

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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