
SENATE BILL 6467

State of Washington 53rd Legislature 1994 Regular Session

By Senators Fraser, Hochstatter, Morton and M. Rasmussen

Read first time 01/24/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to water rights for municipal purposes; amending
2 RCW 90.03.290, 90.03.320, 90.03.380, 90.03.260, and 90.03.330; and
3 adding a new section to chapter 90.03 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 90.03 RCW
6 to read as follows:

7 "Municipal purpose" means for the purposes of this chapter water
8 distributed by a public water system purveyor as defined by chapter
9 70.116 RCW, and includes domestic, commercial, and industrial water
10 uses provided as an integral element of the public water system.

11 **Sec. 2.** RCW 90.03.290 and 1988 c 36 s 66 are each amended to read
12 as follows:

13 When an application complying with the provisions of this chapter
14 and with the rules and regulations of the department has been filed,
15 the same shall be placed on record with the department, and it shall be
16 its duty to investigate the application, and determine what water, if
17 any, is available for appropriation, and find and determine to what
18 beneficial use or uses it can be applied. If it is proposed to

1 appropriate water for irrigation purposes, the department shall
2 investigate, determine and find what lands are capable of irrigation by
3 means of water found available for appropriation. If it is proposed to
4 appropriate water for the purpose of power development, the department
5 shall investigate, determine and find whether the proposed development
6 is likely to prove detrimental to the public interest, having in mind
7 the highest feasible use of the waters belonging to the public. If it
8 is proposed to appropriate water for municipal purposes, which include
9 commercial, industrial, and domestic supply, the department shall
10 investigate, determine, and find whether the proposed application is
11 consistent with adopted land use plans and policies; and state-approved
12 water system plans. If the application does not contain, and the
13 applicant does not promptly furnish sufficient information on which to
14 base such findings, the department may issue a preliminary permit, for
15 a period of not to exceed three years, requiring the applicant to make
16 such surveys, investigations, studies, and progress reports, as in the
17 opinion of the department may be necessary. If the applicant fails to
18 comply with the conditions of the preliminary permit, it and the
19 application or applications on which it is based shall be automatically
20 canceled and the applicant so notified. If the holder of a preliminary
21 permit shall, before its expiration, file with the department a
22 verified report of expenditures made and work done under the
23 preliminary permit, which, in the opinion of the department,
24 establishes the good faith, intent and ability of the applicant to
25 carry on the proposed development, the preliminary permit may, with the
26 approval of the governor, be extended, but not to exceed a maximum
27 period of five years from the date of the issuance of the preliminary
28 permit. The department shall make and file as part of the record in
29 the matter, written findings of fact concerning all things
30 investigated, and if it shall find that there is water available for
31 appropriation for a beneficial use, and the appropriation thereof as
32 proposed in the application will not impair existing rights or be
33 detrimental to the public welfare, it shall issue a permit stating the
34 amount of water to which the applicant shall be entitled and the
35 beneficial use or uses to which it may be applied: PROVIDED, That
36 where the water applied for is to be used for irrigation purposes, it
37 shall become appurtenant only to such land as may be reclaimed thereby
38 to the full extent of the soil for agricultural purposes. But where
39 there is no unappropriated water in the proposed source of supply, or

1 where the proposed use conflicts with existing rights, or threatens to
2 prove detrimental to the public interest, having due regard to the
3 highest feasible development of the use of the waters belonging to the
4 public, it shall be duty of the department to reject such application
5 and to refuse to issue the permit asked for. If the permit is refused
6 because of conflict with existing rights and such applicant shall
7 acquire same by purchase or condemnation under RCW 90.03.040, the
8 department may thereupon grant such permit. Any application may be
9 approved for a less amount of water than that applied for, if there
10 exists substantial reason therefor, and in any event shall not be
11 approved for more water than can be applied to beneficial use for the
12 purposes named in the application. In determining whether or not a
13 permit shall issue upon any application, it shall be the duty of the
14 department to investigate all facts relevant and material to the
15 application. After the department approves said application in whole
16 or in part and before any permit shall be issued thereon to the
17 applicant, such applicant shall pay the fee provided in RCW 90.03.470:
18 PROVIDED FURTHER, That in the event a permit is issued by the
19 department upon any application, it shall be its duty to notify
20 ((both)) the director of ((~~fisheries and the director of~~)) fish and
21 wildlife of such issuance.

22 **Sec. 3.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to read
23 as follows:

24 Actual construction work shall be commenced on any project for
25 which permit has been granted within such reasonable time as shall be
26 prescribed by the department, and shall thereafter be prosecuted with
27 diligence and completed within the time prescribed by the department.
28 The department, in fixing the time for the commencement of the work, or
29 for the completion thereof and the application of the water to the
30 beneficial use prescribed in the permit, shall take into consideration
31 the cost and magnitude of the project and the engineering and physical
32 features to be encountered, and shall allow such time as shall be
33 reasonable and just under the conditions then existing, having due
34 regard for the public welfare and public interests affected: and, for
35 good cause shown, it shall extend the time or times fixed as aforesaid,
36 and shall grant such further period or periods as may be reasonably
37 necessary, having due regard to the good faith of the applicant and the
38 public interests affected. In fixing public water system construction

1 schedules and the time for application of water to beneficial use for
2 municipal supply purposes, the department shall also take into
3 consideration the term and amount of public financing required to
4 complete the project, planned and existing conservation and water use
5 efficiency measures installed by the public water system, and the
6 supply needs of the public water system's service area, given adopted
7 land use plans and policies and related demand projections prepared by
8 public water systems in accordance with state law. If the terms of the
9 permit or extension thereof, are not complied with the department shall
10 give notice by registered mail that such permit will be canceled unless
11 the holders thereof shall show cause within sixty days why the same
12 should not be so canceled. If cause be not shown, said permit shall be
13 canceled.

