
HOUSE BILL 2201

State of Washington

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By Representatives Chandler, Mastin, Mulliken, Honeyford, Robertson, Boldt and Goldsmith

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1 AN ACT Relating to water transfers and changes; amending RCW
2 90.03.380, 90.44.100, 90.03.290, and 90.44.445; and adding a new
3 section to chapter 90.03 RCW.

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

5 **Sec. 1.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
6 as follows:

7 (1) The right to the use of water which has been applied to a
8 beneficial use in the state shall be and remain appurtenant to the land
9 or place upon which the same is used: PROVIDED, HOWEVER, That (~~said~~)
10 the right may be transferred to another or to others and become
11 appurtenant to any other land or place of use without loss of priority
12 of right theretofore established if such change can be made without
13 detriment or injury to existing rights. The point of diversion of
14 water for beneficial use or the purpose of use may be changed, if such
15 change can be made without detriment or injury to existing rights.
16 Before any transfer of such right to use water or change of the point
17 of diversion of water or change of purpose of use can be made, any
18 person having an interest in the transfer or change, shall file a
19 written application therefor with the department, and (~~said~~) the

1 application shall not be granted until notice of ~~((said))~~ the
2 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If
3 it shall appear that such transfer or such change may be made without
4 injury or detriment to existing rights, the department shall issue to
5 the applicant a certificate in duplicate granting the right for such
6 transfer or for such change of point of diversion or of use. The
7 certificate so issued shall be filed and be made a record with the
8 department and the duplicate certificate issued to the applicant may be
9 filed with the county auditor in like manner and with the same effect
10 as provided in the original certificate or permit to divert water.

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

17 (3) A change in place of use by an individual water user or users
18 of water provided by an irrigation district need only receive approval
19 for the change from the board of directors of the district if the use
20 of water continues within the irrigation district. The board of
21 directors may approve such a change if the board determines that the
22 change: Will not adversely affect the district's ability to deliver
23 water to other landowners; will not require the construction by the
24 district of diversion or drainage facilities unless the board finds
25 that the construction by the district is in the interest of the
26 district; will not impair the financial or operational integrity of the
27 district; and is consistent with the contractual obligations of the
28 district.

29 (4) Subsections (1), (2), and (3) of this section do not apply to
30 a change or transfer governed by section 2 of this act.

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

34 (6) The department may not initiate relinquishment proceedings
35 under chapter 90.14 RCW regarding a water right for which an
36 application for a transfer or change is filed under this section during
37 the period beginning on the date the department receives the
38 application and ending two years after the date the department approves
39 or denies the application.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 (1) If a portion of the water governed by a water right is made
4 surplus to the beneficial uses exercised under the right through the
5 implementation of practices or technologies, including but not limited
6 to conveyance practices or technologies, which are more efficient or
7 more water use efficient than those under which the right was perfected
8 or through a change in the crops grown under the water right, the right
9 to use the surplus water may be changed as provided by this section.
10 This section applies only to a change of an agricultural use or portion
11 of an agricultural use of water to an agricultural use of water.

12 (2) The use within an irrigation district of water supplied by the
13 district and made surplus as provided in subsection (1) of this section
14 shall be regulated solely as provided by the board of directors of the
15 irrigation district except as follows: Such a use requires the
16 approval of the board of directors of the irrigation district or must
17 otherwise be authorized by the board; the board may approve or
18 authorize such a use only if the use does not impair the financial or
19 operational integrity of the district; and water made surplus through
20 a change in the crops grown with district-supplied water is not
21 available for use as a matter of right by the individual water user
22 making the change, but may be used by the board for the benefit of the
23 district generally. The district's board of directors may approve or
24 otherwise authorize under this subsection uses of such surplus water
25 that result in the total irrigated acreage within the district
26 exceeding the irrigated acreage recorded with the department for the
27 district's water right if the board notifies the department of the
28 change in the irrigated acreage within the district. Such a
29 notification provides a change in the district's water right and, upon
30 receiving the notification, the department shall revise its records for
31 the district's right to reflect the change.

32 (3) The right to use water made surplus as provided in subsection
33 (1) of this section but not supplied by an irrigation district may be
34 changed to use on other lands owned by the holder of the water right
35 that are contiguous to the lands upon which the use of the water was
36 authorized by the right before such a change. The holder of the water
37 right shall notify the department of such a change. The notification
38 provides a change in the holder's water right and, upon receiving the

1 notification, the department shall revise its records for the water
2 right to reflect the change.

3 (4) A change governed by this section shall be made without loss of
4 priority of the right.

5 (5) This section shall not be construed as authorizing the use of
6 a junior water right in a manner that impairs or interferes with the
7 use of a senior water right.

