

MUNICIPAL WATER LAW:

- **How we got there**
- **Background of the law**
- **Litigation**

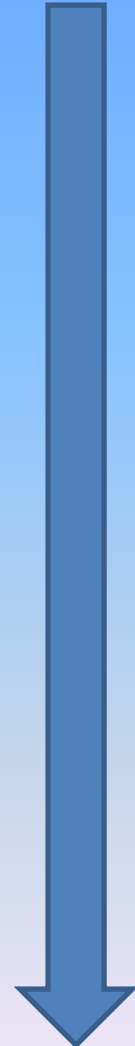
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Chronology of Municipal Water Litigation

Pumps & Pipes	-----	Pre-1998
George T	-----	1998
Buena case		June 18, 2001
MWL	-----	Sept. 9, 2003
Burlingame Filed	-----	Sept. 1, 2006
Lummi Filed	-----	Dec. 26, 2006
Case argued in King Cty Superior Court	-----	May 23, 2008
King Cty Superior Court decision (Judge Rogers)	-----	Jun 11, 2008
State appeals to State Sup Crt	-----	July 3, 2008
Supreme Court accepts appeal	-----	March 3, 2009
Supreme Court hears case	-----	Fall '09 or Winter '10
Supreme Court decides case	-----	Uncertain



Background for Muni Bill

- Water suppliers were looking for certainty in water supplies (inchoate water rights and place of use)
- Desire for more conservation (by e-groups)
- Links to local planning (GMA, W'shed, etc)
- See our web page for the documents:

http://www.ecy.wa.gov/programs/wr/rights/muni_wtr.html

Basic provisions of the MWL

- ◆ Applies to municipal water suppliers (defines)
- ◆ Clarifies provisions of the water code
- ◆ Water system service area and water right place of use
- ◆ Additional coordination (DOH, ECY, Local)
- ◆ “Pumps & pipes” certificates “in good standing”
- ◆ Water use efficiency/conservation rules (DOH)

LAWSUIT

- 2006--Environmental groups, individuals, Indian tribes file lawsuits against State in King County Superior Court challenging constitutionality of MWL – two cases consolidated
- WWUC, Cascade Water Alliance, WSU intervene on side of state
- Facial challenge to constitutionality – 8 issues

Plaintiffs allege violations of:

Separation of powers & substantive due process

- RCW 90.03.015 (3) & (4) - Definitions
- RCW 90.03.330(3) – ‘Good standing’

Substantive due process

- RCW 90.03.260(4) & (5) – Connections & population
- RCW 90.03.386(2) – Place of use via WSPs
- RCW 90.03.560 – Conforming non-muni to muni

Plaintiffs allege violations of:

Procedural due process

- RCW 90.03.260(4) & (5) – Connections & population
- RCW 90.0330(2) – Ecology restricted from revoking or diminishing water rights except in certain situations
- RCW 90.03.386(2) – Place of use via WSPs

SUPERIOR COURT DECISION

- June 11, 2008 -- King County Superior Court Issues Decision (Judge Rogers)
- Invalidates “good standing” provision for pumps & pipes certificates (RCW 90.03.330(3)) Result: back to pre-MWL
- Invalidates definitions of “municipal water supplier” and “municipal water supply purposes” (RCW 90.03.015(3) & (4)) Result: affects relinquishment risk and many MWL sections
- Upholds 5 other challenged provisions

SEPARATION OF POWERS

Court's Decision:

- Definitions violate separation of powers
 - Legislature attempted to overrule State Supreme Court decision in *Theodoratus*
 - Definitions apply retroactively in relinquishment context because relinquishment occurs upon non-use of water—not when relinquishment proceeding is brought

SUBSTANTIVE DUE PROCESS

Superior Court Decision:

- Definitions and Pumps & Pipes
 - Not decided because invalidated on separation of powers grounds
- Place of Use and Service Connection & Population Figures
 - No violation of substantive due process

PROCEDURAL DUE PROCESS

Superior Court Decision:

None of challenged provisions violate
procedural due process

Selected Impacts of the King County Superior Court Decision

- Definitions of “municipal water supplier” and “municipal water supply purposes” are gone for now (pending appeal outcome).
- Loss of “good standing” provision means we do not know the status of inchoate water
- Private water systems are not “municipal water suppliers”

STATUS

- All parties filed appeal and sought direct review by Washington Supreme Court
- Supreme Court accepted review
- Briefing has been completed
- Date for oral argument to be scheduled Fall 2009 or Winter 2010 term
- Decision could take another year

Web Information

WRP Municipal Water Law information:

<http://www.ecy.wa.gov/programs/wr/wrhome.html>

Includes:

1. The Municipal Water Law
2. Interpretive and Policy Statement
3. Law suit information
4. MOUs
5. And more

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http://www.gordonderr.com/index.php?option=com_content&task=view&id=172&Itemid=627

For More Information

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