
HOUSE BILL 1438

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Buys, Blake, Chandler, Warnick, Schmick, and Fagan

Read first time 01/28/13. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to de facto changes in water rights for irrigation
2 purposes that involved conversion to more efficient irrigation
3 technologies; amending RCW 90.03.380 and 90.03.380; adding a new
4 section to chapter 90.03 RCW; creating a new section; providing an
5 effective date; and providing an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that for certain crops
8 grown in Washington state, inefficient overhead irrigation technology
9 was replaced with microirrigation technology, and that this change
10 resulted in more efficient use of water and benefits to instream
11 resources. The legislature also finds that these beneficial water
12 right changes have been in place for over twenty years, resulting in
13 significant economic activity, job creation, and protection of
14 agricultural land from conversion to other uses. It is therefore the
15 intent of the legislature to protect these existing water uses by
16 establishing that the standards for a change of use application for
17 certain types of water rights are the laws in place at the time the
18 change of use was implemented.

1 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to read
2 as follows:

3 (1)(a) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used(~~(:—PROVIDED,)~~). However,
6 (~~That~~) the right may be transferred, consistent with this section and
7 section 4 of this act, to another or to others and become appurtenant
8 to any other land or place of use without loss of priority of right
9 theretofore established if such change can be made without detriment or
10 injury to existing rights. The point of diversion of water for
11 beneficial use or the purpose of use may be changed, if such change can
12 be made without detriment or injury to existing rights.

13 (b) A change in the place of use, point of diversion, and/or
14 purpose of use of a water right to enable irrigation of additional
15 acreage or the addition of new uses may be permitted if such change
16 results in no increase in the annual consumptive quantity of water used
17 under the water right. For purposes of this section, "annual
18 consumptive quantity" means, except as otherwise provided in (e) and
19 (f) of this subsection or section 4 of this act, the estimated or
20 actual annual amount of water diverted pursuant to the water right,
21 reduced by the estimated annual amount of return flows, averaged over
22 the two years of greatest use within the most recent five-year period
23 of continuous beneficial use of the water right.

24 (c) Before any transfer of such right to use water or change of the
25 point of diversion of water or change of purpose of use can be made,
26 any person having an interest in the transfer or change, shall file a
27 written application therefor with the department, and the application
28 shall not be granted until notice of the application is published as
29 provided in RCW 90.03.280.

30 (d) If it (~~shall~~) appears that such transfer or such change may
31 be made without injury or detriment to existing rights, the department
32 shall issue to the applicant a certificate in duplicate granting the
33 right for such transfer or for such change of point of diversion or of
34 use. The certificate so issued shall be filed and be made a record
35 with the department and the duplicate certificate issued to the
36 applicant may be filed with the county auditor in like manner and with
37 the same effect as provided in the original certificate or permit to
38 divert water.

1 (e) The time period that the water right was banked under RCW
2 90.92.070, in an approved local water plan created under RCW 90.92.090,
3 or the water right was subject to an agreement to not divert under RCW
4 90.92.050 will not be included in the most recent five-year period of
5 continuous beneficial use for the purpose of determining the annual
6 consumptive quantity under this section.

7 (f) If the water right has not been used during the previous five
8 years but the nonuse of which qualifies for one or more of the
9 statutory good causes or exceptions to relinquishment in RCW 90.14.140
10 and 90.44.520, the period of nonuse is not included in the most recent
11 five-year period of continuous beneficial use for purposes of
12 determining the annual consumptive quantity of water under this
13 section.

14 (2) If an application for change proposes to transfer water rights
15 from one irrigation district to another, the department shall, before
16 publication of notice, receive concurrence from each of the irrigation
17 districts that such transfer or change will not adversely affect the
18 ability to deliver water to other landowners or impair the financial
19 integrity of either of the districts.

20 (3) A change in place of use by an individual water user or users
21 of water provided by an irrigation district need only receive approval
22 for the change from the board of directors of the district if the use
23 of water continues within the irrigation district, and when water is
24 provided by an irrigation entity that is a member of a board of joint
25 control created under chapter 87.80 RCW, approval need only be received
26 from the board of joint control if the use of water continues within
27 the area of jurisdiction of the joint board and the change can be made
28 without detriment or injury to existing rights.

29 (4) This section shall not apply to trust water rights acquired by
30 the state through the funding of water conservation projects under
31 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

32 (5)(a) Pending applications for new water rights are not entitled
33 to protection from impairment, injury, or detriment when an application
34 relating to an existing surface or ground water right is considered.

35 (b) Applications relating to existing surface or ground water
36 rights may be processed and decisions on them rendered independently of
37 processing and rendering decisions on pending applications for new

1 water rights within the same source of supply without regard to the
2 date of filing of the pending applications for new water rights.

3 (c) Notwithstanding any other existing authority to process
4 applications, including but not limited to the authority to process
5 applications under WAC 173-152-050 as it existed on January 1, 2001, an
6 application relating to an existing surface or ground water right may
7 be processed ahead of a previously filed application relating to an
8 existing right when sufficient information for a decision on the
9 previously filed application is not available and the applicant for the
10 previously filed application is sent written notice that explains what
11 information is not available and informs the applicant that processing
12 of the next application will begin. The previously filed application
13 does not lose its priority date and if the information is provided by
14 the applicant within sixty days, the previously filed application shall
15 be processed at that time. This subsection (5)(c) does not affect any
16 other existing authority to process applications.

17 (d) Nothing in this subsection (5) is intended to stop the
18 processing of applications for new water rights.

19 (6) No applicant for a change, transfer, or amendment of a water
20 right may be required to give up any part of the applicant's valid
21 water right or claim to a state agency, the trust water rights program,
22 or to other persons as a condition of processing the application.

23 (7) In revising the provisions of this section and adding
24 provisions to this section by chapter 237, Laws of 2001, the
25 legislature does not intend to imply legislative approval or
26 disapproval of any existing administrative policy regarding, or any
27 existing administrative or judicial interpretation of, the provisions
28 of this section not expressly added or revised.

29 (8) The development and use of a small irrigation impoundment, as
30 defined in RCW 90.03.370(8), does not constitute a change or amendment
31 for the purposes of this section. The exemption expressly provided by
32 this subsection shall not be construed as requiring a change or
33 transfer of any existing water right to enable the holder of the right
34 to store water governed by the right.

35 (9) This section does not apply to a water right involved in an
36 approved local water plan created under RCW 90.92.090, a water right
37 that is subject to an agreement not to divert under RCW 90.92.050, or
38 a banked water right under RCW 90.92.070.

1 (10)(a) The department may only approve an application submitted
2 after July 22, 2011, for an interbasin water rights transfer after
3 providing notice electronically to the board of county commissioners in
4 the county of origin upon receipt of an application.

5 (b) For the purposes of this subsection:

6 (i) "Interbasin water rights transfer" means a transfer of a water
7 right for which the proposed point of diversion is in a different basin
8 than the proposed place of beneficial use.

9 (ii) "County of origin" means the county from which a water right
10 is transferred or proposed to be transferred.

11 (c) This subsection applies to counties located east of the crest
12 of the Cascade mountains.

13 **Sec. 3.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to read
14 as follows:

15 (1)(a) The right to the use of water which has been applied to a
16 beneficial use in the state shall be and remain appurtenant to the land
17 or place upon which the same is used(~~(+—PROVIDED,)~~). However,
18 (~~That~~) the right may be transferred, consistent with this section and
19 section 4 of this act, to another or to others and become appurtenant
20 to any other land or place of use without loss of priority of right
21 theretofore established if such change can be made without detriment or
22 injury to existing rights. The point of diversion of water for
23 beneficial use or the purpose of use may be changed, if such change can
24 be made without detriment or injury to existing rights.

25 (b) A change in the place of use, point of diversion, and/or
26 purpose of use of a water right to enable irrigation of additional
27 acreage or the addition of new uses may be permitted if such change
28 results in no increase in the annual consumptive quantity of water used
29 under the water right. For purposes of this section, "annual
30 consumptive quantity" means, except as otherwise provided in section 4
31 of this act, the estimated or actual annual amount of water diverted
32 pursuant to the water right, reduced by the estimated annual amount of
33 return flows, averaged over the two years of greatest use within the
34 most recent five-year period of continuous beneficial use of the water
35 right.

36 (c) Before any transfer of such right to use water or change of the
37 point of diversion of water or change of purpose of use can be made,

1 any person having an interest in the transfer or change, shall file a
2 written application therefor with the department, and the application
3 shall not be granted until notice of the application is published as
4 provided in RCW 90.03.280.

5 (d) If it (~~shall~~) appears that such transfer or such change may
6 be made without injury or detriment to existing rights, the department
7 shall issue to the applicant a certificate in duplicate granting the
8 right for such transfer or for such change of point of diversion or of
9 use. The certificate so issued shall be filed and be made a record
10 with the department and the duplicate certificate issued to the
11 applicant may be filed with the county auditor in like manner and with
12 the same effect as provided in the original certificate or permit to
13 divert water.

14 (2) If an application for change proposes to transfer water rights
15 from one irrigation district to another, the department shall, before
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19 integrity of either of the districts.

20 (3) A change in place of use by an individual water user or users
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26 from the board of joint control if the use of water continues within
27 the area of jurisdiction of the joint board and the change can be made
28 without detriment or injury to existing rights.

29 (4) This section shall not apply to trust water rights acquired by
30 the state through the funding of water conservation projects under
31 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

32 (5)(a) Pending applications for new water rights are not entitled
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35 (b) Applications relating to existing surface or ground water
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37 processing and rendering decisions on pending applications for new

1 water rights within the same source of supply without regard to the
2 date of filing of the pending applications for new water rights.

3 (c) Notwithstanding any other existing authority to process
4 applications, including but not limited to the authority to process
5 applications under WAC 173-152-050 as it existed on January 1, 2001, an
6 application relating to an existing surface or ground water right may
7 be processed ahead of a previously filed application relating to an
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11 information is not available and informs the applicant that processing
12 of the next application will begin. The previously filed application
13 does not lose its priority date and if the information is provided by
14 the applicant within sixty days, the previously filed application shall
15 be processed at that time. This subsection (5)(c) does not affect any
16 other existing authority to process applications.

17 (d) Nothing in this subsection (5) is intended to stop the
18 processing of applications for new water rights.

19 (6) No applicant for a change, transfer, or amendment of a water
20 right may be required to give up any part of the applicant's valid
21 water right or claim to a state agency, the trust water rights program,
22 or to other persons as a condition of processing the application.

23 (7) In revising the provisions of this section and adding
24 provisions to this section by chapter 237, Laws of 2001, the
25 legislature does not intend to imply legislative approval or
26 disapproval of any existing administrative policy regarding, or any
27 existing administrative or judicial interpretation of, the provisions
28 of this section not expressly added or revised.

29 (8) The development and use of a small irrigation impoundment, as
30 defined in RCW 90.03.370(8), does not constitute a change or amendment
31 for the purposes of this section. The exemption expressly provided by
32 this subsection shall not be construed as requiring a change or
33 transfer of any existing water right to enable the holder of the right
34 to store water governed by the right.

35 (9)(a) The department may only approve an application submitted
36 after June 30, 2019, for an interbasin water rights transfer after
37 providing notice electronically to the board of county commissioners in
38 the county of origin upon receipt of an application.

1 (b) For the purposes of this subsection:

2 (i) "Interbasin water rights transfer" means a transfer of a water
3 right for which the proposed point of diversion is in a different basin
4 than the proposed place of beneficial use.

5 (ii) "County of origin" means the county from which a water right
6 is transferred or proposed to be transferred.

7 (c) This subsection applies to counties located east of the crest
8 of the Cascade mountains.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
10 to read as follows:

11 (1) In an application for a change in the place of use, purpose of
12 use, or point of diversion under RCW 90.03.380, the department shall
13 review and issue its decision on the change application based on the
14 requirements of RCW 90.03.380 in existence at the time the change of
15 use occurred, if the following conditions are met:

16 (a) The applicant implemented the requested change prior to
17 submitting the change application to the department;

18 (b) The applicant converted to more efficient microirrigation
19 technology during the same time period that the requested change in use
20 was implemented; and

21 (c) The applicant has beneficially used the water right for
22 irrigation purposes using microirrigation technology since implementing
23 the change of use.

24 (2) All applications affected by this section must:

25 (a) Indicate the date or dates on which the actual changes in water
26 use occurred; and

27 (b) Identify the nature and extent of the changes, including any
28 improvements in water use efficiency or reductions in direct impact on
29 instream resources.

30 (3)(a) It is the responsibility of the applicant to provide
31 evidence of:

32 (i) Water use both before and after the de facto changes; and

33 (ii) The points of diversion or withdrawal and place of use both
34 before and after the de facto change occurred.

35 (b) Evidence that may be submitted for a change may include crop
36 receipts, seed receipts, harvest-related receipts, aerial and other

1 photographs showing land in agricultural production or showing
2 irrigation facilities, irrigation equipment receipts, metering records,
3 or any other form of data acceptable to the department.

4 (4) In determining the amount of water diverted and withdrawn and
5 accurately assessing the quantity of water actually applied to
6 beneficial use, the applicant may submit, and the department must
7 consider, information related to the amount of land physically
8 contacted by irrigation water and the type of irrigation, row spacing,
9 and other variables.

10 NEW SECTION. **Sec. 5.** Section 2 of this act expires June 30, 2019.

11 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect June 30,
12 2019.

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