire any
7 property or rights now or hereafter existing when found necessary for
8 the storage of water for, or the application of water to, any
9 beneficial use, including the right to enlarge existing structures
10 employed for the public purposes mentioned in this chapter and use the
11 same in common with the former owner, and including the right and power
12 to condemn an inferior use of water for a superior use. In
13 condemnation proceedings the court shall determine (~~what use will be~~
14 ~~for the greatest public benefit, and that use shall be deemed a~~
15 ~~superior one: PROVIDED, That no property right in water or the use of~~
16 ~~water shall be acquired hereunder by condemnation for irrigation~~
17 ~~purposes, which shall deprive any person of such quantity of water as~~
18 ~~may be reasonably necessary for the irrigation of his land then under~~
19 ~~irrigation to the full extent of the soil, by the most economical~~
20 ~~method of artificial irrigation applicable to such land according to~~
21 ~~the usual methods of artificial irrigation employed in the vicinity~~
22 ~~where such land is situated. In any case, the court shall determine~~
23 ~~what is the most economical method of irrigation. Such property or~~
24 ~~rights shall be acquired in the manner provided by law for the taking~~
25 ~~of private property for public use by private corporations)) whether
26 the use proposed by the condemnor is superior to that of the condemnee
27 by applying the public interest consideration in section 6 of this act.~~

28 **Sec. 8.** RCW 90.03.247 and 1987 c 506 s 95 and 1987 c 505 s 81 are
29 each reenacted and amended to read as follows:

30 (~~Whenever an application for~~) A permit to make beneficial use of
31 public waters (~~is~~) approved after November 12, 1889, relating to a
32 stream or other water body for which minimum flows or levels have been
33 adopted (~~and are in effect at the time of approval, the permit~~) shall
34 be conditioned to protect the levels or flows. No agency may establish
35 minimum flows and levels or similar water flow or level restrictions
36 for any stream or lake of the state other than the department of
37 ecology whose authority to establish is exclusive, as provided in

1 chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of
2 other statutes, including but not limited to RCW 75.20.100 and chapter
3 43.21C RCW, may not be interpreted in a manner that is inconsistent
4 with this section. In establishing such minimum flows, levels, or
5 similar restrictions, the department shall, during all stages of
6 development by the department of ecology of minimum flow proposals,
7 consult with, and carefully consider the recommendations of, the
8 department of (~~fisheries, the department of~~) fish and wildlife, the
9 state energy office, the department of agriculture, and representatives
10 of the affected Indian tribes. Nothing (~~herein~~) in this section
11 shall preclude the department of (~~fisheries, the department of~~) fish
12 and wildlife, the energy office, or the department of agriculture from
13 presenting its views on minimum flow needs at any public hearing or to
14 any person or agency, and the department of (~~fisheries, the department~~
15 ~~of~~) fish and wildlife, the energy office, and the department of
16 agriculture are each empowered to participate in proceedings of the
17 federal energy regulatory commission and other agencies to present its
18 views on minimum flow needs.

19 **Sec. 9.** RCW 90.03.290 and 1988 c 36 s 66 are each amended to read
20 as follows:

21 (1) When an application complying with the provisions of this
22 chapter and with the rules and regulations of the department has been
23 filed, the same shall be placed on record with the department, and it
24 shall be its duty to investigate the application, and determine what
25 water, if any, is available for appropriation, and find and determine
26 to what beneficial use or uses it can be applied. If it is proposed to
27 appropriate water for irrigation purposes, the department shall
28 investigate, determine and find what lands are capable of irrigation by
29 means of water found available for appropriation. If it is proposed to
30 appropriate water for the purpose of power development, the department
31 shall investigate, determine and find whether the proposed development
32 is (~~likely to prove detrimental to~~) in the public interest, (~~having~~
33 ~~in mind the highest feasible use of the waters belonging to the~~
34 ~~public.~~) considering the factors set forth in section 6 of this act.

