

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5575

Chapter 329, Laws of 2003

58th Legislature
2003 Regular Session

SMALL IRRIGATION IMPOUNDMENTS

EFFECTIVE DATE: 7/27/03

Passed by the Senate April 22, 2003
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 18, 2003
YEAS 98 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5575 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 16, 2003 - 3:42 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5575

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Parlette, Morton, Doumit, Honeyford and Hale)

READ FIRST TIME 02/14/03.

1 AN ACT Relating to small irrigation impoundments; and amending RCW
2 90.03.370, 90.03.380, and 90.44.100.

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

4 **Sec. 1.** RCW 90.03.370 and 2002 c 329 s 10 are each amended to read
5 as follows:

6 (1)(a) All applications for reservoir permits are subject to the
7 provisions of RCW 90.03.250 through 90.03.320. But the party or
8 parties proposing to apply to a beneficial use the water stored in any
9 such reservoir shall also file an application for a permit, to be known
10 as the secondary permit, which shall be in compliance with the
11 provisions of RCW 90.03.250 through 90.03.320. Such secondary
12 application shall refer to such reservoir as its source of water supply
13 and shall show documentary evidence that an agreement has been entered
14 into with the owners of the reservoir for a permanent and sufficient
15 interest in said reservoir to impound enough water for the purposes set
16 forth in said application. When the beneficial use has been completed
17 and perfected under the secondary permit, the department shall take the
18 proof of the water users under such permit and the final certificate of
19 appropriation shall refer to both the ditch and works described in the

1 secondary permit and the reservoir described in the primary permit.
2 The department may accept for processing a single application form
3 covering both a proposed reservoir and a proposed secondary permit or
4 permits for use of water from that reservoir.

5 (b) The department shall expedite processing applications for the
6 following types of storage proposals:

7 (i) Development of storage facilities that will not require a new
8 water right for diversion or withdrawal of the water to be stored;

9 (ii) Adding or changing one or more purposes of use of stored
10 water;

11 (iii) Adding to the storage capacity of an existing storage
12 facility; and

13 (iv) Applications for secondary permits to secure use from existing
14 storage facilities.

15 (c) A secondary permit for the beneficial use of water shall not be
16 required for use of water stored in a reservoir where the water right
17 for the source of the stored water authorizes the beneficial use.

18 (2)(a) For the purposes of this section, "reservoir" includes, in
19 addition to any surface reservoir, any naturally occurring underground
20 geological formation where water is collected and stored for subsequent
21 use as part of an underground artificial storage and recovery project.
22 To qualify for issuance of a reservoir permit an underground geological
23 formation must meet standards for review and mitigation of adverse
24 impacts identified, for the following issues:

25 (i) Aquifer vulnerability and hydraulic continuity;

26 (ii) Potential impairment of existing water rights;

27 (iii) Geotechnical impacts and aquifer boundaries and
28 characteristics;

29 (iv) Chemical compatibility of surface waters and ground water;

30 (v) Recharge and recovery treatment requirements;

31 (vi) System operation;

32 (vii) Water rights and ownership of water stored for recovery; and

33 (viii) Environmental impacts.

34 (b) Standards for review and standards for mitigation of adverse
35 impacts for an underground artificial storage and recovery project
36 shall be established by the department by rule. Notwithstanding the
37 provisions of RCW 90.03.250 through 90.03.320, analysis of each
38 underground artificial storage and recovery project and each

1 underground geological formation for which an applicant seeks the
2 status of a reservoir shall be through applicant-initiated studies
3 reviewed by the department.

4 (3) For the purposes of this section, "underground artificial
5 storage and recovery project" means any project in which it is intended
6 to artificially store water in the ground through injection, surface
7 spreading and infiltration, or other department-approved method, and to
8 make subsequent use of the stored water. However, (a) this subsection
9 does not apply to irrigation return flow, or to operational and seepage
10 losses that occur during the irrigation of land, or to water that is
11 artificially stored due to the construction, operation, or maintenance
12 of an irrigation district project, or to projects involving water
13 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130
14 applies to those instances of claimed artificial recharge occurring due
15 to the construction, operation, or maintenance of an irrigation
16 district project or operational and seepage losses that occur during
17 the irrigation of land, as well as other forms of claimed artificial
18 recharge already existing at the time a ground water subarea is
19 established.

20 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of
21 existing law governing issuance of permits to appropriate or withdraw
22 the waters of the state.

23 (5) The department shall report to the legislature by December 31,
24 2001, on the standards for review and standards for mitigation
25 developed under subsection (3) of this section and on the status of any
26 applications that have been filed with the department for underground
27 artificial storage and recovery projects by that date.

28 (6) Where needed to ensure that existing storage capacity is
29 effectively and efficiently used to meet multiple purposes, the
30 department may authorize reservoirs to be filled more than once per
31 year or more than once per season of use.

32 (7) This section does not apply to facilities to recapture and
33 reuse return flow from irrigation operations serving a single farm
34 under an existing water right as long as the acreage irrigated is not
35 increased beyond the acreage allowed to be irrigated under the water
36 right.

