
HOUSE BILL 2772

State of Washington

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By Representatives Kretz, Maycumber, Walsh, Dent, Buys, Schmick, Van Werven, Manweller, Condotta, Hayes, Smith, Stokesbary, Haler, Barkis, and Griffey

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1 AN ACT Relating to addressing the ecological effects of large-
2 scale water withdrawals for urban domestic purposes; amending RCW
3 19.27.097, 90.03.386, and 43.20.260; adding a new section to chapter
4 43.21C RCW; creating new sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The discussion surrounding the
7 implications of the 2016 Washington supreme court decision in *Whatcom*
8 *County v. Western Washington Growth Management Hearings Board*, also
9 known as the *Hirst* decision, has revealed a vast misunderstanding of
10 the ecological impacts of water consumption in our state. Farmers and
11 residents of rural Washington have a unique and stewardship-based
12 connection to the land that makes them intimately aware of natural
13 water and wildlife cycles. Rural residents, many of whom provide
14 agricultural products that feed Washington's residents and fuel
15 Washington's economy, recognize the critical importance of wise water
16 usage. They struggle with the real risks of financial peril and the
17 loss of life and property when water resources are scarce.

18 Water users in rural areas are direct participants in a tightly
19 drawn and highly localized water cycle, withdrawing water from the
20 aquifer for the needs of their household, then returning the vast
21 majority of that water to the same aquifer through infiltration from

1 on-site septic systems. By contrast, the water consumed by many urban
2 water users is piped in from sources located high in the watershed,
3 oftentimes many miles from the home in which it is consumed. It is
4 then flushed away as wastewater, ultimately discharged much further
5 from its original source.

6 The *Hirst* decision has generated a robust discussion concerning
7 the impact that the withdrawal of groundwater for domestic purposes
8 can have on salmon populations, instream resources, watershed
9 function, and other ecological values. Unfortunately, this discussion
10 has focused primarily on perceived ecological impacts that result
11 from individual wells used as a source of water for single-family
12 homes while ignoring the much larger withdrawals of water for urban
13 areas. In particular, the discussions surrounding the *Hirst* decision
14 do not examine the impact on instream flows that stem from the large-
15 scale water withdrawals made in order to provide a water supply for
16 the major metropolitan areas of the state.

17 In light of the claims that have been made concerning the
18 seriousness of the threat to salmon populations and other instream
19 resources posed by permit exempt wells serving single-family homes,
20 and in the spirit of the one Washington ethic, the legislature
21 declares the need to establish the impacts that water withdrawals
22 from major metropolitan areas can have on the ecosystem, and to
23 require a thorough analysis of the environmental impacts associated
24 with the large-scale water withdrawals that are used as a source of
25 water for Washington's largest cities.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C
27 RCW to read as follows:

28 (1) Before a city with a population greater than one hundred
29 thousand may issue a building permit for a building necessitating
30 potable water after the effective date of this section, the city
31 shall prepare an environmental impact statement in order to evaluate
32 the past, present, and future environmental impacts of water
33 withdrawals associated with domestic water consumption by the
34 inhabitants of the city.

35 (2) The impacts addressed by the environmental impact statement
36 prepared under this section must include, but are not limited to:

37 (a) Impacts on instream flows in any water resource inventory
38 areas in which the source or sources for the city's domestic water
39 supply may be located;

1 (b) Impacts on Pacific salmon populations;

2 (c) Impacts on water availability in any water resource inventory
3 areas in which the source or sources for the city's domestic water
4 supply may be located; and

5 (d) Impacts on tribal treaty fishing rights.

6 (3) A city preparing an environmental impact statement under this
7 section may not issue a final environmental impact statement under
8 this section until the city has obtained approval for the draft
9 environmental impact statement from each federally recognized Indian
10 tribe that has either reservation land or a usual and accustomed
11 harvest area in any water resource inventory area in which the source
12 or sources for the city's domestic water supply may be located.

13 **Sec. 3.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
14 read as follows:

15 (1) Each applicant for a building permit of a building
16 necessitating potable water shall provide evidence of an adequate
17 water supply for the intended use of the building. Evidence may be in
18 the form of a water right permit from the department of ecology, a
19 letter from an approved water purveyor stating the ability to provide
20 water, or another form sufficient to verify the existence of an
21 adequate water supply. In addition to other authorities, the county
22 or city may impose conditions on building permits requiring
23 connection to an existing public water system where the existing
24 system is willing and able to provide safe and reliable potable water
25 to the applicant with reasonable economy and efficiency. An
26 application for a water right shall not be sufficient proof of an
27 adequate water supply.

28 (2) Within counties not required or not choosing to plan pursuant
29 to RCW 36.70A.040, the county and the state may mutually determine
30 those areas in the county in which the requirements of subsection (1)
31 of this section shall not apply. The departments of health and
32 ecology shall coordinate on the implementation of this section.
33 Should the county and the state fail to mutually determine those
34 areas to be designated pursuant to this subsection, the county may
35 petition the department of enterprise services to mediate or, if
36 necessary, make the determination.

37 (3) Buildings that do not need potable water facilities are
38 exempt from the provisions of this section. The department of
39 ecology, after consultation with local governments, may adopt rules

1 to implement this section, which may recognize differences between
2 high-growth and low-growth counties.