35 (2) If the application does not contain, and the applicant does not
36 promptly furnish sufficient information on which to base such findings,
37 the department may issue a preliminary permit, for a period of not to
38 exceed three years, requiring the applicant to make such surveys,

1 investigations, studies, and progress reports, as in the opinion of the
2 department may be necessary. However, construction of any works for
3 the diversion of water may not be authorized under a preliminary
4 permit. If the applicant fails to comply with the conditions of the
5 preliminary permit, it and the application or applications on which it
6 is based shall be automatically canceled and the applicant so notified.
7 If the holder of a preliminary permit shall, before its expiration,
8 file with the department a verified report of expenditures made and
9 work done under the preliminary permit, which, in the opinion of the
10 department, establishes the good faith, intent and ability of the
11 applicant to carry on the proposed development, the preliminary permit
12 may, with the approval of the governor, be extended, but not to exceed
13 a maximum period of five years from the date of the issuance of the
14 preliminary permit.

15 (3) Following its investigation and the receipt of all necessary
16 information in the application, the department shall make and file as
17 part of the record in the matter, written findings of fact concerning
18 all ((things)) issues and facts investigated((, and if it shall find
19 that there is water available for appropriation for a beneficial use,
20 and the appropriation thereof as proposed in the application will not
21 impair existing rights or be detrimental to the public welfare, it
22 shall issue a permit stating the amount of water to which the applicant
23 shall be entitled and the beneficial use or uses to which it may be
24 applied: PROVIDED, That where)). The department may issue the permit
25 if it determines that:

26 (a) There is water available for appropriation for a beneficial use
27 as defined in section 4 of this act;

28 (b) The appropriation as proposed in the application will not
29 impair existing rights; and

30 (c) The appropriation is consistent with the public interest,
31 considering the factors set forth in section 6 of this act.

32 (4) Where the water applied for is to be used for irrigation
33 purposes, it shall become appurtenant only to such land as may be
34 reclaimed thereby to the full extent of the soil for agricultural
35 purposes. ((But where there is no unappropriated water in the proposed
36 source of supply, or where the proposed use conflicts with existing
37 rights, or threatens to prove detrimental to the public interest,
38 having due regard to the highest feasible development of the use of the

1 waters belonging to the public, it shall be duty of the department to
2 reject such application and to refuse to issue the permit asked for.))

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

7 (6) Any application may be approved for a less amount of water than
8 that applied for, if there exists substantial reason therefor, and in
9 any event shall not be approved for more water than can be applied to
10 beneficial use for the purposes named in the application. ((In
11 determining whether or not a permit shall issue upon any application,
12 it shall be the duty of the department to investigate all facts
13 relevant and material to the application.))

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

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

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

23 (1) The right to the use of water which has been applied to a
24 beneficial use in the state shall be and remain appurtenant to the land
25 or place upon which the same is used(~~(: PROVIDED, HOWEVER, That said)~~)
26 except as provided in this section. The right may be transferred to
27 another or to others and become appurtenant to any other land or place
28 of use without loss of priority of right theretofore established if
29 ((such change can be made without detriment or injury to existing
30 rights.)) approved as provided for in this section. The point of
31 diversion of water for beneficial use or the purpose of use may be
32 changed(~~(, if such change can be made without detriment or injury to~~
33 ~~existing rights)~~) as provided in this section.

34 (2) Before any transfer of such right to use water or change of the
35 point of diversion of water or change of purpose of use can be made,
36 any person having an interest in the transfer or change, shall file a
37 written application therefor with the department, and ((said))
38 application shall not be granted until notice of said application shall

1 be published as provided in RCW 90.03.280. (~~If it shall appear that~~
2 ~~such transfer or such change may be made without injury or detriment to~~
3 ~~existing rights, the department shall issue to the applicant a~~
4 ~~certificate in duplicate granting the right for such transfer or for~~
5 ~~such change of point of diversion or of use.)) The department may
6 grant a certificate for the transfer or change if it determines that:~~

7 (a) The transfer or change can be made without detriment or injury
8 to existing rights; and

9 (b) The transfer or change is consistent with the public interest,
10 considering the factors set forth in section 6 of this act.

11 (3) The certificate so issued shall be filed and be made a record
12 with the department and (~~the~~) a duplicate certificate issued to the
13 applicant (~~may~~) shall be filed with the county auditor in like manner
14 and with the same effect as provided in the original certificate or
15 permit to divert water.

16 (4) If an application for change proposes to transfer water rights
17 from one irrigation district to another, the department shall, before
18 publication of notice, receive concurrence from each of the irrigation
19 districts that such transfer or change will not adversely affect the
20 ability to deliver water to other landowners or impair the financial
21 integrity of either of the districts.

