
SENATE BILL 6445

State of Washington

54th Legislature

1996 Regular Session

By Senators Sutherland, Swecker, Fraser, Rasmussen, McAuliffe and Haugen

Read first time 01/15/96. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to water supply regulation; amending RCW 43.21A.064
2 and 90.03.070; and adding new sections to chapter 43.27A RCW.

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

4 **Sec. 1.** RCW 43.21A.064 and 1995 c 8 s 3 are each amended to read
5 as follows:

6 Subject to RCW 43.21A.068, the director of the department of
7 ecology shall have the following powers and duties:

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

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

18 (3) (~~He shall~~) Regulate and control the diversion of water in
19 accordance with the rights thereto. Such regulation and control shall

1 be exercised on the basis of the director's determination of the
2 various rights involved, based on a review of the department's records
3 and investigation of relevant facts as provided in section 3 of this
4 act;

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

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

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

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

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

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

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

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

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

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

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

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

35 NEW SECTION. Sec. 4. A new section is added to chapter 43.27A RCW
36 to read as follows:

1 In any appeal of a regulatory order issued pursuant to RCW
2 43.27A.190 it is not a defense that any of the rights recognized have
3 not been confirmed in a general water rights adjudication.

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