

# SENATE BILL REPORT

## SB 5005

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As Reported by Senate Committee On:  
Agriculture, Water, Trade & Economic Development, February 14, 2017

**Title:** An act relating to identifying certain water rights held by municipal water suppliers as water rights available for municipal water supply purposes.

**Brief Description:** Identifying certain water rights held by municipal water suppliers as water rights available for municipal water supply purposes.

**Sponsors:** Senators Padden, Takko and Warnick.

**Brief History:**

**Committee Activity:** Agriculture, Water, Trade & Economic Development: 1/12/17, 2/14/17 [DP, DNP, w/oRec].

**Brief Summary of Bill**

- Includes certain irrigation or agricultural purpose of use water rights that are held by a municipal water supplier in the definition of "municipal water supply purposes."
- Allows a municipal water supplier operating under a coordinated water system plan to transfer municipal water supply purpose water rights in certain situations.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Chase, Ranking Minority Member; Brown, Honeyford, Pearson and Short.

**Minority Report:** Do not pass.

Signed by Senators Wellman, Assistant Ranking Minority Member; McCoy and Van De Wege.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Takko.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Karen Epps (786-7424)

**Background:** Municipal Water Supply Purposes. The state Water Code provides a definition for the term "municipal water supply purposes" and specific procedures relating to water rights held for those purposes. The definition includes beneficial uses of water for residential purposes above a set number of service connections and for governmental or governmental proprietary purposes by a city, town, public utility, district, county, sewer district, or water district. If a portion of the water in a water right is used beneficially for municipal water supply purposes, then any other beneficial use of the water that is generally associated with the municipal use is also considered a municipal water supply purpose. This includes any beneficial uses for commercial purposes, industrial purposes, irrigation of parks and open spaces, institutional purposes, landscaping, fire flow, water system maintenance and repair, or other purposes.

A process exists for a municipal water supplier to request that the Department of Ecology (Ecology) amend the water right documents and related records to ensure that water rights for municipal water supply purposes are correctly identified as being for those purposes. Ecology must make these amendments. These water rights are called "municipal water supply purposes water rights" and are not subject to relinquishment for non-use and are subject to specific change of use and transfer criteria.

Public Water Systems. More than 5.5 million Washington residents receive their drinking water from Group A or Group B public water systems, representing roughly 85 percent of the state's population. Group A public water systems are water systems with 15 or more service connections, a system serving an average of 25 or more people per day for 60 or more days within a calendar year, or a system serving 1,000 or more people for two or more consecutive days. Group B water systems have fewer than 15 service connections and serve fewer than 25 people per day.

Certain public water systems must submit a water system plan for review and approval by the Department of Health. These public water systems include the following:

- systems having 1000 or more services;
- systems required to develop water system plans under the Public Water System Coordination Act of 1977;
- new or expanding systems; and
- other specified systems.

Additionally, water systems located within critical water supply service area boundaries must prepare a coordinated water system plan. In critical water supply service areas where more than one water system exists, a coordinated water system plan must consist of either:

- a compilation of water system plans, together with supplementary provisions addressing water purveyor concerns relating to the entire critical water supply service area, or
- a single plan covering all affected public water systems and area-wide concerns within the external critical water supply service area boundaries.

**Summary of Bill:** Certain irrigation or agricultural irrigation purpose of use water rights that are held by a municipal water supplier are included in the definition of municipal water

supply purposes. Upon request by the municipal water supplier, Ecology must amend the water right documents and related records to identify irrigation purpose of use water rights or agricultural irrigation purpose of use water rights as being for municipal water supply purposes if:

- the irrigation or agricultural irrigation purpose of use water rights were acquired by the municipal water supplier prior to September 9, 2003;
- the irrigation or agricultural irrigation purpose of use water rights are not currently being used for commercial agricultural purposes; and
- the amended water rights will be used within a critical water supply service area under a coordinated water system plan.

A municipal water supplier operating under a coordinated water system plan may transfer municipal water supply purposes water rights:

- for use in any of the municipal water supplier's water systems; or
- to other municipal water suppliers that are operating under the coordinated water system plan and using water from the same waterbody as the transferor.

The provisions in this bill apply to counties east of the crest of the Cascade mountain range with a population greater than 450,000.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The area along I-90 between Spokane and the Idaho border used to be more agricultural in nature but now it is more suburban. This bill is limited in that the water rights have to have been in place prior to September 9, 2003. The benefit of this bill is that it will allow the area to plan for continued growth. The Spokane Valley purveyors started out providing water to orchardists, but now there is no commercial agriculture and these purveyors are now providing water to schools, homes, parks, and the suburban area. These districts are not asking for new rights but for the rights that they presently hold to be converted into municipal water rights. With the change in land use, the water use has changed as well but the amount of use has changed very little. Because of the duty to serve customers, the water purveyors need to have certainty with their water rights that will allow municipal suppliers to follow the municipal water law. This bill is narrowly and carefully drawn; recognizes a historical transition from agriculture into urban and suburban area; and is a good solution for this problem.

CON: The concern is that this solution to this limited crisis will set a precedent that will spread across communities throughout the state, thereby exacerbating the problem that stakeholders had hoped to address in the municipal water law process. Converting long-held agricultural rights into municipal rights without an Ecology review to determine whether they have been relinquished is not acceptable. If this bill were to go into effect, it would have a very serious impact on instream flows and fish.

OTHER: Ecology has worked hard to find sustainable, durable water solutions. This bill would authorize the increased use of water in the basin where there is an instream flow rule that is already being challenged for being protective enough for fish. This is an area where there is already litigation and concerns about the need for more environmental protection. There is concern that this bill would invite new litigation. The municipal water law contains a specific provision about how agricultural rights were to be treated and it made a statement about municipal rights not relying on agricultural rights.

**Persons Testifying:** PRO: Senator Mike Padden, Prime Sponsor; Joseph Carroll, Joseph G. Carroll, P.S.; Steve Skipworth, citizen; Rod Higgins, Mayor, City of Spokane Valley; Mike Schwisow, WA State Water Resources Assoc.

CON: Denise Smith, League of Women Voters of WA; Bruce Wishart, Sierra Club and CELP.

OTHER: Dave Christensen, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** No one.