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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOAN BURLINGAME, an individual; LEE)	
BERNHEISEL, an individual, SCOTT)	NO. 06-2-28667-7 SEA
CORNELIUS, an individual; PETER KNUTSON,)	
an individual; PUGET SOUND HARVESTERS;)	
WASHINGTON ENVIRONMENTAL)	COMPLAINT FOR DECLARATORY
COUNCIL; SIERRA CLUB; and THE CENTER)	AND INJUNCTIVE RELIEF
FOR ENVIRONMENTAL LAW AND POLICY,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF WASHINGTON, WASHINGTON)	
STATE DEPARTMENT OF ECOLOGY, and)	
WASHINGTON STATE DEPARTMENT OF)	
HEALTH,)	
)	
Defendants.)	
)	

Plaintiffs Joan Burlingame, Lee Bernheisel, Scott Cornelius, Peter Knutson, Puget Sound Harvesters, Washington Environmental Council, Sierra Club, and The Center for Environmental Law and Policy, by and through their undersigned counsel, upon knowledge with respect to their own acts and circumstances, and upon information and belief as to other matters, allege as follows:

1 INTRODUCTION

2 1. This lawsuit brings a facial challenge to the constitutionality of certain provisions
3 of the 2003 Municipal Water Law, Second Engrossed Second Substitute House Bill (SESSHB)
4 1338. The unconstitutional provisions of SESSHB 1338 retroactively expand some water rights
5 to the detriment of others. Plaintiffs seek a declaration that these provisions violate the Due
6 Process Clauses of the U.S. and Washington Constitutions and the constitutional separation of
7 powers.

8 2. Residents of Washington rely on their streams, rivers, and aquifers to sustain their
9 salmon runs, support irrigated agriculture, and provide water for their homes and industries. Yet
10 many watersheds in Washington are already over-appropriated. As of 1999, at least 16 of these
11 over-appropriated watersheds contained salmon-bearing streams. State-wide, the Department of
12 Ecology has by regulation closed hundreds of streams to new water rights.

13 3. On June 20, 2003 Governor Gary Locke signed into law SESSHB 1338, “An Act
14 Relating to Certainty and Flexibility of Municipal Water Rights and Efficient Use of Water.”
15 This act is also known as the Municipal Water Law.

16 4. For purposes of this case, the Municipal Water Law changes Washington water
17 law in three major respects. First, it defines “municipal water supplier” to include any private
18 developer with connections for fifteen or more homes. It also retroactively expands the water
19 rights of “municipal water suppliers” without considering the harm to rivers and streams and
20 other water users. Finally, the Municipal Water Law expands the place of use of the water rights
21 of municipal water suppliers.

22 5. These provisions violate the Washington and United States Constitutions. In
23 particular, by retroactively overruling the Washington Supreme Court’s decision in Department
24 of Ecology v. Theodoratus, 135 Wn.2d 582, 957 P.2d 1241 (1998), SESSHB 1338 violates the

1 separation of powers doctrine under the Washington Constitution. The Municipal Water Law
2 also violates both substantive and procedural due process by depriving junior water right holders
3 of their vested property interests without due process of law under both the Washington and U.S.
4 Constitutions.

5 6. The Municipal Water Law, by retroactively expanding certain water rights, will
6 aggravate water shortages. For example, it retroactively validates the “pumps and pipes”
7 certificates that the Department of Ecology erroneously granted to developers over several
8 decades. These certificates define the magnitude of a water right as the applicant’s system
9 capacity rather than as the amount of water put to beneficial use. Holders of these certificates
10 who did not previously use their entire system capacity will now be able to use more water than
11 they were entitled to use before the passage of the Municipal Water Law.

12 7. The enactment of the Municipal Water law poses a serious threat to the water
13 rights of junior appropriators, established instream flows, fisheries, and the environmental,
14 recreational, and aesthetic interests of the residents of the state. The plaintiffs therefore request a
15 judicial declaration that portions of the Municipal Water Law are unconstitutional and injunctive
16 relief from the harmful effects of the law.

