

Municipal Water Law 1338: By the Numbers

In the three years since the passage of Municipal Water Law (MWL) 1338, the consequences are already being felt. Water users have lost their previous ability to contest decisions that could harm their rights, and developers are taking advantage of newly created loopholes. Of even greater concern, the effects will dramatically increase in the coming decades as users continue to withdraw the water that was given away by MWL 1338.

- On Orcas Island, the YMCA lost its ability to appeal a change to a water right that could compromise its ability to operate one of its youth and family camps. (**Fircroft Water Works**)
- In Whatcom County, developers have been able to hoard water rights that have not been used since the 1940s. (**Deer Creek Water Association**)
- Statewide, a survey of just 10 of the large water suppliers indicates that close to 350 million gallons per day could be withdrawn from rivers and streams without any oversight. (**Future Water Withdrawals**)

There is a better way. The different approaches to water usage taken by the two Washington cities noted below demonstrate that there exists an alternative to simply giving away the bulk of the public's water.

Cases Studies

Fircroft Water Works: Depriving water users & the public of the right to comment, protest, and appeal detrimental water transfers.

Fircroft Water Works, a water supplier on Orcas Island, originally filed an application in 2001 to extend the boundaries of where it used its water, before the passage of the MWL. In 1981, Fircroft was granted a water right to supply three developments on Orcas Island. Fircroft applied to change the place of use of its ground water right and add additional purposes in order to supply other developments and truck water to different parts of the island.

The YMCA of Greater Seattle, which operates Camp Orkila on Orcas Island, protested this change. The YMCA has a ground water right that is senior to the Fircroft right as well as two surface water rights that are junior to Fircroft's right. The YMCA was and is concerned that approval of the change would allow Fircroft to expand its water use beyond its historical use, and that the removal of water to other parts of the island will lower the water table.

In the autumn of 2003, however, the Department of Ecology informed Fircroft that its application was no longer needed because of the MWL. Fircroft subsequently withdrew its request and the YMCA lost its right to protest.

Deer Creek Water Association: Change in the place of use and expanded pumping will affect rivers and streams.

Through MWL 1338, the Deer Creek Water Association has acquired the large unused portion of a private water right in Whatcom County. In the 1940s, a private developer, C. V. Wilder, acquired a paper water right in Whatcom County for 450 gallons per minute (gpm) and 375 acre-feet per year (afy). He later transferred this water right to a private water association, the Belden Acres Water Association. The Belden Acres system used only about 32 gpm and 7 afy. Thus very little of Wilder's paper water right was ever put to use, and the unused portion of the right could be as large as 418 gpm and 368 afy. More recently, the Deer Creek Water Association, another private water association, purchased the water.

The transfer of the unused portion of this water right would not have been possible without the MWL 1338. Neither Belden Acres nor Deer Creek would have been considered a municipal water supplier before its passage. Belden Acres' water right would have been limited to that portion of the right that was actually put to use. Now, however, Deer Creek has been able to acquire this water right in a basin in which supplies are limited enough that no new water rights are being distributed. Deer Creek has also been able to change its place of use to include Belden Acres without applying for the change, again through the operation of the MWL.

Future Water Withdrawals: Rivers and streams will suffer from increased use.

A 1997 survey of just 10 of the large water suppliers in the state indicates that close to 350 million gallons per day could be withdrawn without any oversight.¹ Even based on this small sampling, it is clear that these withdrawals threaten specific rivers and streams. For example:

- The City of Everett can now claim 250 million gallons per day (mgd) of water from the Sultan River. Such withdrawals are more than enough to empty the river of water for much of the year.
- The City of Spokane can expand its water usage from 185 mgd to 348 mgd. Even at current usage levels, the Spokane River frequently fails to meet minimum flow levels during the summer months that are necessary for healthy fish and wildlife.
- In 2003, the Department of Ecology determined that the MWL would create problems in at least three basins in the Puget Sound area that support salmon populations.

¹ A million gallons is enough water to cover two and one-half football fields with one foot of water. A typical multi-person household uses around 300 gallons per day.

Waste Not, Want Not: A Tale of Two Cities

These results do not represent the only approach to meeting future water needs. As the contrasting experiences of Seattle and Spokane clearly illustrate, there are alternatives to simply giving away the bulk of the public's water.

- Over the past quarter century, the City of Seattle has grown from just under 1 million people to approximately 1.3 million. However, instead of a 30 percent increase in water usage, total usage is lower today than it was in 1975. This result has not occurred by accident. Due to the city's ongoing investments in conservation efforts – including rebates for efficient appliances, changes to the plumbing code, and pricing designed to discourage waste – both residential and commercial water use has steadily dropped. Indeed, Seattle and 17 other water utilities in the Puget Sound Area have created a successful partnership to implement a “1% Water Conservation Initiative,” designed to reduce water usage by 1% every year from 2000-2010. Current estimates indicate that Seattle will have sufficient water until 2060.²
- By way of comparison, while Seattle's 1.3 million customers use approximately 140 mgd, the City of Spokane's approximately 200,000 residents currently use 185 mgd. In other words, despite serving only 15% of Seattle's population, Spokane uses far more water. Compounding the problem, as noted, MWL 1338 allows Spokane to nearly double its usage to 348 mgd. The reason behind the discrepancy in overall water usage is clear when looking at each city's per capita water use (i.e., the amount of water each person uses). Since 1990, Seattle's per capita water use has declined from just over 120 gallons per day per person to less than 100. Spokane's annual water use is over 320 gallons per day per person, peaking in July and August at over 700 gallons.³

² “Even the Emerald City Must Learn to Conserve,” Seattle Post-Intelligencer, April 7, 2006. See also Regional 1% Water Conservation Program, 2004 annual report, http://www.savingwater.org/docs/water_conservation_report.pdf

³ Watershed Management Plan for WRIA 55 & 57, June 2005, http://www.spokanewatershed.org/wria_home.htm