
HOUSE BILL 1874

State of Washington

57th Legislature

2001 Regular Session

By Representatives Linville and G. Chandler

Read first time 02/07/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water rights; amending RCW 90.03.383; adding a
2 new section to chapter 43.20 RCW; adding new sections to chapter 90.03
3 RCW; and adding new sections to chapter 90.44 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 43.20 RCW
6 to read as follows:

7 The department of health shall adopt as rules conservation and
8 efficiency standards and safeguards that shall apply to the
9 transmission of water to and the distribution of water by a public
10 water system receiving water through an intertie approved after the
11 effective date of this section. The standards shall apply to a public
12 water system receiving such water if the public water system has at
13 least one thousand service connections.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 If a water right certificate was issued by the department of
17 ecology before the effective date of this section to a public water
18 system and, at the time the certificate was issued, the amount of water

1 listed on the certificate as being subject to diversion for use under
2 the certificate included both amounts beneficially used by the date of
3 the issuance and amounts not yet beneficially used by that date, the
4 water right represented by the certificate is for the total of both
5 such amounts. Any amounts not yet beneficially used under such a
6 certificate by the effective date of this section are governed by the
7 inchoate portion of the water right and are available to a public water
8 system holding the certificated right for further development as
9 prescribed in section 3 of this act and for transfer or change for
10 further development as prescribed in section 3 of this act. The place
11 of use for the water right represented by such a certificate is the
12 place of use listed on the certificate or the place of use identified
13 in the water system plan approved by the department of health on the
14 effective date of this section for the public water system, whichever
15 document identifies a larger service area for the public water system.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
17 to read as follows:

18 The beneficial use of water governed by an inchoate portion of a
19 water right described in section 2 or 5 of this act that begins on or
20 after the effective date of this section is subject to the following
21 conditions:

22 (1) The beneficial use shall be consistent with any comprehensive
23 land use plan adopted under chapter 36.70A RCW for the area in which
24 the beneficial use takes place or, if comprehensive land use planning
25 has not been conducted for that area under chapter 36.70A RCW, the
26 beneficial use shall be consistent with any comprehensive plan adopted
27 under chapter 36.70 RCW for the area;

28 (2) The beneficial use shall be initiated not later than fifty
29 years after the effective date of this section; and

30 (3) If a public water system applies for a transfer, change, or
31 amendment to an inchoate portion of its water right to provide for the
32 initial beneficial use of water governed by the inchoate portion of the
33 right, the public water system and the department shall study the
34 effects of the transfer, change, or amendment on habitat for fish
35 stocks listed or proposed for listing as threatened or endangered under
36 the federal endangered species act or as critical or depressed in the
37 state's salmon and steelhead stock inventory. If the proposed use
38 would adversely impact such habitat and the public water system does

1 not withdraw the application, the system shall develop a plan for
2 mitigating the adverse impacts and for monitoring the effectiveness of
3 the mitigation effort. Any such mitigation shall be conducted
4 concurrently with the transfer, change, or amendment of the right.
5 This subsection includes, but is not limited to, any change of the
6 place of use for such an inchoate portion of a water right made through
7 an intertie.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
9 to read as follows:

10 (1) The department may not approve any transfer or change of a
11 water right held by a public water system that changes the place of use
12 for the right for beneficial use by a public water system unless the
13 conservation and efficiency measures and safeguards for the
14 distribution of water in the new place of use are at least as stringent
15 as the conservation and efficiency measures and safeguards existing for
16 the distribution of water by the system in the place of use for the
17 original water right before the transfer or change.

18 (2) This subsection applies to any transfer or change of a water
19 right that changes the place of use of water so that it may be
20 beneficially used by a public water system with one thousand or more
21 service connections. The department of ecology may not approve such a
22 transfer or change for a water right unless the system for distributing
23 water in the new place of use satisfies the standards and safeguards
24 adopted by the department of health under section 1 of this act.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW
26 to read as follows:

27 If a water right certificate was issued by the department of
28 ecology before the effective date of this section to a public water
29 system and, at the time the certificate was issued, the amount of water
30 listed on the certificate as being subject to withdrawal for use under
31 the certificate included both amounts beneficially used by the date of
32 the issuance and amounts not yet beneficially used by that date, the
33 water right represented by the certificate is for the total of both
34 such amounts. Any amounts not yet beneficially used under such a
35 certificate by the effective date of this section are governed by the
36 inchoate portion of the water right and are available to a public water
37 system holding the certificated right for further development as

1 prescribed in section 3 of this act and for further development as
2 prescribed in section 3 of this act through the amendment of the right.
3 The place of use for the water right represented by such a certificate
4 is the place of use listed on the certificate or the place of use
5 identified in the water system plan approved by the department of
6 health on the effective date of this section for the public water
7 system, whichever document identifies a larger service area for the
8 public water system.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.44 RCW
10 to read as follows:

11 (1) The department may not approve any amendment of a water right
12 held by a public water system that changes the place of use for the
13 right for beneficial use by a public water system unless the
14 conservation and efficiency measures and safeguards for the
15 distribution of water in the new place of use are at least as stringent
16 as the conservation and efficiency measures and safeguards existing for
17 the distribution of water by the system in the place of use for the
18 original water right before the amendment.