17 PARTIES

18 Plaintiffs

19 8. Joan Burlingame is a rural property owner, taxpayer, and farmer who lives near
20 Ravensdale in King County. She has a well that she has used for stock-watering, a non-
21 commercial garden, and domestic uses for the last 25 years. During that time, development has
22 encroached upon her property and she has seen a drastic decline in the water available in her
23 well. Sometimes, her well goes dry. She can no longer irrigate her vegetable garden or fruit
24 trees with well water, and she often has insufficient water for cooking, laundry, and bathing.

1 Creeks near her property have suffered from diminished flows, impairing fish habitat and
2 instream values.

3 9. Lee Bernheisel is a taxpayer who owns property north of Carlton that borders on
4 1/4 mile of the Methow River. His property is downstream from the municipalities of Twisp and
5 Winthrop, both of which have pumps and pipes certificates from the Department of Ecology.
6 His property is also downstream from a substantial portion of the development that has occurred
7 and is continuing to occur in the Methow Valley. He has an interruptible water right that is
8 junior to the Twisp and Winthrop pumps and pipes certificates as well as to the water rights held
9 by major developers upstream of his property. Due to extensive water use in recent years, the
10 riparian zone adjacent to his property has become exposed and fish have been unable to spawn in
11 the river adjacent to his property.

12 10. Scott Cornelius is a taxpayer who resides in Pullman. He has a well that draws
13 from the same aquifer as at least two wells that belong to Washington State University (“WSU”).
14 WSU is attempting to consolidate several of its water rights. This consolidation will allow the
15 university to pump more water than it was entitled to withdraw before the passage of the MWL.
16 Among the projects that WSU has planned for its water is a new golf course. Water levels in the
17 aquifer shared by Mr. Cornelius and WSU have been declining for years. WSU’s expanded
18 water use will accelerate this decline, harming Mr. Cornelius and other users of the aquifer.

19 11. Peter Knutson is a taxpayer and a commercial fisherman who works out of
20 Fishermen’s Terminal in Seattle. He resides in Seattle. He has been a fisherman for more than
21 30 years and currently fishes in Puget Sound and off the coast of Alaska. He is an elected
22 commissioner of the Puget Sound Salmon Commission, representing 210 family fishing
23 businesses. Mr. Knutson is also President of the Puget Sound Harvesters.

1 12. The Puget Sound Harvesters (the “Harvesters”) is a non-profit corporation
2 registered in the state of Washington. The Harvesters represents the interests of the small-boat
3 gillnet fishermen who work in the waters of Puget Sound. It has more than 80 members. The
4 principal place of business of the Harvesters is in Seattle. The livelihoods of the Harvesters
5 depend on the existence of healthy fish populations.

6 13. The Washington Environmental Council (“WEC”) is a non-profit corporation
7 registered in the state of Washington. WEC is a statewide, non-profit, nonpartisan organization
8 devoted to environmental protection in the state of Washington. WEC has over 3,500 individual
9 members and over 50 affiliated organizations. WEC members and members of WEC affiliate
10 organizations engage in hiking, fishing, nature study, and other recreational activities, as well as
11 agriculture, aquaculture, and the domestic use of water, all of which are dependent on the sound
12 management of the water resources of the state. Since its founding in 1967, WEC has been
13 actively participating in water resources policy and management, serving on numerous state task
14 forces, advocating for its members’ and the public’s interests before administrative agencies,
15 commissions, the legislature, and the courts. WEC’s principal place of business is in Seattle.

