
HOUSE BILL 1879

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By Representatives Linville, G. Chandler, Haigh, Delvin, Doumit, Cairnes, Rockefeller, Roach, Lantz and Cooper

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1 AN ACT Relating to public water systems; amending RCW 90.03.015,
2 90.03.330, 90.03.460, 90.03.386, and 90.03.383; adding new sections to
3 chapter 90.03 RCW; and adding a new section to chapter 43.20 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 It is in the public interest for municipal water suppliers to be
8 able to use water resources to meet the current and future water supply
9 needs of the public generally and to achieve the objectives of the
10 state's growth management act, chapter 36.70A RCW, where applicable.
11 A growing communities doctrine, that acknowledges the distinctive role
12 of municipal water suppliers to maintain sufficient water to support
13 future growth within the state, has been implicitly recognized in our
14 statutes and is hereby explicitly adopted. Accordingly, the
15 legislature declares that water rights shall be interpreted and
16 administered in recognition of the distinctive role and legal duties
17 that municipal water suppliers have to serve growing communities,
18 specifically including but not limited to the following: Municipal
19 water suppliers may acquire and retain water rights for reasonably

1 anticipated future needs; water rights held by municipal water
2 suppliers shall have a place of use consistent with applicable growth
3 management and water system planning statutes; and reasonable diligence
4 for fully developing new and existing water rights held by municipal
5 water suppliers shall be interpreted consistent with the needs of
6 growing communities for reasonable assurance of continued future water
7 supply. It is further the intent of the legislature that municipal
8 water suppliers shall comply with applicable environmental laws and
9 rules, including those that provide for protection of fish habitat, and
10 applicable state water conservation requirements.

11 **Sec. 2.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
12 as follows:

13 As used in this chapter and chapters 90.14 and 90.44 RCW:

14 (1) "Department" means the department of ecology;

15 (2) "Director" means the director of ecology; (~~and~~)

16 (3) "Municipal water supplier" means a purveyor, as defined in RCW
17 70.116.030(4), that is either: (a) A municipal corporation; or (b) an
18 entity that (i) owns or operates a public water system that is entitled
19 or obligated to serve existing and additional customers and uses within
20 one or more approved water service areas to the extent such customers
21 and uses are allowed under an applicable land use plan, and (ii) has an
22 approved water system plan pursuant to chapter 43.20 RCW that includes
23 supplies of water for domestic use, commercial use, and use by publicly
24 owned institutions or structures;

25 (4) "Municipal water supply purposes" means any use for which water
26 is or is anticipated to be provided by a municipal water supplier; and

27 (5) "Person" means any firm, association, water users' association,
28 corporation, irrigation district, or municipal corporation, as well as
29 an individual.

30 **Sec. 3.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
31 as follows:

32 (1) Upon a showing satisfactory to the department that any
33 appropriation has been perfected in accordance with the provisions of
34 this chapter, it shall be the duty of the department to issue to the
35 applicant a certificate stating such facts in a form to be prescribed
36 by (~~him~~) the director, and such certificate shall thereupon be
37 recorded with the department. Any original water right certificate

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

7 (2) Any water right certificate issued before the effective date of
8 this act and held by a municipal water supplier shall be considered a
9 water right in good standing where: (a) The water has been applied to
10 beneficial use; or (b) the water is to be used for reasonably
11 anticipated future needs.

12 (3) Except as set forth in RCW 90.03.240, the department shall not
13 rescind or reissue any water right certificate without the consent of
14 the water right holder. Nothing in this section shall prohibit the
15 department from correcting ministerial errors in a water right
16 certificate; nor shall this section be construed to prohibit the
17 department from issuing a certificate pursuant to RCW 90.03.380 or an
18 amendment pursuant to RCW 90.44.100, when the certificate holder
19 applies to the department for a transfer or change pursuant to RCW
20 90.03.380 or for an amendment pursuant to RCW 90.44.100.

21 **Sec. 4.** RCW 90.03.460 and 1917 c 117 s 43 are each amended to read
22 as follows:

23 (1) Nothing in this chapter contained shall operate to effect an
24 impairment of any inchoate right to divert and use water while the
25 application of the water in question to a beneficial use is being
26 prosecuted with reasonable diligence, having due regard to the
27 circumstances surrounding the enterprise, including the magnitude of
28 the project for putting the water to a beneficial use and the market
29 for the resulting water right for irrigation or power or other
30 beneficial use, in the locality in question.