19 (2) This subsection applies to any amendment of a water right that
20 changes the place of use of water so that it may be beneficially used
21 by a public water system with one thousand or more service connections.
22 The department of ecology may not approve such an amendment for a water
23 right unless the system for distributing water in the new place of use
24 satisfies the standards and safeguards adopted by the department of
25 health under section 1 of this act.

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

28 (1) The legislature recognizes the value of interties for improving
29 the reliability of public water systems, enhancing their management,
30 and more efficiently utilizing the increasingly limited resource.
31 Given the continued growth in the most populous areas of the state, the
32 increased complexity of public water supply management, and the trend
33 toward regional planning and regional solutions to resource issues,
34 interconnections of public water systems through interties provide a
35 valuable tool to ensure reliable public water supplies for the citizens
36 of the state. Public water systems have been encouraged in the past to
37 utilize interties to achieve public health and resource management

1 objectives. The legislature finds that it is in the public interest to
2 recognize interties existing and in use as of January 1, 1991, and to
3 have associated water rights modified by the department of ecology to
4 reflect current use of water through those interties, pursuant to
5 subsection (3) of this section. The legislature further finds it in
6 the public interest to develop a coordinated process to review
7 proposals for interties commencing use after January 1, 1991.

8 (2) For the purposes of this section, the following definitions
9 shall apply:

10 (a) "Interties" are interconnections between public water systems
11 permitting exchange, acquisition, or delivery of water between those
12 systems for other than emergency supply purposes, where such exchange
13 or delivery is within established instantaneous and annual withdrawal
14 rates specified in the systems' existing water right permits or
15 certificates, or contained in claims filed pursuant to chapter 90.14
16 RCW, and which results in better management of public water supply
17 consistent with existing rights and obligations. Interties include
18 interconnections between public water systems permitting exchange,
19 acquisition, or delivery of water to serve as primary or secondary
20 sources of supply(~~(, but do not include development of new sources of~~
21 ~~supply to meet future demand))~~).

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 public water system's water use shall not
25 exceed the instantaneous or annual withdrawal rate specified in its
26 water right authorization, shall not adversely affect existing water
27 rights, and shall not be inconsistent with state-approved plans such as
28 water system plans or other plans which include specific proposals for
29 construction of interties. Interties commencing use after January 1,
30 1991, shall not be inconsistent with regional water resource plans
31 developed pursuant to chapter 90.54 RCW.

32 (5) For public water systems subject to the approval process of
33 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
34 commencing use after January 1, 1991, shall be incorporated into water
35 system plans pursuant to chapter 43.20 RCW or coordinated water system
36 plans pursuant to chapter 70.116 RCW and submitted to the department of
37 health and the department of ecology for review and approval as
38 provided for in subsections (5) through (9) of this section. The plan
39 shall state how the proposed intertie will improve overall system

1 reliability, enhance the manageability of the systems, provide
2 opportunities for conjunctive use, or delay or avoid the need to
3 develop new water sources.

4 (6) The department of health shall be responsible for review and
5 approval of proposals for new interties. In its review the department
6 of health shall determine whether the intertie satisfies the criteria
7 of subsection (4) of this section, with the exception of water rights
8 considerations, which are the responsibility of the department of
9 ecology, and shall determine whether the intertie is necessary to
10 address emergent public health or safety concerns associated with
11 public water supply.

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

35 (8) If the department of health determines the proposed intertie
36 appears to meet the requirements of subsection (4) of this section but
37 is not necessary to address emergent public health or safety concerns
38 associated with public water supply, the department of health shall
39 instruct the applicant to submit to the department of ecology an

1 application for change to the underlying water right or claim as
2 necessary to reflect the new place of use. The department of ecology
3 shall consider the applications pursuant to the provisions of RCW
4 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
5 interties and associated water rights the department of ecology
6 determines that additional information is required to act on the
7 application, the department may request applicants to provide
8 information necessary for its decision, consistent with agency rules
9 and written guidelines. Parties disagreeing with the decision of the
10 department of ecology on the application for change in place of use may
11 appeal the decision to the pollution control hearings board.

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

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

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