37 (8) In addition to the facilities exempted under subsection (7) of
38 this section, this section does not apply to small irrigation

1 impoundments. For purposes of this section, "small irrigation
2 impoundments" means lined surface storage ponds less than ten acre feet
3 in volume used to impound irrigation water under an existing water
4 right where use of the impoundment: (a)(i) Facilitates efficient use
5 of water; or (ii) promotes compliance with an approved recovery plan
6 for endangered or threatened species; and (b) does not expand the
7 number of acres irrigated or the annual consumptive quantity of water
8 used. Such ponds must be lined unless a licensed engineer determines
9 that a liner is not needed to retain water in the pond and to prevent
10 ground water contamination. Although it may also be composed of other
11 materials, a properly maintained liner may be composed of bentonite.
12 Water remaining in a small irrigation impoundment at the end of an
13 irrigation season may be carried over for use in the next season.
14 However, the limitations of this subsection (8) apply. Development and
15 use of a small irrigation impoundment does not constitute a change or
16 amendment for purposes of RCW 90.03.380 or 90.44.055.

17 **Sec. 2.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
18 as follows:

19 (1) The right to the use of water which has been applied to a
20 beneficial use in the state shall be and remain appurtenant to the land
21 or place upon which the same is used: PROVIDED, HOWEVER, That the
22 right may be transferred to another or to others and become appurtenant
23 to any other land or place of use without loss of priority of right
24 theretofore established if such change can be made without detriment or
25 injury to existing rights. The point of diversion of water for
26 beneficial use or the purpose of use may be changed, if such change can
27 be made without detriment or injury to existing rights. A change in
28 the place of use, point of diversion, and/or purpose of use of a water
29 right to enable irrigation of additional acreage or the addition of new
30 uses may be permitted if such change results in no increase in the
31 annual consumptive quantity of water used under the water right. For
32 purposes of this section, "annual consumptive quantity" means the
33 estimated or actual annual amount of water diverted pursuant to the
34 water right, reduced by the estimated annual amount of return flows,
35 averaged over the two years of greatest use within the most recent
36 five-year period of continuous beneficial use of the water right.
37 Before any transfer of such right to use water or change of the point

1 of diversion of water or change of purpose of use can be made, any
2 person having an interest in the transfer or change, shall file a
3 written application therefor with the department, and the application
4 shall not be granted until notice of the application is published as
5 provided in RCW 90.03.280. If it shall appear that such transfer or
6 such change may be made without injury or detriment to existing rights,
7 the department shall issue to the applicant a certificate in duplicate
8 granting the right for such transfer or for such change of point of
9 diversion or of use. The certificate so issued shall be filed and be
10 made a record with the department and the duplicate certificate issued
11 to the applicant may be filed with the county auditor in like manner
12 and with the same effect as provided in the original certificate or
13 permit to 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
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 **Sec. 3.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
36 as follows:

37 (1) After an application to, and upon the issuance by the

1 department of an amendment to the appropriate permit or certificate of
2 ground water right, the holder of a valid right to withdraw public
3 ground waters may, without losing the holder's priority of right,
4 construct wells or other means of withdrawal at a new location in
5 substitution for or in addition to those at the original location, or
6 the holder may change the manner or the place of use of the water.

7 (2) An amendment to construct replacement or a new additional well
8 or wells at a location outside of the location of the original well or
9 wells or to change the manner or place of use of the water shall be
10 issued only after publication of notice of the application and findings
11 as prescribed in the case of an original application. Such amendment
12 shall be issued by the department only on the conditions that: (a) The
13 additional or replacement well or wells shall tap the same body of
14 public ground water as the original well or wells; (b) where a
15 replacement well or wells is approved, the use of the original well or
16 wells shall be discontinued and the original well or wells shall be
17 properly decommissioned as required under chapter 18.104 RCW; (c) where
18 an additional well or wells is constructed, the original well or wells
19 may continue to be used, but the combined total withdrawal from the
20 original and additional well or wells shall not enlarge the right
21 conveyed by the original permit or certificate; and (d) other existing
22 rights shall not be impaired. The department may specify an approved
23 manner of construction and shall require a showing of compliance with
24 the terms of the amendment, as provided in RCW 90.44.080 in the case of
25 an original permit.

26 (3) The construction of a replacement or new additional well or
27 wells at the location of the original well or wells shall be allowed
28 without application to the department for an amendment. However, the
29 following apply to such a replacement or new additional well: (a) The
30 well shall tap the same body of public ground water as the original
31 well or wells; (b) if a replacement well is constructed, the use of the
32 original well or wells shall be discontinued and the original well or
33 wells shall be properly decommissioned as required under chapter 18.104
34 RCW; (c) if a new additional well is constructed, the original well or
35 wells may continue to be used, but the combined total withdrawal from
36 the original and additional well or wells shall not enlarge the right
37 conveyed by the original water use permit or certificate; (d) the
38 construction and use of the well shall not interfere with or impair

1 water rights with an earlier date of priority than the water right or
2 rights for the original well or wells; (e) the replacement or
3 additional well shall be located no closer than the original well to a
4 well it might interfere with; (f) the department may specify an
5 approved manner of construction of the well; and (g) the department
6 shall require a showing of compliance with the conditions of this
7 subsection (3).

8 (4) As used in this section, the "location of the original well or
9 wells" is the area described as the point of withdrawal in the original
10 public notice published for the application for the water right for the
11 well.

12 (5) The development and use of a small irrigation impoundment, as
13 defined in RCW 90.03.370(8), does not constitute a change or amendment
14 for the purposes of this section. The exemption expressly provided by
15 this subsection shall not be construed as requiring an amendment of any
16 existing water right to enable the holder of the right to store water
17 governed by the right.

Passed by the Senate April 22, 2003.

Passed by the House April 18, 2003.

Approved by the Governor May 16, 2003.

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