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

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

29 **Sec. 11.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to
30 read as follows:

31 (1) No permit shall be granted for the development or withdrawal of
32 public ground waters beyond the capacity of the underground bed or
33 formation in the given basin, district, or locality to yield such water
34 within a reasonable or feasible pumping lift in case of pumping
35 developments, or within a reasonable or feasible reduction of pressure
36 in the case of artesian developments. (~~The department shall have the~~
37 power to determine whether the granting of any such permit will injure

1 or ~~damage any vested or existing right or rights under prior permits~~
2 ~~and))~~

3 (2) The department may grant the permit if it determines that:

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

6 (b) The permit is consistent with the public interest, considering
7 the factors set forth in section 6 of this act; and

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

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

14 **Sec. 12.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read
15 as follows:

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

18 (1) All uses of water ((for domestic, stock watering, industrial,
19 commercial, agricultural, irrigation, hydroelectric power production,
20 mining, fish and wildlife maintenance and enhancement, recreational,
21 and thermal power production purposes, and preservation of
22 environmental and aesthetic values, and all other uses compatible with
23 the enjoyment of the public waters of the state,)) consistent with the
24 limitations of section 4 of this act and the public interest factors
25 set forth in section 6 of this act are declared to be beneficial.

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

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

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

1 clear that overriding considerations of the public interest will be
2 served.

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

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

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

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

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

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

37 (7) Development of water supply systems, whether publicly or
38 privately owned, which provide water to the public generally in
39 regional areas within the state shall be encouraged. Development of

1 water supply systems for multiple domestic use which will not serve the
2 public generally shall be discouraged where water supplies are
3 available from water systems serving the public.

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

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

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

12 **Sec. 13.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to
13 read as follows:

14 The right acquired by appropriation shall relate back to the date
15 of filing of the (~~original application with the department~~) issuance
16 of a permit under RCW 90.03.290(3) and, for withdrawal of public ground
17 waters, the issuance of a final permit under RCW 90.44.070.

18 NEW SECTION. **Sec. 14.** PERIODS OF CRITICAL WATER SHORTAGE. (1) It
19 is the intent of the legislature by this section to recognize that
20 maximizing the benefit of the uses of the state's waters for all of its
21 citizens requires procedures capable of addressing the substantial
22 changes in the state's development and uses of water, needs for
23 environmental protection, and changes in natural conditions or legal
24 decisions affecting water supply. The extent and measure of water
25 withdrawal rights deemed beneficial under normal conditions of water
26 supply may be determined excessive when such supply is greatly
27 diminished for some or all users, and the state must have procedures
28 within its water resource laws to redefine beneficial uses in such
29 extraordinary circumstances, and to act to protect the public health,
30 welfare, and safety.

31 (2) The governor may declare a critical water shortage in a
32 geographical area of the state, when he or she determines that:

33 (a)(i) Due to natural conditions or an emergency the area is
34 experiencing or likely to experience within that calendar year a water
35 supply that is below sixty percent of normal; or

1 (ii) A judicial decision or action to establish a minimum flow or
2 level is likely to restrict the withdrawals of a substantial number of
3 rights holders with junior priority dates in the water source; and

4 (b) The water shortage is likely to cause severe hardship within
5 the area.

6 (3) In determining the shortage under subsection (2)(a)(i) of this
7 section, the governor shall consider the advice of state and federal
8 agencies charged with monitoring the quantity of water supplies within
9 the area. The normal water supply for the area shall be determined
10 based upon the average amount of water available for the area on an
11 annual basis. The evaluation shall include consideration of
12 precipitation, stream flow, snowpack, and other hydrological and
13 meteorological factors.

14 (4) In determining the potential for hardship under subsection
15 (2)(b) of this section, the governor shall obtain the views of the
16 governing bodies of the general purpose local governments within the
17 area.

18 (5) A declaration under this section shall be for a specific period
19 of time up to one year. The declaration may be renewed in the manner
20 and subject to the limitations upon the original declaration.

21 (6) The declaration shall be published once a week for six
22 consecutive weeks in at least one newspaper of general circulation
23 within the area, and announced by broadcast media received within the
24 area for the same duration.

25 (7) The conditions placed upon existing water rights during a
26 critical water shortage under this section shall not be effective prior
27 to ninety days following the declaration by the governor.