8 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
9 read as follows:

10 (1) After an application to, and upon the issuance by the
11 department of an amendment to the appropriate permit or certificate of
12 ground water right, the holder of a valid right to withdraw public
13 ground waters may, without losing his priority of right, construct
14 wells or other means of withdrawal at a new location in substitution
15 for or in addition to those at the original location, or he may change
16 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~
17 ~~such)).~~ An amendment shall be issued only after publication of notice
18 of the application and findings as prescribed in the case of an
19 original application. Such amendment shall be issued by the department
20 only on the conditions that: ~~((+1))~~ (a) The additional or substitute
21 well or wells shall tap the same body of public ground water as the
22 original well or wells; ~~((+2))~~ (b) use of the original well or wells
23 shall be discontinued upon construction of the substitute well or
24 wells; ~~((+3))~~ (c) the construction of an additional well or wells
25 shall not enlarge the right conveyed by the original permit or
26 certificate; and ~~((+4))~~ (d) other existing rights shall not be
27 impaired. The department may specify an approved manner of
28 construction and shall require a showing of compliance with the terms
29 of the amendment, as provided in RCW 90.44.080 in the case of an
30 original permit.

31 (2) This section does not apply to a change in use governed by
32 section 2 of this act.

33 (3) The department may not initiate relinquishment proceedings
34 under chapter 90.14 RCW regarding a water right for which an
35 application for a transfer or change is filed under this section during
36 the period beginning on the date the department receives the
37 application and ending two years after the date the department makes a
38 decision on the application.

1 **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
2 as follows:

3 When an application complying with the provisions of this chapter
4 and with the rules and regulations of the department has been filed,
5 the same shall be placed on record with the department, and it shall be
6 its duty to investigate the application, and determine what water, if
7 any, is available for appropriation, and find and determine to what
8 beneficial use or uses it can be applied. If it is proposed to
9 appropriate water for irrigation purposes, the department shall
10 investigate, determine and find what lands are capable of irrigation by
11 means of water found available for appropriation. If it is proposed to
12 appropriate water for the purpose of power development, the department
13 shall investigate, determine and find whether the proposed development
14 is likely to prove detrimental to the public interest, having in mind
15 the highest feasible use of the waters belonging to the public. If the
16 application does not contain, and the applicant does not promptly
17 furnish sufficient information on which to base such findings, the
18 department may issue a preliminary permit, for a period of not to
19 exceed three years, requiring the applicant to make such surveys,
20 investigations, studies, and progress reports, as in the opinion of the
21 department may be necessary. If the applicant fails to comply with the
22 conditions of the preliminary permit, it and the application or
23 applications on which it is based shall be automatically canceled and
24 the applicant so notified. If the holder of a preliminary permit
25 shall, before its expiration, file with the department a verified
26 report of expenditures made and work done under the preliminary permit,
27 which, in the opinion of the department, establishes the good faith,
28 intent and ability of the applicant to carry on the proposed
29 development, the preliminary permit may, with the approval of the
30 governor, be extended, but not to exceed a maximum period of five years
31 from the date of the issuance of the preliminary permit. The
32 department shall make and file as part of the record in the matter,
33 written findings of fact concerning all things investigated, and if it
34 shall find that there is water available for appropriation for a
35 beneficial use, and the appropriation thereof as proposed in the
36 application will not impair existing rights or be detrimental to the
37 public welfare, it shall issue a permit stating the amount of water to
38 which the applicant shall be entitled and the beneficial use or uses to
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to
2 such land as may be reclaimed thereby to the full extent of the soil
3 for agricultural purposes. But where there is no unappropriated water
4 in the proposed source of supply, or where the proposed use conflicts
5 with existing rights, or threatens to prove detrimental to the public
6 interest, having due regard to the highest feasible development of the
7 use of the waters belonging to the public, it shall be duty of the
8 department to reject such application and to refuse to issue the permit
9 asked for. If the permit is refused because of conflict with existing
10 rights and such applicant shall acquire same by purchase or
11 condemnation under RCW 90.03.040, the department may thereupon grant
12 such permit. Any application may be approved for a less amount of
13 water than that applied for, if there exists substantial reason
14 therefor, and in any event shall not be approved for more water than
15 can be applied to beneficial use for the purposes named in the
16 application. In determining whether or not a permit shall issue upon
17 any application, it shall be the duty of the department to investigate
18 all facts relevant and material to the application. After the
19 department approves said application in whole or in part and before any
20 permit shall be issued thereon to the applicant, such applicant shall
21 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
22 event a permit is issued by the department upon any application, it
23 shall be its duty to notify the director of fish and wildlife of such
24 issuance.

25 This section does not apply to changes made under section 2 of this
26 act or to applications for transfers or changes made under RCW
27 90.03.380 or 90.44.100.

28 **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
29 as follows:

30 In any acreage expansion program adopted by the department as an
31 element of a ground water management program, the authorization for a
32 water right certificate holder to participate in the program shall be
33 on an annual basis for the first two years. After the two-year period,
34 the department may authorize participation for ten-year periods. The
35 department may authorize participation for ten-year periods for
36 certificate holders who have already participated in an acreage
37 expansion program for two years. The department may require annual
38 certification that the certificate holder has complied with all

1 requirements of the program. The department may terminate the
2 authority of a certificate holder to participate in the program for one
3 calendar year if the certificate holder fails to comply with the
4 requirements of the program.

5 This section applies only in an area with a ground water area or
6 subarea management program in effect on the effective date of this
7 section. The provisions of section 2 of this act, RCW 90.03.380, and
8 90.44.100 apply to transfers, changes, and amendments to permits or
9 rights for the beneficial use of ground water in any other area.

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