16 14. The Sierra Club is a national environmental organization founded in 1892 and
17 devoted to the study and protection of the earth’s scenic and ecological resources – mountains,
18 wetlands, woodlands, wild shores and rivers, deserts, plains, and their wild flora and fauna.
19 Sierra Club has some 60 chapters in the United States and Canada, including the Cascade
20 Chapter and Northern Rockies Chapter in Washington, and has its principal place of business in
21 San Francisco, California. The Sierra Club’s 30,000 members in Washington swim, hike,
22 paddle, fish, and generally use and enjoy the many rivers and streams of Washington. Sierra
23 Club members also rely upon and utilize water resources in their homes, schools, and businesses
24

1 around the state.

2 15. The Center for Environmental Law and Policy (“CELP”) is a non-profit
3 corporation registered in the state of Washington. CELP’s members live, work, recreate, and use
4 waters in and along Washington’s lakes, rivers, and streams. CELP represents its members’ and
5 the public’s interests in decisions that affect water resources and takes action through research,
6 education, litigation, and the oversight of government activities to leave a legacy of clean,
7 flowing water in Washington for use and enjoyment by all. CELP’s principal place of business
8 is located in Seattle.

9 Defendants

10 16. Defendant State of Washington (“State”) enacted the Municipal Water Law.

11 17. Defendant Department of Ecology is an agency of the State that is charged with
12 implementing and administering the Washington Water Code, including the Municipal Water
13 Law.

14 18. Defendant Department of Health is an agency of the State that is responsible for
15 the approval of water system plans and small water system management programs.

16 JURISDICTION, VENUE, AND STANDING

17 19. This Court has jurisdiction over this action under RCW 2.08.010 (general equity
18 jurisdiction), RCW 4.92.010 (actions against state), RCW 7.24.010 (declaratory judgment), and
19 RCW 7.40.010 (injunctive relief).

20 20. Venue is proper in this Court pursuant to RCW 4.92.010(1) because plaintiffs
21 Joan Burlingame and Peter Knutson reside in King County and the principal places of business
22 of WEC, CELP, and the Harvesters are in King County.

23 21. The Washington Supreme Court has recognized that litigants can have standing to
24 challenge governmental acts based on their status as taxpayers. See, e.g., State ex rel. Boyles v.

1 Whatcom County Superior Court, 103 Wn.2d 610, 614, 694 P.2d 27 (1985).

2 22. The Court generally requires that the taxpayer first request action by the Attorney
3 General and that this request be denied before the taxpayer files suit. Id.

4 23. Plaintiffs Joan Burlingame, Lee Bernheisel, Peter Knutson, and Scott Cornelius,
5 as well as the members of plaintiffs Puget Sound Harvesters, WEC, Sierra Club, and CELP pay
6 some or all of the following taxes: state sales taxes, personal property taxes, real property taxes,
7 use taxes, and utility taxes. Plaintiffs WEC, Sierra Club, and CELP pay some or all of the
8 following taxes: sales taxes, business and occupation taxes, industrial insurance taxes, and
9 unemployment insurance taxes.

10 24. Plaintiffs have unique rights and interests that have been harmed by the Municipal
11 Water Law. For example, plaintiffs Joan Burlingame and Scott Cornelius are water right holders
12 who are harmed by the retroactive expansion of the senior rights of other water right holders.
13 Plaintiffs Peter Knutson and the Puget Sound Harvesters are harmed because the Municipal
14 Water Law will reduce the water available in streams, thereby harming salmon populations and
15 the plaintiffs' livelihoods as fishermen. Moreover, members of WEC, the Sierra Club, and the
16 Center have aesthetic, recreational, and fishing interests that will be harmed by the Municipal
17 Water Law.

18 25. The Department of Ecology and Department of Health are expending state funds
19 to implement the Municipal Water Law. These expenditures constitute a misuse of taxpayer
20 funds, given the unconstitutionality of the Municipal Water Law. Unless enjoined by this Court,
21 the Department of Ecology and Department of Health will continue to misuse taxpayer funds.
22 Their misuse of taxpayer funds is resulting, and will result, in actual and substantial injury to the
23 plaintiffs and to the public.

1 acquired.

