
HOUSE BILL 1957

State of Washington**56th Legislature****1999 Regular Session**

By Representatives G. Chandler, Linville, Mastin, Reardon, Sump, Schoesler and Erickson

Read first time 02/11/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water right transfers, changes, and amendments;
2 amending RCW 90.03.290, 90.03.380, 90.03.390, 90.44.100, 90.80.010,
3 90.80.040, and 90.80.120; and adding a new section to chapter 90.03
4 RCW.

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

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

8 The department is authorized to process and render decisions on
9 applications for change or transfer under this chapter and amendments
10 of ground water rights under chapter 90.44 RCW as a matter of higher
11 priority than processing and rendering decisions on applications for
12 new water rights. Any application for a new water right for which a
13 permit decision has not been made by the department at the time a
14 transfer, change, or amendment is approved shall not be considered an
15 existing water right subject to analysis as to whether the application
16 may be injured, impaired, or detrimentally affected by the transfer or
17 change.

1 **Sec. 2.** 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 transfers, changes, or amendments to
26 existing water rights made under RCW 90.03.380, 90.03.390, or
27 90.44.100.

28 **Sec. 3.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
29 read as follows:

30 (1) The right to the use of water which has been applied to a
31 beneficial use in the state shall be and remain appurtenant to the land
32 or place upon which the same is used: PROVIDED, HOWEVER, That the
33 right may be transferred to another or to others and become appurtenant
34 to any other land or place of use without loss of priority of right
35 theretofore established if such change can be made without detriment or
36 injury to existing rights. The point of diversion of water for
37 beneficial use or the purpose of use may be changed, if such change can
38 be made without detriment or injury to existing rights. A change in

1 the place of use, point of diversion, and/or purpose of use of a water
2 right to enable irrigation of additional acreage or the addition of new
3 uses may be permitted if such change results in no increase in the
4 annual consumptive quantity of water used under the water right. For
5 purposes of this section, "annual consumptive quantity" means the
6 estimated or actual annual amount of water diverted pursuant to the
7 water right, reduced by the estimated annual amount of return flows,
8 averaged over the most recent five-year period of continuous beneficial
9 use of the water right. Before any transfer of such right to use water
10 or change of the point of diversion of water or change of purpose of
11 use can be made, any person having an interest in the transfer or
12 change, shall file a written application therefor with the department
13 and with the water conservancy board created under chapter 90.80 RCW
14 within the jurisdictional boundaries of which the place of use of the
15 right to be transferred or changed is located, and the application
16 shall not be granted until notice of the application is published as
17 provided in RCW 90.03.280. If it shall appear that such transfer or
18 such change may be made without injury or detriment to existing rights,
19 the department shall issue to the applicant a certificate in duplicate
20 granting the right for such transfer or for such change of point of
21 diversion or of use. The certificate so issued shall be filed and be
22 made a record with the department and the duplicate certificate issued
23 to the applicant may be filed with the county auditor in like manner
24 and with the same effect as provided in the original certificate or
25 permit to divert water.

26 (2) If an application for change proposes to transfer water rights
27 from one irrigation district to another, the department shall, before
28 publication of notice, receive concurrence from each of the irrigation
29 districts that such transfer or change will not adversely affect the
30 ability to deliver water to other landowners or impair the financial
31 integrity of either of the districts.

32 (3) A change in place of use by an individual water user or users
33 of water provided by an irrigation district need only receive approval
34 for the change from the board of directors of the district if the use
35 of water continues within the irrigation district, and when water is
36 provided by an irrigation entity that is a member of a board of joint
37 control created under chapter 87.80 RCW, approval need only be received
38 from the board of joint control if the use of water continues within

1 the area of jurisdiction of the joint board and the change can be made
2 without detriment or injury to existing rights.

3 (4) Each application for a change or transfer filed under this
4 section shall be reviewed by the water conservancy board created under
5 chapter 90.80 RCW within the jurisdictional boundaries of which the
6 place of use of the right to be transferred or changed is located. The
7 department shall conduct its review of the change or transfer under
8 this section only if the board submits a report and a proposed
9 certificate conditionally approving the transfer or change under RCW
10 90.80.080. Decisions on applications shall be made by the board in the
11 order in which the applications are filed with it. The department
12 shall make decisions regarding the proposed certificates filed with it
13 by a board under RCW 90.80.080 in the order in which such certificates
14 are filed with the department by that board.

