



WHITWORTH WATER DISTRICT

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Austin Melcher
Washington State Department of Ecology
Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on Ecology's Policy 2030

Dear Mr. Melcher:

This letter is to provide comments on Ecology's Draft Municipal Water Law Interpretative and Policy Statement (referred to herein as the Draft Policy Statement). This comment letter will focus on Ecology's directives in Sections 5 and 8 to have staff consider the "original intent described in documents in the record for the original water right authorization" when considering changes to municipal water right certificates. The District is concerned that the Draft Policy Statement exceeds Ecology's authority and creates improper and unnecessary impediments to providing safe drinking water for our growing community. Additionally, Whitworth Water District joins the Washington Water Utilities Council in its comments.

Ecology's authority in an interpretative or policy statement is limited to providing its opinion of the meaning of a statute or providing its current approach to implementation of a statute or case law, it does not have the authority to include additional requirements not found in statute or caselaw. Under the State Administrative Procedures Act, an "interpretative statement" is described, in pertinent part, as a "written expression of the **opinion of an agency**, . . . **as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.**" RCW 34.05.010(8) (emphasis added). A "Policy statement" is defined as "a written description of **the current approach of an agency . . . to implementation of a statute or other provision of law, of a court decision, or of an agency order . . .**" RCW 34.05.010(15) (emphasis added). Here, Ecology is adding new requirements and directives not found in statute or case law. This is contrary to Ecology's authority.

Ecology's Draft Policy Statement cannot add new criteria to RCW 90.03.380 and RCW 90.44.100

The Draft Policy Statement adds additional requirements to the transfer of municipal water rights not found under RCW 90.03.380 and RCW 90.44.100. Under RCW 90.03.380(1) a water right "may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made **without detriment or injury to existing rights.**" RCW 90.03.380(1) further states, in pertinent part: "If it **shall** appear that such transfer or such change may be made without injury or detriment to existing rights, **the department shall issue** to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use." Similarly, RCW 90.44.100(1) states that a groundwater right's (permit or certificate) point of withdrawal, manner or place of use may be changed so long as it is tapping the same body of

public groundwater, is not enlarged, does not impair the existing rights of other users, and is not detrimental to the public interest.

Ecology's Draft Policy Statement applies new criteria to RCW 90.03.380 and RCW 90.44.100 for changes and transfers of water rights held for municipal supply purposes: consistency with the "original intent" of the application. RCW 90.03.380 and RCW 90.44.100 define the criteria for approving a change or transfer of a water right. Ecology's authority is to tentatively determine the use of the water right (i.e. the transfer will not cause enlargement of the water right), whether the transfer "can be made without detriment or injury to existing rights" or cause impairment to other existing rights, and is not detrimental to the public welfare (for groundwater rights). Ecology does not have the authority to limit a transfer based on its review and interpretation of "original intent." Ecology's Draft Policy Statement adds an additional requirement to the statute without authority.

Ecology's Draft Policy Statement is inconsistent with RCW 90.03.330(3)

Ecology's Draft Policy Statement is inconsistent with RCW 90.03.330(3) by imposing additional review requirements on water right certificates for municipal water supply purposes. Under RCW 90.03.330(3), the Legislature stated, in pertinent part, that a:

water right represented by a water right certificate issued prior to September 9, 2003, for municipal water supply purposes . . . where the certificate was issued based on an administrative policy [of pumps and pipes] . . . for municipal supply purposes. . . . [is] a water right in good standing.

Ecology's Draft Policy Statement states that if a holder of a groundwater certificate applies to "transfer [the water right] to another entity", Ecology will:

determine[] whether any inchoate quantities remain in good standing and valid for transfer based on the original intent described in the water right authorization, whether reasonable diligence to develop the water right has occurred, and if the transfer would be detrimental to the public welfare.

Pg. 12. Under RCW 90.03.330(3), the Legislature confirmed that a "pumps and pipes" certificate issued prior to 2003, should be treated like any certificate for municipal supply purposes. The "good standing" designation is by operation of law in the statute and should not be diminished by additional criteria. The Legislature could have required that water rights for municipal water supply purpose be treated as Ecology is asserting in its Draft Policy Statement, but it did not. The Legislature's directive is clear: A water right certificate is in good standing and is subject only to those provisions any municipal supply water right certificate would be subject to. Ecology's reading that a water right in "good standing" can be prohibited from a transfer or change because it is somehow inconsistent with the "original intent" of the application is inconsistent with the statute.

We, municipal water purveyors, Ecology and the citizens of this State, need to find workable solutions to meet the long term water needs of our growing communities. If municipal water purveyors proposed to change water rights to meet future water needs, the applications should be reviewed based on the statutory criteria. Ecology cannot add additional limitations on water rights held for municipal water supply purposes that would prevent the ability of purveyor's to meet the long-term needs of the growing communities authorized by our local governments.



Tim Murrell
General Manager