2 31. When there is insufficient water to meet the needs of all users, the person who
3 first appropriated water from the source river or aquifer has priority, a scheme often dubbed
4 “first in time, first in right.” In the terminology of water law, the person who earlier gains a right
5 to use water has the “senior” right while the person who later acquires a right has the “junior”
6 right. The priority date of a water right is the date a person: (a) puts water to beneficial use (for
7 persons claiming water rights before 1917 and for “exempt” uses); or (b) files an application for
8 a water right with the Department of Ecology.

9 32. A water right can be lost through the failure to continue putting the water to
10 beneficial use. This concept is embodied in the related doctrines of “relinquishment” and
11 “abandonment.” These doctrines reflect a corollary of the requirement of beneficial use. When
12 water is no longer used for a beneficial purpose, the water right can be lost. “Abandonment” is a
13 common-law doctrine under which a water right is lost when a water right holder intentionally
14 fails to use the water for an extended period of time. “Relinquishment” is a related statutory
15 doctrine under which a water right is lost upon the voluntary failure to use a water right for five
16 years, even if there is no intent to abandon the right. Municipal water rights are exempt from
17 relinquishment, but not from abandonment.

18 The Supreme Court Ruling in Theodoratus

19 33. For many decades, the Department of Ecology issued water right certificates to
20 developers and municipalities that quantified the water right as the applicant’s system capacity
21 rather than as the amount of water actually used. These certificates were commonly referred to
22 as “pumps and pipes” certificates.

23 34. In 1998, the Washington Supreme Court, in the case of Department of Ecology v.
24

1 Theodoratus, 135 Wn.2d 582, 957 P.2d 1241 (1998), held that the water rights of developers
2 were limited to the amount of water actually put to beneficial use, and that the Department of
3 Ecology had acted ultra vires in issuing “pumps and pipes” certificates. The Court also held that
4 private developers were not municipalities for purposes of the Water Code.

5 The Municipal Water Law

6 35. The Washington state legislature passed SESSHB 1338, the Municipal Water
7 Law, on June 10, 2003. The Governor signed the bill into law on June 20, 2003. The bill
8 became effective on September 9, 2003.

9 36. Previously, in 1997, the legislature had passed a bill that contained provisions
10 similar to those in SESSHB 1338. Then-Governor Gary Locke vetoed those portions of the bill
11 that would have retroactively expanded municipal water rights, finding that it would give “an
12 unfair advantage to public water systems by creating great uncertainty in trying to determine
13 what water is available for other water rights, new applications, and the protection of instream
14 resources.” Veto Message, SB 5783, May 20, 1997.

15 37. The Municipal Water Law modified several provisions of the Water Code.

16 38. First, the Municipal Water Law includes non-municipal entities in its definition of
17 “municipal water suppliers.” The statute defines the terms “municipal water supplier” and
18 “municipal water supply purposes.” A “municipal water supplier” is defined as “an entity that
19 supplies water for municipal water supply purposes.” SESSHB 1338 § 1(3), codified at
20 RCW 90.03.015(3). “Municipal water supply purposes” is defined to include a beneficial use of
21 water “[f]or residential purposes through fifteen or more residential service connections or for
22 providing residential use of water for a nonresidential population that is, on average, at least
23 twenty-five people for at least sixty days a year.” SESSHB 1338 § 1(4), codified at

1 RCW 90.03.015(4). This aspect of the definition encompasses private water systems, including
2 those for private residential developments, hotels, trailer parks, and mobile home parks.

3 39. By defining “municipal water suppliers” to include private entities, the Municipal
4 Water Law retroactively expands the water rights of these entities at the expense of other water
5 right holders. The definitions in the Municipal Water Law allow private developers and other
6 non-municipalities to benefit from the retroactive expansions of municipal water rights described
7 below. They also allow such private entities to take advantage of the pre-existing exemption
8 from relinquishment granted to municipal water suppliers. See RCW 90.14.140(2)(d). Non-
9 municipal water right holders who fail, without sufficient cause, to put a water right to beneficial
10 use for a period of five successive years are deemed to have relinquished the unused portion of
11 the right to the State. RCW 90.14.130-180. The water then becomes available for junior
12 appropriators or instream flows. By conferring “municipal water supplier” status on developers,
13 the Municipal Water Law has retroactively exempted a particular class of private water right
14 holders from this general rule.

