

2 ESHB 2050 - S COMM AMD

3 By Committee on Agriculture & Environment

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 90.03.380 and 1996 c 320 s 19 are each amended to  
8 read as follows:

9 (1) The right to the use of water which has been applied to a  
10 beneficial use in the state shall be and remain appurtenant to the land  
11 or place upon which the same is used: PROVIDED, HOWEVER, That said  
12 right may be transferred to another or to others and become appurtenant  
13 to any other land or place of use without loss of priority of right  
14 theretofore established if such change can be made without detriment or  
15 injury to existing rights. The point of diversion of water for  
16 beneficial use or the purpose of use may be changed, if such change can  
17 be made without detriment or injury to existing rights. Before any  
18 transfer of such right to use water or change of the point of diversion  
19 of water or change of purpose of use can be made, any person having an  
20 interest in the transfer or change, shall file a written application  
21 therefor with the department, and said application shall not be granted  
22 until notice of said application shall be published as provided in RCW  
23 90.03.280. If it shall appear that such transfer or such change may be  
24 made without injury or detriment to existing rights, the department  
25 shall issue to the applicant a certificate in duplicate granting the  
26 right for such transfer or for such change of point of diversion or of  
27 use. The certificate so issued shall be filed and be made a record  
28 with the department and the duplicate certificate issued to the  
29 applicant may be filed with the county auditor in like manner and with  
30 the same effect as provided in the original certificate or permit to  
31 divert water.

32 (2) If an application for change proposes to transfer water rights  
33 from one irrigation district to another, the department shall, before  
34 publication of notice, receive concurrence from each of the irrigation  
35 districts that such transfer or change will not adversely affect the

1 ability to deliver water to other landowners or impair the financial  
2 integrity of either of the districts.

3 (3) A change in place of use by an individual water user or users  
4 of water provided by an irrigation district need only receive approval  
5 for the change from the board of directors of the district if the use  
6 of water continues within the irrigation district, and when water is  
7 provided by an irrigation entity that is a member of a board of joint  
8 control created under chapter 87.80 RCW, approval need only be received  
9 from the board of joint control if the use of water continues within  
10 the area of jurisdiction of the joint board and the change can be made  
11 without detriment or injury to existing rights.

12 (4) Any right represented by an application for a water right for  
13 which a permit for water use has not been issued by the time a transfer  
14 or change is approved under this section shall not be construed as  
15 being injured or detrimentally affected by the transfer or change.

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

19 **Sec. 2.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
20 read as follows:

21 After an application to, and upon the issuance by the department of  
22 an amendment to the appropriate permit or certificate of ground water  
23 right, the holder of a valid right to withdraw public ground waters  
24 may, without losing his priority of right, construct wells or other  
25 means of withdrawal at a new location in substitution for or in  
26 addition to those at the original location, or he may change the manner  
27 or the place of use of the water: PROVIDED, HOWEVER, That such  
28 amendment shall be issued only after publication of notice of the  
29 application and findings as prescribed in the case of an original  
30 application. Such amendment shall be issued by the department only on  
31 the conditions that: (1) The additional or substitute well or wells  
32 shall tap the same body of public ground water as the original well or  
33 wells; (2) use of the original well or wells shall be discontinued upon  
34 construction of the substitute well or wells; (3) the construction of  
35 an additional well or wells shall not enlarge the right conveyed by the  
36 original permit or certificate; and (4) other existing rights shall not  
37 be impaired. The department may specify an approved manner of  
38 construction and shall require a showing of compliance with the terms

1 of the amendment, as provided in RCW 90.44.080 in the case of an  
2 original permit.

3 Any right represented by an application for a water right for which  
4 a permit for water use has not been issued by the time an amendment is  
5 approved under this section shall not be construed as being impaired by  
6 the amendment.

7 **Sec. 3.** RCW 90.44.030 and 1945 c 263 s 2 are each amended to read  
8 as follows:

9 The rights to appropriate the surface waters of the state and the  
10 rights acquired by the appropriation and use of surface waters shall  
11 not be affected or impaired by any of the provisions of this  
12 supplementary chapter and, to the extent that any underground water is  
13 part of or tributary to the source of any surface stream or lake, or  
14 that the withdrawal of ground water may affect the flow of any spring,  
15 water course, lake, or other body of surface water, the right of an  
16 appropriation and owner of surface water shall be superior to any  
17 subsequent right hereby authorized to be acquired in or to ground  
18 water.

19 (2) Rights acquired by appropriation of surface waters are affected  
20 or impaired by a ground water withdrawal only if:

21 (a) After no more than six months pumping, the surface water will  
22 lie within the cone of depression of a well tapping an unconfined  
23 aquifer; or

24 (b) Withdrawal of ground water from a well tapping a confined  
25 aquifer will cause a measurable head reduction within fifty feet of the  
26 surface water body in question in the shallowest unconfined water table  
27 aquifer that underlies that surface water body; or

28 (c) Withdrawal of ground water will cause a measurable reduction in  
29 the flow or level of the surface water body.

30 (3) If any of the conditions in subsection (2) of this section  
31 occur or will occur, then withdrawal of ground water affects or impairs  
32 existing surface water rights, including instream flow appropriations  
33 adopted by regulation, that are not being satisfied during the period  
34 of the occurrence.

