

Agriculture & Ecology Committee

HB 1874

Brief Description: *Changing provisions relating to water rights.*

Sponsors: *Representatives Linville and G. Chandler .*

Brief Summary of Bill

- *Identifies the inchoate portion of certain certificated water rights of public water systems, requires the use of such an inchoate right to be initiated within 50 years and to be consistent with adopted comprehensive plans, and establishes mitigation and monitoring requirements for transferring inchoate rights where certain fish habitat would be adversely affected.*
- *Requires Department of Health (DOH) to adopt conservation and efficiency standards and safeguards for water distribution and identifies the circumstances under which the standards apply.*
- *Allows interties to be used to acquire water, no longer prohibits interties from including the development of new sources of supply to meet future demands, and, with certain exceptions, prohibits an intertie from being used to deliver a primary or secondary supply of water on a temporary basis.*

Hearing Date: *2/16/01*

Staff: *Kenneth Hirst (786-7105).*

Background:

Water Rights for Municipal Use. The Surface Water Code identifies certain information that must be provided by an applicant for a water right and allows the Department of Ecology (DOE) to require additional information. If the application is for a municipal water supply, the information must include the present population to be served and an estimate of the future requirements of the municipality. If a water right is claimed for municipal water supply purposes under the code, it is not subject to relinquishment under

the water right relinquishment statutes. (RCW 90.03.260 and 90.14.140.)

Once a water right permit is issued to an applicant, the applicant must diligently implement its requirements, including a construction schedule. (RCW 90.03.320.) The code as it was enacted in 1917 and as it is today requires the state (originally the State Hydraulic Engineer, now the DOE) to issue a water right certificate upon a satisfactory showing that the appropriation has been "perfected" in accordance with the code. (RCW 90.03.330 and Section 34, Chapter 117, Laws of 1917.) The Ground Water Code enacted in 1945 requires a certificate stating that the appropriation has been "perfected" to be issued upon a showing that construction has been completed in compliance with the terms of the permit. The latter code identifies specific information that is required for such a showing and allows the DOE to require additional information. (RCW 90.44.080.)

Through the years, many water right certificates were issued by the state for municipal use once the main withdrawal and distribution works had been constructed for using the water, but before all of the water was actually put to use. This is sometimes referred to as a "pumps and pipes" basis for issuing a certificated water right. In a 1998 case involving the water right of a private developer, the state's Supreme Court stated that a final water right certificate could not be issued for the developer's right for a quantity of water that had not actually been put to beneficial use. The court stated in its decision that it declined to address issues concerning municipal water suppliers in the context of the case. (Dep't of Ecology v. Theodoratus, 135 Wn.2d 582 at page 594.) Nonetheless, the court followed this declaration with a discussion of the possible effect of a gubernatorial veto of a bill regarding water rights for municipal water supplies. In a draft policy that the DOE circulated last year and subsequently withdrew, the DOE stated its conclusion that the holdings of the court in the case apply to all water rights, including municipal water rights. (Draft Water Resource Program Policy 1250.)

Water Use Efficiency. The State Board of Health has the authority to adopt rules for public drinking water, including those regarding the design, construction, operation, and maintenance of public water systems and planning for such systems. (RCW 43.20.050(2)(a).) Rules adopted under this authority require certain public water systems to submit system plans to the DOH for approval at least every 6 years and provide that DOH's approval of such a plan is for a 6 year period. (WAC 246-290-100.) State law directs the DOH to develop procedures and guidelines regarding water use efficiency which are to be included in the development and approval of cost-efficient water system plans. (RCW 43.20.230.)

Interties. Interties are connections between public water systems that allow an exchange or delivery of water between them. Interties were expressly acknowledged by statute in 1991, and new interties were authorized under certain circumstances. (Section 1, Chapter 350, Laws of 1991.) Interties include such connections between systems for the delivery water that serve as primary or secondary sources of supply, but do not include the development of new sources of supply to meet future demand. (RCW 90.03.383(2)(a).) The exchange or delivery of water between public water systems made through an intertie must be within the established instantaneous and annual withdrawal rates specified in their existing water rights. (RCW 90.03.383(2)(a) and (4).)

Summary of Bill:

Water Rights of Public Water Systems. If a water right certificate was issued by the DOE to a public water system and, at the time the certificate was issued, the amount of water listed on the certificate for diversion or withdrawal under the certificate included both amounts beneficially used by that time and amounts not yet beneficially used, the water right is for the total of both amounts. Any amounts not yet beneficially used under such an "inchoate" portion of the right remain available to the water system for further development and for transfer for further development. The place of use for such a certificated right is the place of use listed on the certificate or the place of use identified in the latest water system plan approved by the DOH, whichever provides the larger service area. (Sections 2 & 5.)

The beneficial use of the inchoate right of a public water system must be initiated within the next 50 years and must be consistent with the comprehensive land use plan or other comprehensive plan for the area in which the use takes place. If a part of the inchoate portion of the right is to be transferred, the water system and the DOE must study the effects on habitat for fish stocks listed or proposed for listing under the federal Endangered Species Act or as critical or depressed in the state's salmon and steelhead inventory. If the transfer would adversely affect the habitat but the water system wishes to proceed with the transfer, the system must develop a mitigation and monitoring plan. The mitigation must be conducted concurrently with the transfer. (Section 3.)

Conservation Standards. The DOH must adopt conservation and efficiency standards and safeguards for the transmission of water to and the distribution of water by a public water system with at least 1,000 service connections that is made through a new intertie. These standards also apply to any transfer of a water right to a new place of use for use by a public water system with at least 1,000 service connections. The DOE may not approve any transfer of water by a public water system to a new place of use and for use by a public water system unless the distribution standards in the receiving place are as stringent as those in the sending system. (Sections 1, 4 and 6.)

Interties. Interties may be used to acquire water, not just exchange or deliver water, and they are no longer expressly prohibited from including the development of new sources of supply to meet future demands. An intertie cannot be used to deliver a primary or secondary supply of water to a receiving system on a temporary basis. This prohibition applies unless the terms of the intertie agreement specify the source of the water that will be used to replace the temporarily delivered water and provide that replacement water will be available for delivery before delivery under the agreement is terminated. If such a supply of water is currently delivered on a temporary basis and the intertie agreement does not contain such a provision for replacement water, the delivery of the water cannot be terminated until the agreement is modified to establish these provisions and replacement water is available for delivery to or use by the receiving system. (Section 7(10).)

Appropriation: None.

Fiscal Note: Requested on February 11, 2001.

Effective Date: