

Defending the Municipal Water Law

By Dean Boyer

Dozens of Marrowstone Island residents every week stop to fill water containers at a metered hydrant outside the Jefferson County Public Utility District office in Port Hadlock. One enterprising resident has started a cottage industry delivering water to Marrowstone residents. Using a truck with a 1000-gallon tank, he delivers water to residents who can't haul it for themselves. Meanwhile, the PUD is working to extend a pipeline to serve about 300 homes on the island.

With more than 100 wells on Marrowstone either dry or fouled by saltwater, the project has the backing of most island residents, the Jefferson County Board of Commissioners, all three of Jefferson County's state legislators, and the state Department of Ecology. Jefferson County is under a mandate from the Western Washington Growth Management Board to prevent further saltwater intrusion on Marrowstone Island.

The PUD was authorized to include Marrowstone Island in its Quimper Water System, using existing water rights, under the Municipal Water Law passed in 2003. But future projects in Jefferson County and elsewhere across the state to provide safe drinking water to rural communities could come to a halt if environmental groups are successful in overturning the law.

In September 2006, a coalition that includes the Washington Environmental Council, Sierra Club and the Center for Environmental Law and Policy filed a lawsuit against the state in King County Superior Court that challenges the three primary provisions of the Municipal Water Law, including the validity of some water rights, the definition of municipal water suppliers, and their ability to meet the needs of growing communities. In December, a coalition of tribes filed a similar lawsuit.

"The Municipal Water Law made the Marrowstone Island project possible," said Jefferson County PUD Commissioner Kelly Hays, who happens to live on the island. "Without the Municipal Water Law there was a question whether we could have provided water to island

When the Legislature passed the Municipal Water Law in 2003, it was hailed as a breakthrough for PUDs and other municipal water providers.



residents. It's really that simple."

When the Legislature passed the Municipal Water Law in 2003, it was hailed as a breakthrough for PUDs and other municipal water providers.

For a number of years, there had been disputes between municipal water providers and the state Department of Ecology over the nature and extent of municipal water rights.

One of the most significant disputes was over so-called "pumps and pipes" water right permits. For 40 years, the state issued water right certificates based on the capacity of a municipal water system once it was fully developed, not on the amount of water used. These undeveloped water rights allowed water systems to grow with their communities.

Then in the 1990s, the Department of Ecology changed its policy and began basing its calculation of water rights on actual usage. The issue came to a head in 1998 when the Washington Supreme Court, in a case involving a private developer, ruled that the "pumps and pipes" methodology was invalid.

The court expressly declined to apply its decision to municipal water providers. Nevertheless, the Department of Ecology began applying the court's ruling to all water right certificates, which put many municipal water rights in question.

To resolve the issue, the Legislature declared in the Municipal Water Law that pumps and pipes water rights certificates issued to municipal water providers prior to September 2003 were rights "in good standing." Any water rights issued after September 2003 could only be for the "actual beneficial use of water."

The Legislature also addressed two other concerns.

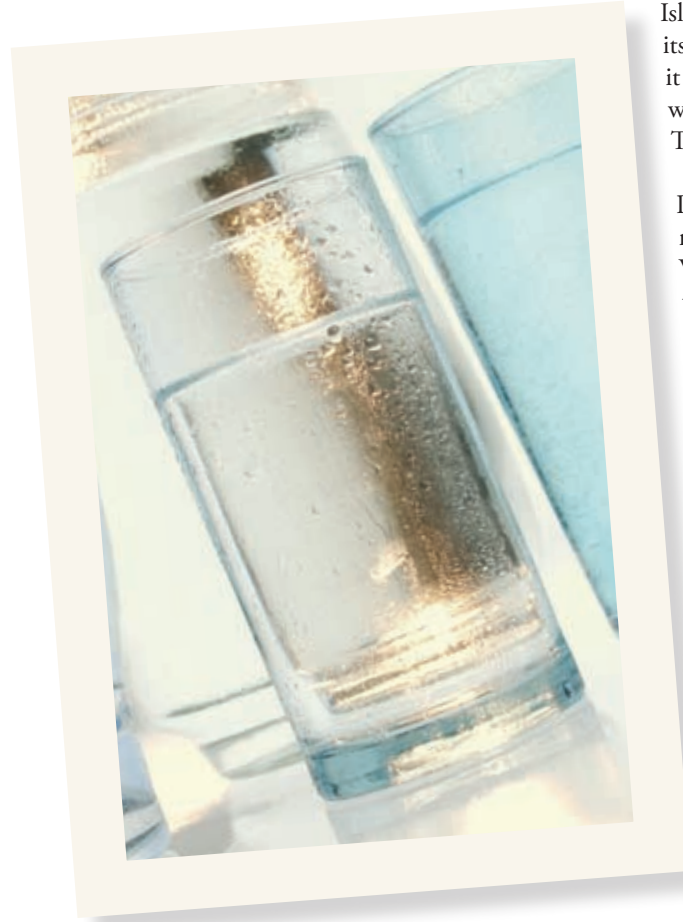
Over the years, the state had defined the area municipal water providers could serve in different ways, such as "service area," quarter sections, or the legal boundaries of the municipality. But, did the service area grow as the municipality grew, or was it fixed in time?

The Department of Ecology, relying on a 1997 Washington Supreme Court case involving the Okanogan County town of Twisp, took the position that municipal water providers must apply for a change to their water rights before they could expand their service area. This created additional uncertainty for municipal water systems and their communities.

The Municipal Water Law settled the question by establishing that a municipal

water system can provide water to a service area approved by the state Department of Health or a local legislative authority. The Legislature said municipal water providers, including public utility districts, did not have to apply to the Department of Ecology for a change in place of use. In return, however, municipal water providers were required to implement cost-effective water conservation efforts.

Lastly, the Municipal Water Law spelled out for the first time in statute a definition of "municipal water supplier."



According to the law, a municipal water supplier is any entity that provides water "for municipal water supply purposes," including nongovernmental water systems with at least 15 residential connections. This also meant that nongovernmental municipal water suppliers were protected from losing their water rights to relinquishment for nonuse, which was especially important to PUDs that were being asked to take over small, failing systems since it meant that those systems' water rights were secure.

"The Municipal Water Law was really important legislation for public utility districts and other municipal water providers," said John Kounts, water program director for the Washington Public Utility

Districts Association.

"Municipal water suppliers have a duty to provide safe, reliable drinking water to their communities, as well as be good stewards of the environment," Kounts added, "but prior to adoption of the Municipal Water Law they faced severe limitations and uncertainty in fulfilling that mandate. PUDs and other municipal water suppliers need clear statutory authority to acquire, maintain and use water rights to meet future needs."

For example, the Jefferson County PUD plans to serve Marrowstone Island with water from its Sparling well, which it acquired in a swap of water resources with Port Townsend.

The Kitsap County Public Utility District relied on the Municipal Water Law to pipe in water to homeowners near Lake Symington, where private wells were affecting lake levels and stream flows in Big Beef Creek.

Tacoma Water, which provides wholesale water to 14 utilities as well as serving Tacoma residents, is relying on the law to use undeveloped water rights from its South Tacoma well field to reduce the amount of water it draws from the Green River during the summer months.

In December, the Washington Water Utilities Council,

an association representing water systems serving 80 percent of the state's population, intervened in the lawsuit on behalf of the state to help defend the law. WPUDA, a member of the council, is also urging state legislators to let the lawsuit run its course and not act prematurely to change the law.

"We believe the Legislature acted appropriately in 2003," Kounts said. "Any effort by lawmakers to address the tribes' and environmental coalition's concerns now would be premature and could undermine key elements of the law just as it's beginning to produce real benefits for the state. It's too bad that some groups aren't willing to give the law a chance to work."

The lawsuit is set for trial in February 2008. 