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SENATE BILL 5949

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State of Washington

54th Legislature

1995 Regular Session

By Senator Fraser

Read first time 02/16/95. Referred to Committee on Senate Select  
Committee on Water Policy.

1 AN ACT Relating to water supply regulation; amending RCW 43.21A.064  
2 and 90.03.070; adding new sections to chapter 43.27A RCW; providing an  
3 effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to read  
6 as follows:

7 The director of the department of ecology shall have the following  
8 powers and duties:

9 (1) The supervision of public waters within the state and their  
10 appropriation, diversion, and use, and of the various officers  
11 connected therewith;

12 (2) Insofar as may be necessary to assure safety to life or  
13 property, (~~he shall~~) inspect the construction of all dams, canals,  
14 ditches, irrigation systems, hydraulic power plants, and all other  
15 works, systems, and plants pertaining to the use of water, and ((he))  
16 the director may require such necessary changes in the construction or  
17 maintenance of said works, to be made from time to time, as will  
18 reasonably secure safety to life and property;

1       (3) (~~He shall~~) Regulate and control the diversion of water in  
2 accordance with the rights thereto. Such regulation and control shall  
3 be exercised on the basis of the director's determination of the  
4 various rights involved, based on a review of the department's records  
5 and investigation of relevant facts as provided in section 3 of this  
6 act;

7       (4) (~~He shall~~) Determine the discharge of streams and springs and  
8 other sources of water supply, and the capacities of lakes and of  
9 reservoirs whose waters are being or may be utilized for beneficial  
10 purposes;

11       (5) (~~He shall~~) Keep such records as may be necessary for the  
12 recording of the financial transactions and statistical data thereof,  
13 and (~~shall~~) procure all necessary documents, forms, and blanks.  
14 (~~He~~) The director shall keep a seal of the office, and all  
15 certificates by him or her covering any of (~~his~~) the director's acts  
16 or the acts of his or her office, or the records and files of his or  
17 her office, under such seal, shall be taken as evidence thereof in all  
18 courts;

19       (6) (~~He shall~~) Render when required by the governor, a full  
20 written report of the work of his or her office with such  
21 recommendations for legislation as he or she may deem advisable for the  
22 better control and development of the water resources of the state;

23       (7) The director and duly authorized deputies may administer oaths;

24       (8) (~~He shall~~) Establish and (~~promulgate~~) adopt rules governing  
25 the administration of chapter 90.03 RCW;

26       (9) (~~He shall~~) Perform such other duties as may be prescribed by  
27 law.

28       **Sec. 2.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to read  
29 as follows:

30       It shall be the duty of the water master, acting under the  
31 direction of the department, to divide in whole or in part, the water  
32 supply of (~~his~~) the water master's district among the several water  
33 conduits and reservoirs using said supply, according to the right and  
34 priority of each, respectively. (~~He~~) The water master shall divide,  
35 regulate and control the use of water within (~~his~~) the district by  
36 such regulation of headgates, conduits and reservoirs as shall be  
37 necessary to prevent the use of water in excess of the amount to which  
38 the owner of the right is lawfully entitled. Such regulation shall be

1 exercised on the basis of the water master's tentative determination of  
2 the various rights involved, based on a review of the department's  
3 records and investigation of relevant facts. Whenever, in the  
4 pursuance of his or her duties, the water master regulates a headgate  
5 of a water conduit or the controlling works of a reservoir, ((he)) the  
6 water master shall attach to such headgate or controlling works a  
7 written notice, properly dated and signed, stating that such headgate  
8 or controlling works has been properly regulated and is wholly under  
9 ((his)) the water master's control and such notice shall be a legal  
10 notice to all parties. In addition to dividing the available waters  
11 and supervising the stream patrolmen in ((his)) the district, ((he))  
12 the water master shall enforce such rules ((and regulations)) as the  
13 department shall from time to time prescribe.

14 The county or counties in which water master districts are created  
15 shall deputize the water masters appointed hereunder, and may without  
16 charge provide to each water master suitable office space, supplies,  
17 equipment and clerical assistance as are necessary to the water master  
18 in the performance of his or her duties.

19 NEW SECTION. Sec. 3. A new section is added to chapter 43.27A RCW  
20 to read as follows:

21 In issuing orders pursuant to RCW 43.27A.190 for the purpose of  
22 regulating between or among the users of water, the department shall  
23 first determine whether any use of water is based on a valid existing  
24 water right. In making such determination, the department shall  
25 investigate and make a tentative determination as to the priority,  
26 quantity, place of use, and point of diversion of the water right.  
27 Unless exigent circumstances exist, the department shall notify the  
28 person whose use of water will be regulated prior to issuing an order  
29 of regulation. The notice shall state that the order of regulation  
30 shall be issued in three days after receipt of the notice, unless the  
31 person can show cause in writing to the department why the department's  
32 decision is in error. The order of regulation shall be effective  
33 immediately upon issuance, unless otherwise stated in the order. The  
34 department's determination of the validity of a water right is not  
35 binding in any subsequent general adjudication, but is prima facie  
36 evidence of the existence and conditions of the right.

1        NEW SECTION.   **Sec. 4.**   A new section is added to chapter 43.27A RCW  
2 to read as follows:

3        In any appeal of a regulatory order issued pursuant to RCW  
4 43.27A.190 it is not a defense that any of the rights recognized have  
5 not been confirmed in a general water rights adjudication.

6        NEW SECTION.   **Sec. 5.**   This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and shall take  
9 effect July 1, 1995.

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