15 40. Second, the Municipal Water Law retroactively eliminates the beneficial use
16 requirement for water rights used for “municipal water supply purposes,” including those held by
17 private entities:

18 This subsection applies to the water right represented by a water right certificate
19 issued prior to September 9, 2003, for municipal water supply purposes as defined
20 in RCW 90.03.015 where the certificate was issued based on an administrative
21 policy for issuing such certificates once works for diverting or withdrawing and
distributing water for municipal supply purposes were constructed rather than
after the water had been placed to actual beneficial use. Such a water right is a
right in good standing.

22 SESSHB 1338 § 6(3), codified at RCW 90.03.330(3). The elimination of the beneficial use
23 requirement explicitly applies only retroactively. Section 6(4) makes this retroactivity even
24 more obvious, by requiring that after the effective date of the legislation, the Department of

1 Ecology may issue certificates only on the basis of actual beneficial use. SESSHB 1338 § 6(4),
2 codified at RCW 90.03.330(4).

3 41. Third, the Municipal Water Law expands the place of use of a municipal water
4 right from the area specified on the water right certificate to the service area described in a water
5 system plan or small water system management program. SESSHB 1338 § 5(2), codified at
6 RCW 90.03.386(2). Unlike RCW 90.03.380(1) and 90.44.100(2)(d), this provision does not
7 require that a change in the place of use be consistent with and avoid impairing existing water
8 rights. Nor does it take into account the possible effects of such a change on the public interest.
9 As a practical matter, making the place of use coextensive with the service area boundary will
10 result in greater demand for and use of water, which will, in turn, reduce the amount of water
11 available to junior appropriators.

12 CAUSES OF ACTION

13 42. Based on the foregoing allegations, plaintiffs assert the following causes of action
14 against defendants.

15 COUNT I : SECTIONS 1(3), 1(4), AND 6(3) 16 OF THE MUNICIPAL WATER LAW VIOLATE 17 THE SEPARATION OF POWERS

17 43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 40.

18 44. The doctrine of the separation of powers, although not specifically identified in
19 the Washington Constitution, is implicit in the tripartite form of the state government. The
20 Washington Supreme Court has recognized that the Washington Constitution incorporates the
21 separation of powers.

22 45. A statute that retroactively overrules a decision of the Washington Supreme Court
23 violates the constitutional separation of powers. Any other result would make the legislature a
24 court of last resort.

1 46. The definitions of “municipal water supplier” and “municipal water supply
2 purposes” in section 1(3)-1(4) of the Municipal Water Law, RCW 90.03.015(3)-(4), allow any
3 entities that supply water “[f]or residential purposes through fifteen or more residential service
4 connections or for providing residential use of water for a nonresidential population that is, on
5 average, at least twenty-five people for at least sixty days a year” to benefit from the exemption
6 from statutory relinquishment available to municipalities. These provisions retroactively change
7 the status of these rights.

8 47. Section 6(3) of the Municipal Water Law retroactively eliminates the beneficial
9 use requirement for water rights used for “municipal water supply purposes.”
10 RCW 90.03.330(3). Section 6(4) makes this retroactivity even more explicit by requiring that
11 after the effective date of the legislation the Department of Ecology may issue certificates only
12 on the basis of actual beneficial use. RCW 90.03.330(4).

13 48. By retroactively providing developers and other private entities with exemptions
14 from relinquishment and the beneficial use requirement rejected by the Washington Supreme
15 Court in Theodoratus, the legislature is attempting retroactively to overrule the Washington
16 Supreme Court’s holding and final decision.

