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SENATE BILL 6019

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State of Washington

57th Legislature

2001 Regular Session

By Senators McDonald, Jacobsen, Prentice and Morton

Read first time 02/14/2001. Referred to Committee on Environment,  
Energy & Water.

1 AN ACT Relating to applications for diversion of water for  
2 municipal purposes; and amending RCW 90.03.290.

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

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

6 When an application complying with the provisions of this chapter  
7 and with the rules and regulations of the department has been filed,  
8 the same shall be placed on record with the department, and it shall be  
9 its duty to investigate the application, and determine what water, if  
10 any, is available for appropriation, and find and determine to what  
11 beneficial use or uses it can be applied. If it is proposed to  
12 appropriate water for irrigation purposes, the department shall  
13 investigate, determine and find what lands are capable of irrigation by  
14 means of water found available for appropriation. If it is proposed to  
15 appropriate water for the purpose of power development, the department  
16 shall investigate, determine and find whether the proposed development  
17 is likely to prove detrimental to the public interest, having in mind  
18 the highest feasible use of the waters belonging to the public. If the  
19 application does not contain, and the applicant does not promptly

1 furnish sufficient information on which to base such findings, the  
2 department may issue a preliminary permit, for a period of not to  
3 exceed three years, requiring the applicant to make such surveys,  
4 investigations, studies, and progress reports, as in the opinion of the  
5 department may be necessary. If the applicant fails to comply with the  
6 conditions of the preliminary permit, it and the application or  
7 applications on which it is based shall be automatically canceled and  
8 the applicant so notified. If the holder of a preliminary permit  
9 shall, before its expiration, file with the department a verified  
10 report of expenditures made and work done under the preliminary permit,  
11 which, in the opinion of the department, establishes the good faith,  
12 intent and ability of the applicant to carry on the proposed  
13 development, the preliminary permit may, with the approval of the  
14 governor, be extended, but not to exceed a maximum period of five years  
15 from the date of the issuance of the preliminary permit. The  
16 department shall make and file as part of the record in the matter,  
17 written findings of fact concerning all things investigated, and if it  
18 shall find that there is water available for appropriation for a  
19 beneficial use, and the appropriation thereof as proposed in the  
20 application will not impair existing rights or be detrimental to the  
21 public welfare, it shall issue a permit stating the amount of water to  
22 which the applicant shall be entitled and the beneficial use or uses to  
23 which it may be applied: PROVIDED, That where the water applied for is  
24 to be used for irrigation purposes, it shall become appurtenant only to  
25 such land as may be reclaimed thereby to the full extent of the soil  
26 for agricultural purposes. But where there is no unappropriated water  
27 in the proposed source of supply, or where the proposed use conflicts  
28 with existing rights, or threatens to prove detrimental to the public  
29 interest, having due regard to the highest feasible development of the  
30 use of the waters belonging to the public, it shall be duty of the  
31 department to reject such application and to refuse to issue the permit  
32 asked for. If the permit is refused because of conflict with existing  
33 rights and such applicant shall acquire same by purchase or  
34 condemnation under RCW 90.03.040, the department may thereupon grant  
35 such permit. Any application may be approved for a less amount of  
36 water than that applied for, if there exists substantial reason  
37 therefor, and in any event shall not be approved for more water than  
38 can be applied to beneficial use for the purposes named in the  
39 application. In determining whether or not a permit shall issue upon

1 any application, it shall be the duty of the department to investigate  
2 all facts relevant and material to the application. If the application  
3 proposes to divert water for municipal purposes and satisfies the  
4 following conditions, the department shall presumptively find that  
5 water is available for appropriation and that the application will not  
6 impair existing rights or be detrimental to the public welfare and  
7 shall issue a permit: (1) The application demonstrates that the  
8 diversion is made within one mile upstream from the point at which  
9 fresh water begins to mix with salt water, or the diversion is from a  
10 water body impounded behind an outlet control facility which is within  
11 one mile upstream of the point at which fresh water begins to mix with  
12 salt water; (2) the application demonstrates that the diversion is  
13 downstream of the point of diversion of any existing water rights; and  
14 (3) the application demonstrates that the diversion will at no time  
15 decrease flows below minimum instream flows established by rule. After  
16 the department approves said application in whole or in part and before  
17 any permit shall be issued thereon to the applicant, such applicant  
18 shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in  
19 the event a permit is issued by the department upon any application, it  
20 shall be its duty to notify the director of fish and wildlife of such  
21 issuance.

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