31 (2) A municipal water supplier prosecutes its water right with
32 reasonable diligence when the right has been or is identified to meet
33 existing or reasonably anticipated future needs in an approved water
34 system plan pursuant to chapter 43.20 RCW or an approved coordinated
35 water system plan pursuant to chapter 70.116 RCW. This subsection
36 shall not be interpreted to limit or exclude other methods or means of
37 prosecuting a water right with reasonable diligence, including, without
38 limitation, installed system capacity.

1 (3) Municipal water suppliers shall have a minimum of fifty years
2 from the latest approval of a plan identified in subsection (2) of this
3 section to put to use their water rights identified for reasonably
4 anticipated future use. Municipal water suppliers may have additional
5 time based on the particular facts and circumstances, including,
6 without limitation, the size and nature of the water diversion or
7 conveyance project, projected useful life of facilities, size and
8 nature of service areas, growth projections, system interconnections,
9 water conservation, and financing requirements.

10 **Sec. 5.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read
11 as follows:

12 Within service areas established pursuant to chapters 43.20 and
13 70.116 RCW, the department of ecology and the department of health
14 shall coordinate approval procedures to ensure compliance and
15 consistency with the approved water system plan. For water
16 appropriations held by a municipal water supplier, the place of use
17 shall be the water service areas in the municipal water supplier's
18 water system plan approved pursuant to chapter 43.20 RCW or coordinated
19 water system plan approved pursuant to chapter 70.116 RCW, as either
20 plan may be amended from time to time.

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
22 to read as follows:

23 The beneficial use of water governed by an inchoate water right or
24 inchoate portion of a water right described in RCW 90.03.330 that
25 begins on or after the effective date of this section is subject to the
26 following conditions:

27 (1) The beneficial use shall be consistent with any watershed plan
28 adopted under chapter 90.82 RCW that is applicable to the watershed in
29 which the water is diverted or withdrawn and the watershed in which the
30 water is used, and is consistent with any requirements for mitigating
31 the effects of water diversions and withdrawals in the watershed that
32 are identified in the plan. Further, the municipal water supplier
33 holding the water right shall participate in any watershed planning
34 conducted under chapter 90.82 RCW for the watershed.

35 (2) The water system plan approved by the department of health for
36 the public water system shall satisfy the requirements that apply to
37 the plan under section 7(1) (b) and (c) of this act and the water

1 withdrawal target rate applicable to the plan shall be achieved by the
2 public water system by the end of the six-year life of the plan.
3 Achieving a more water use efficient withdrawal rate is desirable but
4 not required. This subsection (2) applies to a public water system
5 with one thousand or more service connections.

6 (3) For a use of water from or in a watershed in which one or more
7 aquatic species have been listed as threatened or endangered under the
8 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., the
9 beneficial use shall be consistent with requirements imposed by the
10 federal government under the act on such a use in the watershed.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.20 RCW
12 to read as follows:

13 (1)(a) Each year, the department of health shall determine the
14 volume of water annually withdrawn by each public water system with one
15 thousand or more service connections and shall determine the annual
16 average amount of water withdrawn per service connection in the system.
17 The secretary of health may adjust the average as described in
18 subsection (2) of this section. The department shall group the systems
19 by geographic areas with similar climatological characteristics and,
20 using these averages and adjusted averages as appropriate, shall
21 determine the annual average amount of water withdrawn per service
22 connection in each such group. This average for the public water
23 systems in each geographic group constitutes the water withdrawal
24 target rate for the group. The department shall publish these target
25 rates annually.

26 (b) Each water system plan of a public water system with one
27 thousand or more connections submitted to the department of health for
28 approval shall be for a six-year planning period. Beginning January 1,
29 2004, an inchoate portion of such a public water system's water right
30 shall not be developed or transferred, changed, or amended for
31 development unless the development or transfer, change, or amendment
32 for development is described in a water system plan approved by the
33 department of health for the system, the plan satisfies the
34 requirements of (c) of this subsection, and the development or
35 transfer, change, or amendment takes place during the six-year life of
36 the water system plan.

37 (c) If the water system plan for a public water system with one
38 thousand or more service connections includes a description of the

1 development of an inchoate portion of the system's water right or the
2 transfer, change, or amendment of an inchoate portion of the right for
3 development, the plan shall contain provisions identifying how the
4 annual average amount of water withdrawn per service connection by the
5 system, as adjusted under subsection (2) of this section, will meet a
6 water withdrawal target rate published under (b) of this subsection for
7 the system's geographic group for either of the two calendar years
8 preceding the system's submission of the plan to the department of
9 health for approval. The department of health shall not approve a plan
10 containing such a description of the development of an inchoate water
11 right or the transfer, change, or amendment for development of an
12 inchoate water right unless the plan identifies how the system will
13 meet the water withdrawal target rate during the six-year life of the
14 plan.