3 (4) After the effective date of this section, no city with a
4 population greater than one hundred thousand may issue a building
5 permit for a building necessitating potable water until the city has
6 prepared and issued a final environmental impact statement as
7 described in section 2 of this act.

8 **Sec. 4.** RCW 90.03.386 and 2003 1st sp.s. c 5 s 5 are each
9 amended to read as follows:

10 (1) Within service areas established pursuant to chapter 43.20 or
11 70.116 RCW, the department of ecology and the department of health
12 shall coordinate approval procedures to ensure compliance and
13 consistency with the approved water system plan or small water system
14 management program.

15 (2) The effect of the department of health's approval of a
16 planning or engineering document that describes a municipal water
17 supplier's service area under chapter 43.20 RCW, or the local
18 legislative authority's approval of service area boundaries in
19 accordance with procedures adopted pursuant to chapter 70.116 RCW, is
20 that the place of use of a surface water right or groundwater right
21 used by the supplier includes any portion of the approved service
22 area that was not previously within the place of use for the water
23 right if the supplier is in compliance with the terms of the water
24 system plan or small water system management program, including those
25 regarding water conservation, and the alteration of the place of use
26 is not inconsistent, regarding an area added to the place of use,
27 with: Any comprehensive plans or development regulations adopted
28 under chapter 36.70A RCW; any other applicable comprehensive plan,
29 land use plan, or development regulation adopted by a city, town, or
30 county; or any watershed plan approved under chapter 90.82 RCW, or a
31 comprehensive watershed plan adopted under RCW 90.54.040(1) after
32 September 9, 2003, if such a watershed plan has been approved for the
33 area.

34 (3) A municipal water supplier must implement cost-effective
35 water conservation in accordance with the requirements of RCW
36 70.119A.180 as part of its approved water system plan or small water
37 system management program. In preparing its regular water system plan
38 update, a municipal water supplier with one thousand or more service
39 connections must describe: (a) The projects, technologies, and other

1 cost-effective measures that comprise its water conservation program;
2 (b) improvements in the efficiency of water system use resulting from
3 implementation of its conservation program over the previous six
4 years; and (c) projected effects of delaying the use of existing
5 inchoate rights over the next six years through the addition of
6 further cost-effective water conservation measures before it may
7 divert or withdraw further amounts of its inchoate right for
8 beneficial use. When establishing or extending a surface or ground
9 water right construction schedule under RCW 90.03.320, the department
10 must take into consideration the public water system's use of
11 conserved water.

12 (4)(a) A municipal water supplier that supplies water to a city
13 with a population greater than one hundred thousand may not deliver
14 more than three hundred fifty gallons per day to a single family
15 residence located within such a city, and no more than one hundred
16 fifty gallons per day per residence to an apartment building,
17 townhome, condominium, or other multifamily residential building
18 located within such a city, except as provided in (b) of this
19 subsection.

20 (b) A municipal water supplier that supplies water to a city with
21 a population greater than one hundred thousand shall assess and
22 collect a fee of one dollar per gallon for every gallon over three
23 hundred fifty gallons per day delivered to a single-family residence
24 located within such a city, and for every gallon over one hundred
25 fifty gallons per day per residence delivered to an apartment
26 building, townhome, condominium, or other multifamily residential
27 building located within such a city.

28 (c) A municipal water supplier that collects fees under (b) of
29 this subsection shall remit the proceeds from any such fees on a
30 quarterly basis to the Washington state recreation and conservation
31 office to be deposited into the habitat conservation account for the
32 purpose of habitat restoration and enhancement.

33 **Sec. 5.** RCW 43.20.260 and 2003 1st sp.s. c 5 s 8 are each
34 amended to read as follows:

35 In approving the water system plan of a public water system, the
36 department shall ensure that water service to be provided by the
37 system under the plan for any new industrial, commercial, or
38 residential use is consistent with the requirements of any
39 comprehensive plans or development regulations adopted under chapter

1 36.70A RCW or any other applicable comprehensive plan, land use plan,
2 or development regulation adopted by a city, town, or county for the
3 service area. A municipal water supplier, as defined in RCW
4 90.03.015, has a duty to provide retail water service within its
5 retail service area if: (1) Its service can be available in a timely
6 and reasonable manner; (2) the municipal water supplier has
7 sufficient water rights to provide the service; (3) the municipal
8 water supplier has sufficient capacity to serve the water in a safe
9 and reliable manner as determined by the department of health; and
10 (4) it is consistent with the requirements of any comprehensive plans
11 or development regulations adopted under chapter 36.70A RCW or any
12 other applicable comprehensive plan, land use plan, or development
13 regulation adopted by a city, town, or county for the service area
14 and, for water service by the water utility of a city or town, with
15 the utility service extension ordinances of the city or town. A
16 municipal water supplier, as defined in RCW 90.03.015, that supplies
17 water to a city with a population greater than one hundred thousand
18 may not supply water in a way that results in the water being
19 discharged from a publicly owned treatment works into a water
20 resource inventory area that is different from the water resource
21 inventory area in which the water originated.

22 NEW SECTION. Sec. 6. This act may be known and cited as the one
23 Washington water act.

24 NEW SECTION. Sec. 7. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect immediately.

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