17 49. Sections 1(3)-(4) and 6(3) of the Municipal Water Law therefore violate the
18 separation of powers doctrine embodied in the Washington Constitution.

19 COUNT II: SECTIONS 1(3), 1(4), 5(2), AND 6(3)
20 OF THE MUNICIPAL WATER LAW VIOLATE
21 SUBSTANTIVE DUE PROCESS

22 50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 48.

23 51. Article I, section 3, of the Washington State Constitution provides that “[n]o
24 person shall be deprived of life, liberty, or property, without due process of law.” The
25 Fourteenth Amendment of the United States Constitution states: “nor shall any State deprive any
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1 person of life, liberty, or property, without due process of law.”

2 52. A vested water right is private property subject to due process protections.

3 53. A law that retroactively impairs vested property rights violates due process.

4 54. Section 1(3)-(4) of the Municipal Water Law, RCW 90.03.015(3)-(4),
5 retroactively exempts certain private water right holders from relinquishment. These provisions
6 therefore effectively resurrect water rights that have already been relinquished to the state for
7 nonuse and that would otherwise be available for junior appropriators or instream flows. The
8 statute therefore retroactively impairs and diminishes all water rights junior to those resurrected.
9 This result is unconstitutional.

10 55. Section 6(3) of the Municipal Water Law, RCW 90.03.330(3), retroactively
11 expands the water rights of “municipal water suppliers” by eliminating the beneficial use
12 requirement for such rights and therefore perfecting the unused portions of such paper rights. It
13 correspondingly decreases the rights of junior holders. The statute, by retroactively impairing
14 the rights of junior water rights holders, violates due process.

15 56. Section 5(2) of the Municipal Water Law, RCW 90.03.386(2), expands the place
16 of use of a municipal water right from the area specified on the water right certificate to the
17 service area described in a water system plan. A municipality or developer’s expansion or
18 change of its place of use harms other water rights holders both by increasing the amount of
19 water that may be used and by changing the pattern of return flows. Moving water far from the
20 point of diversion can reduce the amount of water available for other users, including junior
21 water right holders. Unlike RCW 90.03.380(1) and 90.44.100(2)(d), the previously applicable
22 provisions, the Municipal Water Law does not require that a change in the place of use be
23 consistent with, and avoid impairing, existing water rights. By removing this constraint on
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1 changes in the place of use of a municipal water right, section 5(2) decreases the vested rights of
2 junior holders, and violates the due process clauses of the Washington and United States
3 Constitutions.

4 COUNT III: SECTIONS 1(3)-(4), 5(2), AND 6(3)
5 OF THE MUNICIPAL WATER LAW VIOLATE
6 PROCEDURAL DUE PROCESS

6 57. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55.

7 58. Article I, section 3, of the Washington State Constitution provides that “[n]o
8 person shall be deprived of life, liberty, or property, without due process of law.” The
9 Fourteenth Amendment of the United States Constitution states: “nor shall any State deprive any
10 person of life, liberty, or property, without due process of law.”

11 59. A vested water right is private property subject to due process protections.

12 60. Procedural due process requires that an individual be provided with notice and an
13 opportunity for a hearing before being deprived of a protected property interest.

14 61. The Municipal Water Law diminishes the water rights of junior holders by
15 operation of law, without providing them with any notice or opportunity for a hearing.

16 62. Prior to the Municipal Water Law, state law required a municipality or developer
17 or other private entity to apply to the Department of Ecology to obtain, expand the quantity of
18 water associated with, or change the place of use of, a water right.

19 63. The laws and standards governing change of use applications protect the interests
20 of other water right holders and instream flows. Specifically, changes in the place of use of a
21 water right are permitted only if “such change can be made without detriment or injury to
22 existing rights.” RCW 90.03.380(1); see also RCW 90.44.100.