28 (8) During the period of a declared critical water shortage, the
29 governor may direct the department of ecology to issue orders
30 restricting the uses of water within the area for the purpose of
31 reducing the hardship upon all users. The restrictions shall apply to
32 all water rights within the area, and shall be determined in a specific
33 quantity or rate of flow that is equitable among all rights holders
34 subject to the restrictions, considering the relative seniority of the
35 rights and the public interest factors set forth in section 6 of this
36 act. The restrictions may apply to less than all rights holders to a
37 water source, but a rights holder may be subject to restriction only if
38 all other rights holders of record with the department with a junior
39 priority date are also subject to restriction.

1 (9) In determining the restrictions applicable to each water right,
2 the department shall accord the greatest weight to the seniority of the
3 right. The weight given to seniority may be reduced depending upon the
4 extent of the shortfall of water supplies within the area of a declared
5 critical water shortage. However, restrictions shall not be modified
6 more than annually during the period of the declaration.

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

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

- 15 (a) Drought, or other unavailability of water;
- 16 (b) Active service in the armed forces of the United States during
17 military crisis;
- 18 (c) Nonvoluntary service in the armed forces of the United States;
- 19 (d) ~~((The operation of legal proceedings))~~ An administrative order
20 or court order that temporarily prevents the use of the right;
- 21 (e) Federal laws imposing land or water use restrictions either
22 directly or through the voluntary enrollment of a landowner in a
23 federal program implementing those laws, or acreage limitations, or
24 production quotas; or
- 25 (f) Compliance with a permit to discharge wastes issued under
26 chapter 90.48 RCW.

27 (2) Notwithstanding any other provisions of RCW 90.14.130 through
28 90.14.180, there shall be no relinquishment of any water right:

- 29 (a) If such right is claimed for power development purposes under
30 chapter 90.16 RCW and annual license fees are paid in accordance with
31 chapter 90.16 RCW, or
- 32 (b) If such right is used for a standby or reserve water supply to
33 be used in time of drought or other low flow period so long as
34 withdrawal or diversion facilities are maintained in good operating
35 condition for the use of such reserve or standby water supply, or
- 36 (c) ~~((If such right is claimed for a determined future development~~
37 ~~to take place either within fifteen years of July 1, 1967, or the most~~
38 ~~recent beneficial use of the water right, whichever date is later, or~~

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

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

5 **Sec. 16.** RCW 90.22.010 and 1988 c 47 s 6 are each amended to read
6 as follows:

7 (1) The department of ecology may establish minimum water flows or
8 levels for streams, lakes or other public waters for the purposes of
9 protecting fish, game, birds or other wildlife resources, or
10 recreational or aesthetic values of said public waters whenever it
11 appears to be in the public interest to establish the same. In
12 addition, the department of ecology shall, when requested by the
13 department of ~~((fisheries or the department of))~~ fish and wildlife to
14 protect fish, game or other wildlife resources under the jurisdiction
15 of the requesting state agency, or if the department of ecology finds
16 it necessary to preserve water quality, establish such minimum flows or
17 levels as are required to protect the resource or preserve the water
18 quality described in the request or determination. Any request
19 submitted by the department of ~~((fisheries or department of))~~ fish and
20 wildlife shall include a statement setting forth the need for
21 establishing a minimum flow or level. When the department acts to
22 preserve water quality, it shall include a similar statement with the
23 proposed rule filed with the code reviser. This section shall not
24 apply to waters artificially stored in reservoirs, provided that in the
25 granting of storage permits by the department of ecology in the future,
26 full recognition shall be given to downstream minimum flows, if any
27 there may be, which have theretofore been established hereunder.

28 ~~((The current guidelines, standards, or criteria governing the
29 instream flow programs established pursuant to this chapter shall not
30 be altered or amended after March 15, 1988, in accordance with RCW
31 90.54.022(5).))~~ (2) A minimum water flow or level adopted under this
32 section shall be considered an appropriative right and shall have a
33 priority date of the twelfth of November, 1989.

34 NEW SECTION. **Sec. 17.** Sections 4, 5, 6, and 14 of this act are
35 each added to chapter 90.03 RCW.

1 NEW SECTION. **Sec. 18.** Captions used in this act do not constitute
2 any part of the law.

3 NEW SECTION. **Sec. 19.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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