
HOUSE BILL 2713

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Rayburn, Chandler, Pruitt, Rust, Roland, Lemmon, Bray, Moak, R. Meyers, Kremen, Karahalios and Springer

Read first time 01/21/94. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to water rights; amending RCW 43.27A.190; and
2 adding a new section to chapter 43.27A RCW.

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

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

6 (1) The legislature recognizes the importance of due process
7 concerns associated with the issuance of orders by the department of
8 ecology regulating, as between holders of water rights, the withdrawal
9 or use of water under such rights. Therefore, the legislature directs
10 that the state's chief legal officer, the attorney general, design a
11 process short of a general adjudication process to be used by the
12 department of ecology to issue orders for this purpose.

13 (2) The attorney general shall design, in detail, a process other
14 than a general adjudication process to be used by the department of
15 ecology for: (a) Making determinations regarding the existence and
16 extent of a water right and determinations as to whether the use of a
17 water right or water right permit is impairing or interfering with the
18 use of another more senior water right; and (b) based on those
19 determinations, issuing regulatory orders to protect senior water

1 rights from impairment or interference by users of junior water rights.
2 The process designed by the attorney general shall ensure that the due
3 process rights of all water right holders and holders of water right
4 permits that would be affected by such a determination and order are
5 protected. The attorney general shall provide the process to the
6 department of ecology in the form of a written proposal. The
7 department shall adopt the proposed process by rule. The department
8 may not alter, delete, or create any aspect of the process without
9 first obtaining the express written approval of the attorney general.
10 Once the department has adopted such rules, the department may not
11 amend them without first obtaining the express written approval of the
12 attorney general.

13 (3) The department of ecology may use the process adopted in
14 subsection (2) of this section to make the determinations and to issue
15 the orders described in this section. The department may not use any
16 other process for making such determinations or for issuing such
17 orders. A general adjudication of water rights is not necessary for
18 the exercise of the department's authorities under this section. Any
19 appeal of a determination made or order issued by the department under
20 this section shall be made to the superior court in the manner
21 prescribed by chapter 34.05 RCW for the appeal of an order. In such an
22 appeal, the superior court's review shall be de novo. Pending a
23 judicial decision holding otherwise, a determination made by the
24 department under this section shall be considered to be tentative.

25 (4) This section does not apply to any tentative determinations or
26 determinations made by the department of ecology in considering
27 applications for water right permits.

28 **Sec. 2.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
29 read as follows:

30 Notwithstanding and in addition to any other powers granted to the
31 department of ecology, whenever it appears to the department that a
32 person is violating or is about to violate any of the provisions of the
33 following:

- 34 (1) Chapter 90.03 RCW; or
- 35 (2) Chapter 90.44 RCW; or
- 36 (3) Chapter 86.16 RCW; or
- 37 (4) Chapter 43.37 RCW; or
- 38 (5) Chapter 43.27A RCW; or

1 (6) Any other law relating to water resources administered by the
2 department; or

3 (7) A rule or regulation adopted, or a directive or order issued by
4 the department relating to subsections (1) through (6) of this section;
5 the department may cause a written regulatory order to be served upon
6 said person either personally, or by registered or certified mail
7 delivered to addressee only with return receipt requested and
8 acknowledged by him. The order shall specify the provision of the
9 statute, rule, regulation, directive or order alleged to be or about to
10 be violated, and the facts upon which the conclusion of violating or
11 potential violation is based, and shall order the act constituting the
12 violation or the potential violation to cease and desist or, in
13 appropriate cases, shall order necessary corrective action to be taken
14 with regard to such acts within a specific and reasonable time. The
15 regulation of a headgate or controlling works as provided in RCW
16 90.03.070, by a watermaster, stream patrolman, or other person so
17 authorized by the department shall constitute a regulatory order within
18 the meaning of this section. A regulatory order issued hereunder shall
19 become effective immediately upon receipt by the person to whom the
20 order is directed, except for regulations under RCW 90.03.070 which
21 shall become effective when a written notice is attached as provided
22 therein. Except as provided in section 1 of this act, any person
23 aggrieved by such order may appeal the order pursuant to RCW
24 43.21B.310.

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