14 **Sec. 4.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
15 as follows:

16 The right to the use of water which has been applied to a
17 beneficial use in the state shall be and remain appurtenant to the land
18 or place upon which the same is used: PROVIDED, HOWEVER, That said
19 right may be transferred to another or to others and become appurtenant
20 to any other land or place of use without loss of priority of right
21 theretofore established if such change can be made without detriment or
22 injury to existing rights. The point of diversion of water for
23 beneficial use or the purpose of use may be changed, if such change can
24 be made without detriment or injury to existing rights. Before any
25 transfer of such right to use water or change of the point of diversion
26 of water or change of purpose of use can be made, any person having an
27 interest in the transfer or change, shall file a written application
28 therefor with the department, and said application shall not be granted
29 until notice of said application shall be published as provided in RCW
30 90.03.280. If it shall appear that such transfer or such change may be
31 made without injury or detriment to existing rights, the department
32 shall issue to the applicant a certificate in duplicate granting the
33 right for such transfer or for such change of point of diversion or of
34 use. The certificate so issued shall be filed and be made a record
35 with the department and the duplicate certificate issued to the
36 applicant may be filed with the county auditor in like manner and with
37 the same effect as provided in the original certificate or permit to
38 divert water.

1 If a public water system holding an interest in existing rights
2 seeks a change in place or purpose of use for such water rights for
3 municipal purposes and has shown that: The purveyor proposing to
4 provide supply has permitted or certificated water rights sufficient to
5 meet the request for service; the provision of such supply shall fall
6 within the instantaneous quantity established in the purveyor's permit
7 or certificate; and the provision of such supply is consistent with
8 locally adopted land use plans and policies and state approved water
9 system plans; the department shall issue an amended permit or
10 certificate within ninety days of acceptance of a completed
11 application, provided, the department determines the change in place or
12 purpose of use will not impair existing rights.

13 If an application for change proposes to transfer water rights from
14 one irrigation district to another, the department shall, before
15 publication of notice, receive concurrence from each of the irrigation
16 districts that such transfer or change will not adversely affect the
17 ability to deliver water to other landowners or impair the financial
18 integrity of either of the districts.

19 A change in place of use by an individual water user or users of
20 water provided by an irrigation district need only receive approval for
21 the change from the board of directors of the district if the use of
22 water continues within the irrigation district.

23 This section shall not apply to trust water rights acquired by the
24 state through the funding of water conservation projects under chapter
25 90.38 RCW or RCW 90.42.010 through 90.42.070.

26 Quantities of water appropriated for municipal supply purposes held
27 under permit or certificate subject to change shall not be relinquished
28 or diminished unless the department can clearly show: The water
29 appropriated clearly exceeds that amount necessary to meet future
30 supply needs as determined by adopted land use plans and policies or
31 related demand projections prepared by public water systems in
32 accordance with state law, and the public water system clearly lacks
33 sufficient installed capacity to make full beneficial use of the
34 instantaneous amount provided for in permit or certificate.

35 **Sec. 5.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read
36 as follows:

37 Each application for permit to appropriate water shall set forth
38 the name and post office address of the applicant, the source of water

1 supply, the nature and amount of the proposed use, the time during
2 which water will be required each year, the location and description of
3 the proposed ditch, canal, or other work, the time within which the
4 completion of the construction and the time for the complete
5 application of the water to the proposed use. If for agricultural
6 purposes, it shall give the legal subdivision of the land and the
7 acreage to be irrigated, as near as may be, and the amount of water
8 expressed in acre feet to be supplied per season. If for power
9 purposes, it shall give the nature of the works by means of which the
10 power is to be developed, the head and amount of water to be utilized,
11 and the uses to which the power is to be applied. If for construction
12 of a reservoir, it shall give the height of the dam, the capacity of
13 the reservoir, and the uses to be made of the impounded waters. If for
14 ((municipal)) public water supply, it shall give the present population
15 to be served, and, as near as may be((7)) projected in a state-approved
16 water system plan, and the demand projections for the future
17 requirement of the ((municipality)) public water system service area.
18 If for mining purposes, it shall give the nature of the mines to be
19 served and the method of supplying and utilizing the water; also their
20 location by legal subdivisions. All applications shall be accompanied
21 by such maps and drawings, in duplicate, and such other data, as may be
22 required by the department, and such accompanying data shall be
23 considered as a part of the application.

24 **Sec. 6.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
25 as follows:

26 (1) Upon a showing satisfactory to the department that any
27 appropriation has been perfected in accordance with the provisions of
28 this chapter, it shall be the duty of the department to issue to the
29 applicant a certificate stating such facts in a form to be prescribed
30 by ((him)) the director, and such certificate shall thereupon be
31 recorded with the department.

32 (2) For those public water supplies designed to accommodate future
33 growth as defined by a state-approved water system plan, the
34 appropriation shall be considered to be perfected at such time as the
35 permanent diversion or withdrawal facilities have been installed and
36 such facilities are in use.

37 (3) The annual authorized appropriation will be fully consummated
38 as demand develops.

1 (4) Any original water right certificate issued, as provided by
2 this chapter, shall be recorded with the department and thereafter, at
3 the expense of the party receiving the same, be by the department
4 transmitted to the county auditor of the county or counties where the
5 distributing system or any part thereof is located, and be recorded in
6 the office of such county auditor, and thereafter be transmitted to the
7 owner thereof.

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