15 (2) If the secretary of health determines that the use of water
16 provided by a public water system is dominated by one or more very
17 large commercial or industrial users such that the annual average of
18 the amount of water withdrawn per service connection by the system
19 calculated by the department under subsection (1)(a) of this section is
20 quite different than it would be, considering water use rates by each
21 category of use, if the commercial or industrial water use were not so
22 disproportionate to other uses, the secretary may adjust the annual
23 average calculated for the water system to compensate for the
24 disproportionate use. The secretary shall adopt rules identifying the
25 circumstances under which such adjustments may be made and how they may
26 be made.

27 (3) The department of health shall provide enhanced technical
28 assistance to public water systems that are developing water system
29 plans to meet water withdrawal target rates. The objective of the
30 enhanced support is to assist the systems in identifying and evaluating
31 tools and techniques that might be used to meet the target rates.

32 (4) For the purposes of this section, a public water system that
33 achieves a water withdrawal rate under which the annual average of the
34 amount of water withdrawn per service connection by the system is equal
35 to or less than the water withdrawal target rate applicable to the
36 system's water system plan has achieved the water withdrawal target
37 rate applicable to the plan. Similarly, a plan for achieving an annual
38 average of the amount of water withdrawn per service connection that is
39 equal to or less than the water withdrawal target rate applicable to

1 the plan is a plan for achieving the water withdrawal target rate
2 applicable to the plan.

3 (5) For the purposes of subsections (1) and (2) of this section, a
4 water "withdrawal" means both a water diversion and a water withdrawal
5 and water "withdrawn" refers to both water diverted and water
6 withdrawn.

7 **Sec. 8.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
8 as follows:

9 (1) The legislature recognizes the value of interties for improving
10 the reliability of public water systems, enhancing their management,
11 and more efficiently utilizing the increasingly limited resource.
12 Given the continued growth in the most populous areas of the state, the
13 increased complexity of public water supply management, and the trend
14 toward regional planning and regional solutions to resource issues,
15 interconnections of public water systems through interties provide a
16 valuable tool to ensure reliable public water supplies for the citizens
17 of the state. Public water systems have been encouraged in the past to
18 utilize interties to achieve public health and resource management
19 objectives. The legislature finds that it is in the public interest to
20 recognize interties existing and in use as of January 1, 1991, and to
21 have associated water rights modified by the department of ecology to
22 reflect current use of water through those interties, pursuant to
23 subsection (3) of this section. The legislature further finds it in
24 the public interest to develop a coordinated process to review
25 proposals for interties commencing use after January 1, 1991.

26 (2) For the purposes of this section, the following definitions
27 shall apply:

28 (a) "Interties" are interconnections between public water systems
29 permitting exchange, acquisition, or delivery of water between those
30 systems for other than emergency supply purposes, where such exchange
31 or delivery is within established instantaneous and annual withdrawal
32 rates specified in the systems' existing water right permits or
33 certificates, or contained in claims filed pursuant to chapter 90.14
34 RCW, and which results in better management of public water supply
35 consistent with existing rights and obligations. Interties include
36 interconnections between public water systems permitting exchange,
37 acquisition, or delivery of water to serve as primary or secondary

1 sources of supply(~~(, but do not include development of new sources of~~
2 ~~supply to meet future demand)~~).

3 (b) "Service area" is the area designated in a water system plan or
4 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
5 respectively. When a public water system does not have a designated
6 service area subject to the approval process of those chapters, the
7 service area shall be the designated place of use contained in the
8 water right permit or certificate, or contained in the claim filed
9 pursuant to chapter 90.14 RCW.

10 (3) Public water systems with interties existing and in use as of
11 January 1, 1991, or that have received written approval from the
12 department of health prior to that date, shall file written notice of
13 those interties with the department of health and the department of
14 ecology. The notice may be incorporated into the public water system's
15 five-year update of its water system plan, but shall be filed no later
16 than June 30, 1996. The notice shall identify the location of the
17 intertie; the dates of its first use; the purpose, capacity, and
18 current use; the intertie agreement of the parties and the service
19 areas assigned; and other information reasonably necessary to modify
20 the water right permit. Notwithstanding the provisions of RCW
21 90.03.380 and 90.44.100, for public water systems with interties
22 existing and in use as of January 1, 1991, the department of ecology,
23 upon receipt of notice meeting the requirements of this subsection,
24 shall, as soon as practicable, modify the place of use descriptions in
25 the water right permits, certificates, or claims to reflect the actual
26 use through such interties, provided that the place of use is within
27 service area designations established in a water system plan approved
28 pursuant to chapter 43.20 RCW, or a coordinated water system plan
29 approved pursuant to chapter 70.116 RCW, and further provided that the
30 water used is within the instantaneous and annual withdrawal rates
31 specified in the water right permit and that no outstanding complaints
32 of impairment to existing water rights have been filed with the
33 department of ecology prior to September 1, 1991. Where such
34 complaints of impairment have been received, the department of ecology
35 shall make all reasonable efforts to resolve them in a timely manner
36 through agreement of the parties or through available administrative
37 remedies.

