
HOUSE BILL 2925

State of Washington

55th Legislature

1998 Regular Session

By Representatives Chandler, Cairnes, Radcliff, Robertson, Linville, Backlund, Regala, Mitchell and Scott

Read first time 01/22/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water; and amending RCW 90.03.383, 90.03.330,
2 and 90.14.140.

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

4 **Sec. 1.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
5 as follows:

6 (1) The legislature recognizes the value of interties for improving
7 the reliability of public water systems, enhancing their management,
8 and more efficiently utilizing the increasingly limited resource.
9 Given the continued growth in the most populous areas of the state, the
10 increased complexity of public water supply management, and the trend
11 toward regional planning and regional solutions to resource issues,
12 interconnections of public water systems through interties provide a
13 valuable tool to ensure reliable public water supplies for the citizens
14 of the state. Public water systems have been encouraged in the past to
15 utilize interties to achieve public health and resource management
16 objectives. The legislature finds that it is in the public interest to
17 recognize interties existing and in use as of January 1, 1991, and to
18 have associated water rights modified by the department of ecology to
19 reflect current use of water through those interties, pursuant to

1 subsection (3) of this section. The legislature further finds it in
2 the public interest to develop a coordinated process to review
3 proposals for interties commencing use after January 1, 1991.

4 (2) For the purposes of this section, the following definitions
5 shall apply:

6 (a) "Interties" are interconnections between public water systems
7 permitting exchange, acquisition, or delivery of wholesale and/or
8 retail water between those systems for other than emergency supply
9 purposes, where such exchange, acquisition, or delivery is within
10 established instantaneous and annual withdrawal rates specified in the
11 systems' existing water right permits or certificates, or contained in
12 claims filed pursuant to chapter 90.14 RCW, and which results in better
13 management of public water supply consistent with existing rights and
14 obligations. Interties include interconnections between public water
15 systems permitting exchange, acquisition, or delivery of water to serve
16 as primary or secondary sources of supply(~~(, but do not include~~
17 ~~development of new sources of supply to meet future demand)) and the
18 development of new sources of supply to meet future demands if the
19 water system or systems receiving water through such an intertie make
20 efficient use of existing sources of water supply and the provision of
21 water through such an intertie is consistent with local land use plans.
22 For this purpose, a system's full compliance with the state department
23 of health's conservation guidelines for such systems is deemed
24 efficient use.~~

25 (b) "Service area" is the area designated as the wholesale and/or
26 retail area in a water system plan or a coordinated water system plan
27 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public
28 water system does not have a designated service area subject to the
29 approval process of those chapters, the service area shall be the
30 designated place of use contained in the water right permit or
31 certificate, or contained in the claim filed pursuant to chapter 90.14
32 RCW.

33 (3)(a) Public water systems with interties existing and in use as
34 of January 1, 1991, or that have received written approval from the
35 department of health prior to that date, shall file written notice of
36 those interties with the department of health and the department of
37 ecology. The notice may be incorporated into the public water system's
38 five-year update of its water system plan, but shall be filed no later
39 than June 30, 1996. The notice shall identify the location of the

1 intertie; the dates of its first use; the purpose, capacity, and
2 current use; the intertie agreement of the parties and the service
3 areas assigned; and other information reasonably necessary to modify
4 the public water system's water right (~~permit~~). Notwithstanding the
5 provisions of RCW 90.03.380 and 90.44.100, for public water systems
6 with interties existing and in use or with written approval as of
7 January 1, 1991, the department of ecology, upon receipt of notice
8 meeting the requirements of this subsection, shall, as soon as
9 practicable, modify the place of use descriptions in the water right
10 permits, certificates, or claims to reflect the actual use through such
11 interties, provided that the place of use is within service area
12 designations established in a water system plan approved pursuant to
13 chapter 43.20 RCW, or a coordinated water system plan approved pursuant
14 to chapter 70.116 RCW, and further provided that the water used is
15 within the instantaneous and annual withdrawal rates specified in the
16 water rights (~~permit~~) and that no outstanding complaints of
17 impairment to existing water rights have been filed with the department
18 of ecology prior to September 1, 1991. Where such complaints of
19 impairment have been received, the department of ecology shall make all
20 reasonable efforts to resolve them in a timely manner through agreement
21 of the parties or through available administrative remedies.

22 (b) An intertie meeting the requirements of this subsection (3) for
23 modifying the place of use description in a water right permit,
24 certificate, or claim may be used to its full design or built capacity
25 within the most recently approved retail or wholesale or retail and
26 wholesale service area, without further approval under this section and
27 without regard to the capacity actually used before January 1, 1991.

28 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
29 exchange, acquisition, or delivery of water through interties approved
30 by the department of health commencing use after January 1, 1991, shall
31 be permitted when the intertie improves overall system reliability,
32 enhances the manageability of the systems, provides opportunities for
33 conjunctive use, or delays or avoids the need to develop new water
34 sources, and otherwise meets the requirements of this section, provided
35 that each public water system's water use shall not exceed the
36 instantaneous or annual withdrawal rate specified in its water right
37 authorization, shall not adversely affect existing water rights, and
38 shall not be inconsistent with state-approved plans such as water
39 system plans or other plans which include specific proposals for

1 construction of interties. Interties approved and commencing use after
2 January 1, 1991, shall not be inconsistent with regional water resource
3 plans developed pursuant to chapter 90.54 RCW or chapter 90.82 RCW.

4 (5) For public water systems subject to the approval process of
5 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
6 commencing use after January 1, 1991, shall be incorporated into water
7 system plans pursuant to chapter 43.20 RCW or coordinated water system
8 plans pursuant to chapter 70.116 RCW and submitted to the department of
9 health and the department of ecology for review and approval as
10 provided for in subsections (5) through (9) of this section. The plan
11 shall state how the proposed intertie will improve overall system
12 reliability, enhance the manageability of the systems, provide
13 opportunities for conjunctive use, or delay or avoid the need to
14 develop new water sources.

15 (6) The department of health shall be responsible for review and
16 approval of proposals for new interties. In its review the department
17 of health shall determine whether the intertie satisfies the criteria
18 of subsection (4) of this section, with the exception of water rights
19 considerations, which are the responsibility of the department of
20 ecology, and shall determine whether the intertie is necessary to
21 address emergent public health or safety concerns associated with
22 public water supply.

23 (7) If the intertie is determined by the department of health to be
24 necessary to address emergent public health or safety concerns
25 associated with public water supply, the public water system shall
26 amend its water system plan as required and shall file an application
27 with the department of ecology to change its existing water right to
28 reflect the proposed use of the water as described in the approved
29 water system plan. The department of ecology shall process the
30 application for change pursuant to RCW 90.03.380 or 90.44.100 as
31 appropriate, except that, notwithstanding the requirements of those
32 sections regarding notice and protest periods, applicants shall be
33 required to publish notice one time, and the comment period shall be
34 fifteen days from the date of publication of the notice. Within sixty
35 days of receiving the application, the department of ecology shall
36 issue findings and advise the department of health if existing water
37 rights are determined to be adversely affected. If no determination is
38 provided by the department of ecology within the sixty-day period, the
39 department of health shall proceed as if existing rights are not

1 adversely affected by the proposed intertie. The department of ecology
2 may obtain an extension of the sixty-day period by submitting written
3 notice to the department of health and to the applicant indicating a
4 definite date by which its determination will be made. No additional
5 extensions shall be granted, and in no event shall the total review
6 period for the department of ecology exceed one hundred eighty days.

7 (8) If the department of health determines the proposed intertie
8 appears to meet the requirements of subsection (4) of this section but
9 is not necessary to address emergent public health or safety concerns
10 associated with public water supply, the department of health shall
11 instruct the applicant to submit to the department of ecology an
12 application for change to the underlying water right or claim as
13 necessary to reflect the new place of use. The department of ecology
14 shall consider the applications pursuant to the provisions of RCW
15 90.03.380 and 90.44.100 as appropriate. The department of ecology
16 shall not deny or limit a change of place of use for an intertie on the
17 grounds that the holder of a permit has not yet put all of the water
18 authorized in the permit to beneficial use. If in its review of
19 proposed interties and associated water rights the department of
20 ecology determines that additional information is required to act on
21 the application, the department may request applicants to provide
22 information necessary for its decision, consistent with agency rules
23 and written guidelines. Parties disagreeing with the decision of the
24 department of ecology ((~~en~~)) to approve or deny the application for
25 change in place of use may appeal the decision to the pollution control
26 hearings board.

27 (9) The department of health may approve plans containing intertie
28 proposals prior to the department of ecology's decision on the water
29 right application for change in place of use. However, notwithstanding
30 such approval, construction work on the intertie shall not begin until
31 the department of ecology issues the appropriate water right document
32 to the applicant consistent with the approved plan.

33 **Sec. 2.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
34 as follows:

35 (1) Upon a showing satisfactory to the department that any
36 appropriation has been perfected in accordance with the provisions of
37 this chapter, it shall be the duty of the department to issue to the
38 applicant a certificate stating such facts in a form to be prescribed

1 by him, and such certificate shall thereupon be recorded with the
2 department. Any original water right certificate issued, as provided
3 by this chapter, shall be recorded with the department and thereafter,
4 at the expense of the party receiving the same, be by the department
5 transmitted to the county auditor of the county or counties where the
6 distributing system or any part thereof is located, and be recorded in
7 the office of such county auditor, and thereafter be transmitted to the
8 owner thereof.

9 (2) If a public water system is providing water for municipal
10 supply purposes under a certificated water right, the instantaneous and
11 annual withdrawal rates specified in the certificate are deemed valid
12 and perfected.

13 (3) If a federal reclamation project is providing water for
14 reclamation purposes under a certificated water right, the
15 instantaneous and annual withdrawal rates specified in the certificate
16 are deemed valid and perfected.

17 (4) If an irrigation district is providing water for the purposes
18 authorized by chapter 87.03 RCW under a certificated water right, the
19 instantaneous and annual withdrawal rates specified in the certificate
20 are deemed valid and perfected.

21 **Sec. 3.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
22 as follows:

23 (1) For the purposes of RCW 90.14.130 through 90.14.180,
24 "sufficient cause" shall be defined as the nonuse of all or a portion
25 of the water by the owner of a water right for a period of five or more
26 consecutive years where such nonuse occurs as a result of:

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

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

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

31 (d) The operation of legal proceedings;

32 (e) Federal laws imposing land or water use restrictions either
33 directly or through the voluntary enrollment of a landowner in a
34 federal program implementing those laws, or acreage limitations, or
35 production quotas;

36 (f) An elapse of time occurring while a request or application is
37 processed for transferring or changing a water right to use by a public
38 water supplier for municipal purposes;

1 (g) The implementation of practices or technologies or the
2 installation or repair of facilities, including but not limited to
3 water conveyance practices, technologies, or facilities, that are more
4 efficient or more water use efficient than practices, technologies, or
5 facilities previously used under the water right.

6 (2) Notwithstanding any other provisions of RCW 90.14.130 through
7 90.14.180, there shall be no relinquishment of any water right:

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

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

15 (c) If such right is claimed for a determined future development to
16 take place (~~either~~) at any time within fifteen years of either July
17 1, 1967, or the most recent beneficial use of the water right,
18 whichever date is later, or

19 (d) If such right is claimed for municipal water supply purposes
20 under chapter 90.03 RCW, or

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

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