
ENGROSSED SUBSTITUTE HOUSE BILL 2303

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Regala, Huff, Kastama, Bush, McDonald, Sullivan and Linville)

Read first time . Referred to Committee on .

1 AN ACT Relating to water rights; and amending RCW 90.03.383 and
2 90.03.290.

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 or delivery of water between those systems for
8 other than emergency supply purposes, where such exchange or delivery
9 is within established instantaneous and annual withdrawal rates
10 specified in the ~~((systems⁴))~~ supplying system's existing water right
11 permits or certificates, or contained in claims filed pursuant to
12 chapter 90.14 RCW, and which results in better management of public
13 water supply consistent with existing rights and obligations.
14 Interties include interconnections between public water systems
15 permitting exchange or delivery of water to serve as primary or
16 secondary sources of supply, but do not include development of new
17 sources of supply to meet future demand requiring new water right
18 applications to and appropriations by the department of ecology. As
19 referred to in this section, changes of points of use for existing
20 water right permits, certificates, or claims are not within the meaning
21 of a development of new sources of supply.

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

29 (3) Public water systems with interties existing and in use as of
30 January 1, 1991, or that have received written approval from the
31 department of health prior to that date, shall file written notice of
32 those interties with the department of health and the department of
33 ecology. The notice may be incorporated into the public water system's
34 five-year update of its water system plan, but shall be filed no later
35 than June 30, 1996. The notice shall identify the location of the
36 intertie; the dates of its first use; the purpose, capacity, and
37 current use; the intertie agreement of the parties and the service
38 areas assigned; and other information reasonably necessary to modify
39 the water right permit. Notwithstanding the provisions of RCW

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

18 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
19 exchange or delivery of water through interties commencing use after
20 January 1, 1991, shall be permitted when the intertie improves overall
21 system reliability, enhances the manageability of the systems, provides
22 opportunities for conjunctive use, or delays or avoids the need to
23 develop new water sources, and otherwise meets the requirements of this
24 section, provided that ((each)) a supplying public water system's water
25 use shall not exceed the instantaneous or annual withdrawal rate
26 specified in its water right authorization, shall not adversely affect
27 existing water rights, and shall not be inconsistent with state-
28 approved plans such as water system plans or other plans which include
29 specific proposals for construction of interties. A receiving public
30 water system's use may exceed its water right authorization if the
31 receiving public water system's withdrawal does not exceed the
32 instantaneous or annual withdrawal rate specified in the receiving
33 public water system's water right authorization. Interties commencing
34 use after January 1, 1991, shall not be inconsistent with regional
35 water resource plans developed pursuant to chapter 90.54 RCW.

36 (5) For public water systems subject to the approval process of
37 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
38 commencing use after January 1, 1991, shall be incorporated into water
39 system plans pursuant to chapter 43.20 RCW or coordinated water system

1 plans pursuant to chapter 70.116 RCW and submitted to the department of
2 health and the department of ecology for review and approval as
3 provided for in subsections (5) through (9) of this section. The plan
4 shall state how the proposed intertie will improve overall system
5 reliability, enhance the manageability of the systems, provide
6 opportunities for conjunctive use, or delay or avoid the need to
7 develop new water sources.

8 (6) The department of health shall be responsible for review and
9 approval of proposals for new interties. In its review the department
10 of health shall determine whether the intertie satisfies the criteria
11 of subsection (4) of this section, with the exception of water rights
12 considerations, which are the responsibility of the department of
13 ecology, ((and)) shall determine whether the intertie is necessary to
14 address emergent public health or safety concerns associated with
15 public water supply, and shall determine whether long-term supply is
16 addressed in the intertie agreement between the systems.

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

1 (8) If the department of health determines the proposed intertie
2 appears to meet the requirements of subsection (4) of this section but
3 is not necessary to address emergent public health or safety concerns
4 associated with public water supply, the department of health shall
5 instruct the applicant to submit to the department of ecology an
6 application for change to the underlying water right or claim as
7 necessary to reflect the new place of use. The department of ecology
8 shall consider the applications pursuant to the provisions of RCW
9 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
10 interties and associated water rights the department of ecology
11 determines that additional information is required to act on the
12 application, the department may request applicants to provide
13 information necessary for its decision, consistent with agency rules
14 and written guidelines. Parties disagreeing with the decision of the
15 department of ecology on the application for change in place of use may
16 appeal the decision to the pollution control hearings board.