23 64. If “municipal water suppliers” had not been granted retroactively expanded water
24 rights by the Municipal Water Law, they would have needed to apply for new water rights to

1 increase their water use. The Department of Ecology may grant water right applications only
2 when the appropriation “will not impair existing rights or be detrimental to the public welfare.”
3 RCW 90.03.290(3). The Department of Ecology must also consider whether granting the water
4 right would be in the public interest. In deciding whether granting a particular application is in
5 the public interest, the Department of Ecology must consider the effect of the appropriation on
6 instream flows. RCW 90.54.020. In particular, when an application that is related to a stream
7 for which minimum flows have been adopted, the permit must be conditioned to protect the
8 levels or flows. RCW 90.03.247.

9 65. Applicants for a water right or a change to a water right must publish a notice of
10 their application in a local newspaper. RCW 90.03.280; RCW 90.03.380(1). This notice gives
11 interested parties the right to protest the application and to participate in the decision making
12 process. A protest triggers the Department of Ecology’s duty to “thoroughly investigate” the
13 objection. RCW 90.03.470(11); WAC 508-12-170. Anyone harmed by the Department’s
14 approval of a water right application or water right change application may appeal that decision
15 to the Pollution Control Hearings Board. WAC 508-12-400.

16 66. The Municipal Water Law retroactively expands the water rights of municipalities
17 and developers by operation of law. The Municipal Water Law also allows municipalities and
18 developers to change the place of use of their water rights by obtaining the Department of
19 Health’s approval of a Water System Plan that defines a service area differently from the place of
20 use described in the applicant’s water right certificate.

21 67. Because of the reciprocal nature of water rights, the water rights of junior water
22 right holders are diminished by the expansion of the water rights of senior water right holders.

23 68. The Municipal Water Law provides junior water right holders with no notice or
24

1 opportunity to be heard regarding the expansion of the water rights of municipalities or
2 developers. The Municipal Water Law provides junior water right holders with no notice or
3 opportunity to be heard regarding the change in the place of use of the water rights of
4 municipalities or developers.

5 69. For example, following the enactment of the Municipal Water Law, the
6 Department of Ecology advised certain applicants that their pending water right change
7 applications were no longer necessary because the Municipal Water Law had carried out the
8 requested changes by operation of law.

9 70. By carrying out these changes without notice and an opportunity for a hearing,
10 such as was previously provided by the Water Code, the Municipal Water Law has deprived
11 junior water right holders of their vested rights without due process of law, in violation of the
12 due process clauses of the Washington and United States Constitutions.

13 RELIEF SOUGHT

14 71. Based on the foregoing, plaintiffs request the following relief from this court:

15 A. A declaration that sections 1(3), 1(4), and 6(3) of the Municipal Water Law
16 violate the separation of powers and are therefore invalid.

17 B. A declaration that sections 1(3), 1(4), 5(2), and 6(3) of the Municipal Water Law
18 violate substantive and procedural due process and are therefore invalid.

19 C. An injunction requiring the State of Washington and its agents and employees to
20 cease implementing or enforcing those provisions of the Municipal Water Law that the court
21 declares to be invalid.

22 D. An injunction requiring the Department of Ecology to notify all participants in
23 change of place of use proceedings pending when the Municipal Water Law was enacted, which
24 the Department of Ecology concluded were rendered moot because the Municipal Water Law

1 carried out these changes by operation of law, that those applications must now be reinstated if
2 the applicants are to change the place of use of their water rights.

3 E. An injunction requiring the Department of Health to notify any person who had a
4 water system plan or small water system management program approved since the enactment of
5 the Municipal Water Law that their water right certificate governs the place of use of their water
6 right.

7 F. An injunction prohibiting the Department of Health from approving water system
8 plans and small water system management programs that change the place of use of a water right
9 from the area described in the water right certificate.

10 G. An award of reasonable costs and other expenses associated with bringing this
11 action.

12 H. Such other and further relief that this Court deems to be just and appropriate.

13 Respectfully submitted this 1st day of September, 2006.

14
15 /s/ Shaun Goho
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