

# ANALYSIS OF HB 1881

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*House Agriculture & Ecology Committee*

*March 3, 1997*

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## **BACKGROUND:**

*When a person with a water right permit demonstrates to the Department of Ecology's satisfaction that the appropriation of water has been perfected, the department issues the permit holder a certificate for that water right. The certificate constitutes a vested right in the use of the water. The term perfected- is undefined.*

*The common law doctrine of appropriation requires water rights for irrigation to be perfected by: (1) an intent to apply the water to a beneficial use; (2) an actual diversion from the natural channel or aquifer by some means sufficient for the purpose; and (3) an application of the water within a reasonable time to some beneficial use. In determining what constitutes a reasonable amount of time under a water permit to commence and complete a project and put the water to a beneficial use, the Department of Ecology is required to take into consideration the cost and magnitude of the project and allow such time as is reasonable and just after considering existing conditions and the public interest.*

*Historically, appropriations by municipal water systems have been perfected in Washington based upon when pumps and pipes- are installed to meet the requirements for increases in population.*

*In 1994, the Department of Ecology interpreted the law to require municipal water systems to perfect their water rights in the same manner as irrigation rights. Municipal water rights, therefore, are only perfected once the water has been put to actual use.*

*A number of municipalities have expressed concern that they have not fully utilized the maximum amount of water authorized under their permits, but might need the water to serve future population growth.*

## **SUMMARY:**

*In fixing public water system construction schedules and the time for applying water to a beneficial use for a municipal purpose, the Department of Ecology must consider the term and amount of financing required to complete the project, delays resulting from conservation and efficiency measures installed by the public water system, and the supply needs of the public water system's service area consistent with an approved comprehensive plan and related demand projections.*

*In determining the amount of instantaneously diverted water that is being applied to beneficial use for purposes of perfecting a public water supply water right to accommodate future growth, the time of perfection is based upon the capacity of the diversion structure of structures installed at the time. The amount of annual appropriation of water considered to be applied to a beneficial use at the time of perfection is based upon the growth projection contained in the most current state-approved water system plan. The Department of Ecology may not issue a certificate for quantities of water which exceed those contained in any permit that has been issued. Water rights subject to the terms of a final adjudication decree are not subject to these provisions.*

*A municipal purpose is defined as water distributed by a public water system purveyor and includes domestic, commercial, and industrial water uses provided as an integral part of the public water system. Water systems that are not recognized for potable water use by a state-approved water system plan, and wells exempt from permit requirements for withdrawals of ground water do not qualify as a municipal purpose.*