35 **Sec. 4.** RCW 90.44.035 and 1987 c 109 s 107 are each amended to  
36 read as follows:

37 For purposes of this chapter:

- 1 (1) "Department" means the department of ecology;
- 2 (2) "Director" means the director of ecology;
- 3 (3) "Ground waters" means all waters that exist beneath the land  
4 surface or beneath the bed of any stream, lake or reservoir, or other  
5 body of surface water within the boundaries of this state, whatever may  
6 be the geological formation or structure in which such water stands or  
7 flows, percolates or otherwise moves. There is a recognized  
8 distinction between natural ground water and artificially stored ground  
9 water;
- 10 (4) "Natural ground water" means water that exists in underground  
11 storage owing wholly to natural processes; ((and))
- 12 (5) "Artificially stored ground water" means water that is made  
13 available in underground storage artificially, either intentionally, or  
14 incidentally to irrigation and that otherwise would have been  
15 dissipated by natural waste;
- 16 (6) "Confined aquifer" means an aquifer in which ground water is  
17 under sufficient hydrostatic head to rise above the bottom of the  
18 overlying confining bed;
- 19 (7) "Confining bed" means a layer of low permeability material  
20 immediately overlying a confined aquifer; and
- 21 (8) "Measurable" means capable of being measured in the field with  
22 the use of equipment normally used by professionals for the measurement  
23 in question.

24 **Sec. 5.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to  
25 read as follows:

26 (1) No permit shall be granted for the development or withdrawal of  
27 public ground waters beyond the capacity of the underground bed or  
28 formation in the given basin, district, or locality to yield such water  
29 within a reasonable or feasible pumping lift in case of pumping  
30 developments, or within a reasonable or feasible reduction of pressure  
31 in the case of artesian developments. The department shall have the  
32 power to determine whether the granting of any such permit will injure  
33 or damage any vested or existing right or rights under prior permits  
34 and may in addition to the records of the department, require further  
35 evidence, proof, and testimony before granting or denying any such  
36 permits.

37 (2) No permit for the development or withdrawal of public ground  
38 waters may be denied or conditioned due to injury to, impairment of, or

1 conflict with an existing surface water right unless the ground water  
2 withdrawal in question will impair the surface water right pursuant to  
3 RCW 90.44.030(2): PROVIDED, That this section does not affect the  
4 ability of the department to limit or restrict future ground water  
5 appropriations by adopting rules after following the procedures of RCW  
6 90.44.180 or 90.44.400 through 90.44.420 or chapter 90.54 RCW.

7 (3) The standards governing impairment of existing surface water  
8 rights by applications to appropriate public ground water in RCW  
9 90.44.030(2), this subsection, and subsection (2) of this section apply  
10 only to the determinations to be made by the department in ruling upon  
11 such applications, and reflect the uncertainties inherent in making  
12 tentative determinations regarding future impacts of withdrawing ground  
13 water. Any person claiming that a senior water right is injured by one  
14 or more junior water rights may file an action to enjoin the junior  
15 water rights in the superior court of the county where the claimed  
16 senior water right is located. The superior court shall hear such  
17 action de novo, and if it finds by a preponderance of the evidence that  
18 one or more junior water rights is causing or contributing to the  
19 injury of a senior water right, the court may enjoin use of the junior  
20 water rights in reverse order of priority in the manner it deems  
21 necessary to protect the senior water right. This section does not  
22 apply where the claimed senior water right consists of a minimum flow  
23 or level of the closure of a surface water body.

24 NEW SECTION. Sec. 6. A new section is added to chapter 90.03 RCW  
25 to read as follows:

26 (1) The existence of hydraulic continuity between ground water and  
27 a surface body of water does not, in itself, constitute the impairment  
28 of an existing water right in the surface water body by a proposed  
29 permit for a ground water right or an amendment to a ground water  
30 right.

31 (2) In making a determination as to whether an application to  
32 appropriate public water will impair existing rights the department  
33 shall take into consideration:

34 (a) The availability of water and the effect of granting a water  
35 right permit, transfer, change, or amendment are those that exist with  
36 the incorporation of the effects of any offset to be provided by the  
37 applicant under RCW 90.03.255 or 90.44.055 or any other water supply  
38 augmentation or mitigation to be provided by the applicant as part of

1 his or her application for a water right permit, transfer, change, or  
2 amendment;

3 (b) Seasonal variations in water supply and in the recharge of  
4 surface and ground water bodies; and

5 (c) The provisions of RCW 90.44.030.

6 (3) The rule of impairment provided by RCW 90.44.030 is provided  
7 for water allocation decisions made by the department and is provided  
8 to adjust for the uncertainty that is inherent in evaluating the  
9 effects of proposed ground water withdrawals on surface water bodies.  
10 It does not provide a standard for reviewing any claim made by a person  
11 with a senior water right in superior court or in an appeal of a  
12 superior court decision that the person's senior water right is  
13 impaired or injured by the use of any junior water right or that the  
14 use of a junior water right conflicts with or is detrimental to the use  
15 of the person's senior water right.

16 NEW SECTION. **Sec. 7.** Any person whose application to appropriate  
17 public ground water was denied by the department of ecology between  
18 November 1, 1995, and the effective date of this section, when one of  
19 the grounds for denial was that the proposed ground water withdrawal  
20 would impair, or conflict with, surface water closures or surface water  
21 rights including minimum flows, may have his or her application  
22 reconsidered in accordance with this section. Any such person desiring  
23 reconsideration shall resubmit his or her application to the department  
24 of ecology within thirty days of the effective date of this section.  
25 The department of ecology shall accord any such resubmitted application  
26 its original priority date and shall reconsider the application on a  
27 priority basis, applying the standards of this act. The decision of  
28 the department of ecology may be appealed in the manner provided by law  
29 for appeals of decisions on applications to appropriate public water."

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33 On page 1, line 2 of the title, after "uses;" strike the remainder  
34 of the title and insert "amending RCW 90.03.380, 90.44.100, 90.44.030,

1 90.44.035, and 90.44.070; adding a new section to chapter 90.03 RCW;  
2 and creating a new section."

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