38 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
39 exchange or delivery of water through interties commencing use after

1 January 1, 1991, shall be permitted when the intertie improves overall
2 system reliability, enhances the manageability of the systems, provides
3 opportunities for conjunctive use, or delays or avoids the need to
4 develop new water sources, and otherwise meets the requirements of this
5 section, provided that each public water system's water use shall not
6 exceed the instantaneous or annual withdrawal rate specified in its
7 water right authorization, shall not adversely affect existing water
8 rights, and shall not be inconsistent with state-approved plans such as
9 water system plans or other plans which include specific proposals for
10 construction of interties. Interties commencing use after January 1,
11 1991, shall not be inconsistent with regional water resource plans
12 developed pursuant to chapter 90.54 RCW.

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

24 (6) The department of health shall be responsible for review and
25 approval of proposals for new interties. In its review the department
26 of health shall determine whether the intertie satisfies the criteria
27 of subsection (4) of this section, with the exception of water rights
28 considerations, which are the responsibility of the department of
29 ecology, and shall determine whether the intertie is necessary to
30 address emergent public health or safety concerns associated with
31 public water supply.

32 (7) If the intertie is determined by the department of health to be
33 necessary to address emergent public health or safety concerns
34 associated with public water supply, the public water system shall
35 amend its water system plan as required and shall file an application
36 with the department of ecology to change its existing water right to
37 reflect the proposed use of the water as described in the approved
38 water system plan. The department of ecology shall process the
39 application for change pursuant to RCW 90.03.380 or 90.44.100 as

1 appropriate, except that, notwithstanding the requirements of those
2 sections regarding notice and protest periods, applicants shall be
3 required to publish notice one time, and the comment period shall be
4 fifteen days from the date of publication of the notice. Within sixty
5 days of receiving the application, the department of ecology shall
6 issue findings and advise the department of health if existing water
7 rights are determined to be adversely affected. If no determination is
8 provided by the department of ecology within the sixty-day period, the
9 department of health shall proceed as if existing rights are not
10 adversely affected by the proposed intertie. The department of ecology
11 may obtain an extension of the sixty-day period by submitting written
12 notice to the department of health and to the applicant indicating a
13 definite date by which its determination will be made. No additional
14 extensions shall be granted, and in no event shall the total review
15 period for the department of ecology exceed one hundred eighty days.

16 (8) If the department of health determines the proposed intertie
17 appears to meet the requirements of subsection (4) of this section but
18 is not necessary to address emergent public health or safety concerns
19 associated with public water supply, the department of health shall
20 instruct the applicant to submit to the department of ecology an
21 application for change to the underlying water right or claim as
22 necessary to reflect the new place of use. The department of ecology
23 shall consider the applications pursuant to the provisions of RCW
24 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
25 interties and associated water rights the department of ecology
26 determines that additional information is required to act on the
27 application, the department may request applicants to provide
28 information necessary for its decision, consistent with agency rules
29 and written guidelines. Parties disagreeing with the decision of the
30 department of ecology on the application for change in place of use may
31 appeal the decision to the pollution control hearings board.

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

38 (10) An intertie may not be used to deliver a primary or secondary
39 supply of water to a receiving system on a temporary basis unless the

1 terms of the intertie agreement specify the source of the water that
2 will be used by the receiving system to replace the water delivered on
3 the temporary basis, and provide that replacement water will be
4 available for delivery to, or use by, the receiving system before
5 delivery by the supplying system under the agreement is terminated.
6 However, if a primary or secondary supply of water is delivered to a
7 receiving system on a temporary basis by means of an intertie on the
8 effective date of this section and the agreement between the supplying
9 system and receiving system does not contain such provision for such a
10 replacement supply of water for the receiving system, the delivery of
11 the water by the supplying system to the receiving system may not be
12 terminated until the agreement is modified to establish such
13 provisions, and such replacement water is available for delivery to or
14 use by the receiving system.

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