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

23 (10) An intertie shall not be used to deliver a primary or
24 secondary supply of water to a receiving system on a temporary basis
25 unless the terms of the intertie agreement specify the source of the
26 water that will be used by the receiving system to replace the water
27 delivered on the temporary basis and provide that replacement water
28 will be available for delivery to or use by the receiving system before
29 delivery by the supplying system under the agreement is terminated.
30 However, if a primary or secondary supply of water is delivered to a
31 receiving system on a temporary basis by means of an intertie on the
32 effective date of this subsection and the agreement between the
33 supplying system and receiving system does not contain such provision
34 for such a replacement supply of water for the receiving system, the
35 delivery of the water by the supplying system to the receiving system
36 shall not be terminated until the agreement is modified to establish
37 such provisions and such replacement water is available for delivery to
38 or use by the receiving system.

1 **Sec. 2.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
2 as follows:

3 When an application complying with the provisions of this chapter
4 and with the rules (~~and regulations~~) of the department has been
5 filed, the same shall be placed on record with the department, and it
6 shall be its duty to investigate the application, and determine what
7 water, if any, is available for appropriation, and find and determine
8 to what beneficial use or uses it can be applied. If it is proposed to
9 appropriate water for irrigation purposes, the department shall
10 investigate, determine and find what lands are capable of irrigation by
11 means of water found available for appropriation. If it is proposed to
12 appropriate water for the purpose of power development, the department
13 shall investigate, determine and find whether the proposed development
14 is likely to prove detrimental to the public interest, having in mind
15 the highest feasible use of the waters belonging to the public. If the
16 application does not contain, and the applicant does not promptly
17 furnish sufficient information on which to base such findings, the
18 department may issue a preliminary permit, for a period of not to
19 exceed three years, requiring the applicant to make such surveys,
20 investigations, studies, and progress reports, as in the opinion of the
21 department may be necessary. If the applicant fails to comply with the
22 conditions of the preliminary permit, it and the application or
23 applications on which it is based shall be automatically canceled and
24 the applicant so notified. If the holder of a preliminary permit
25 shall, before its expiration, file with the department a verified
26 report of expenditures made and work done under the preliminary permit,
27 which, in the opinion of the department, establishes the good faith,
28 intent and ability of the applicant to carry on the proposed
29 development, the preliminary permit may, with the approval of the
30 governor, be extended, but not to exceed a maximum period of five years
31 from the date of the issuance of the preliminary permit. The
32 department shall make and file as part of the record in the matter,
33 written findings of fact concerning all things investigated, and if it
34 shall find that there is water available for appropriation for a
35 beneficial use, and the appropriation thereof as proposed in the
36 application will not impair existing rights or be detrimental to the
37 public welfare, it shall issue a permit stating the amount of water to
38 which the applicant shall be entitled and the beneficial use or uses to
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to
2 such land as may be reclaimed thereby to the full extent of the soil
3 for agricultural purposes. But where there is no unappropriated water
4 in the proposed source of supply, or where the proposed use conflicts
5 with existing rights, or threatens to prove detrimental to the public
6 interest, having due regard to the highest feasible development of the
7 use of the waters belonging to the public, it shall be duty of the
8 department to reject such application and to refuse to issue the permit
9 asked for. If the permit is refused because of conflict with existing
10 rights and such applicant shall acquire same by purchase or
11 condemnation under RCW 90.03.040, the department may thereupon grant
12 such permit. Any application may be approved for a less amount of
13 water than that applied for, if there exists substantial reason
14 therefor, and in any event shall not be approved for more water than
15 can be applied to beneficial use for the purposes named in the
16 application. In determining whether or not a permit shall issue upon
17 any application, it shall be the duty of the department to investigate
18 all facts relevant and material to the application. If the applicant
19 is a public water system that is a party to an existing intertie
20 agreement, the department shall also consider the existence, nature,
21 economics, and terms of the agreement between the intertied public
22 water systems when making a determination on the application for new
23 water rights by the public water system. After the department approves
24 ((said)) the application in whole or in part and before any permit
25 shall be issued thereon to the applicant, such applicant shall pay the
26 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a
27 permit is issued by the department upon any application, it shall be
28 its duty to notify the director of fish and wildlife of such issuance.

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