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

18 **Sec. 4.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
19 as follows:

20 RCW 90.03.380 shall not be construed to prevent water users from
21 making a seasonal or temporary change of point of diversion or place of
22 use of water when such change can be made without detriment to existing
23 rights, but in no case shall such change be made without the permission
24 of the water master of the district in which such proposed change is
25 located, or of the department. Nor shall RCW 90.03.380 be construed to
26 prevent construction of emergency interties between public water
27 systems to permit exchange of water during short-term emergency
28 situations, or rotation in the use of water for bringing about a more
29 economical use of the available supply, provided however, that the
30 department of health in consultation with the department of ecology
31 shall adopt rules or develop written guidelines setting forth standards
32 for determining when a short-term emergency exists and the
33 circumstances in which emergency interties are permitted. The rules or
34 guidelines shall be consistent with the procedures established in RCW
35 43.83B.400 through 43.83B.420. Water users owning lands to which water
36 rights are attached may rotate in the use of water to which they are
37 collectively entitled, or an individual water user having lands to
38 which are attached water rights of a different priority, may in like

1 manner rotate in use when such rotation can be made without detriment
2 to other existing water rights, and has the approval of the water
3 master or department.

4 Any application for a change or transfer filed under this section
5 shall be reviewed by the water conservancy board created under chapter
6 90.80 RCW within the jurisdictional boundaries of which the place of
7 use of the right to be transferred or changed is located. The
8 department shall conduct its review of the change or transfer only if
9 the board submits a report and a proposed certificate conditionally
10 approving the transfer or change under RCW 90.80.080. Decisions on
11 applications shall be made by the board in the order in which the
12 applications are filed with it. The department shall make decisions
13 regarding the proposed certificates filed with it by a board under RCW
14 90.80.080 in the order in which such certificates are filed with the
15 department by that board.

16 **Sec. 5.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
17 as follows:

18 (1) After an application to, and upon the issuance by the
19 department of an amendment to the appropriate permit or certificate of
20 ground water right, the holder of a valid right to withdraw public
21 ground waters may, without losing the holder's priority of right,
22 construct wells or other means of withdrawal at a new location in
23 substitution for or in addition to those at the original location, or
24 the holder may change the manner or the place of use of the water.

25 (2) An amendment to construct replacement or a new additional well
26 or wells at a location outside of the location of the original well or
27 wells or to change the manner or place of use of the water shall be
28 issued only after publication of notice of the application and findings
29 as prescribed in the case of an original application. Such amendment
30 shall be issued by the department only on the conditions that: (a) The
31 additional or replacement well or wells shall tap the same body of
32 public ground water as the original well or wells; (b) where a
33 replacement well or wells is approved, the use of the original well or
34 wells shall be discontinued and the original well or wells shall be
35 properly decommissioned as required under chapter 18.104 RCW; (c) where
36 an additional well or wells is constructed, the original well or wells
37 may continue to be used, but the combined total withdrawal from the
38 original and additional well or wells shall not enlarge the right

1 conveyed by the original permit or certificate; and (d) other existing
2 rights shall not be impaired. The department may specify an approved
3 manner of construction and shall require a showing of compliance with
4 the terms of the amendment, as provided in RCW 90.44.080 in the case of
5 an original permit.

6 (3) The construction of a replacement or new additional well or
7 wells at the location of the original well or wells shall be allowed
8 without application to the department for an amendment. However, the
9 following apply to such a replacement or new additional well: (a) The
10 well shall tap the same body of public ground water as the original
11 well or wells; (b) if a replacement well is constructed, the use of the
12 original well or wells shall be discontinued and the original well or
13 wells shall be properly decommissioned as required under chapter 18.104
14 RCW; (c) if a new additional well is constructed, the original well or
15 wells may continue to be used, but the combined total withdrawal from
16 the original and additional well or wells shall not enlarge the right
17 conveyed by the original water use permit or certificate; (d) the
18 construction and use of the well shall not interfere with or impair
19 water rights with an earlier date of priority than the water right or
20 rights for the original well or wells; (e) the replacement or
21 additional well shall be located no closer than the original well to a
22 well it might interfere with; (f) the department may specify an
23 approved manner of construction of the well; and (g) the department
24 shall require a showing of compliance with the conditions of this
25 subsection (3).

26 (4) A copy of each amendment filed under this section shall be
27 filed with the water conservancy board created under chapter 90.80 RCW
28 within the jurisdictional boundaries of which the place of use of the
29 right to be amended is located. The application shall be reviewed by
30 the board created under chapter 90.80 RCW. The department shall
31 conduct its review of the amendment only if the board submits a report
32 and a proposed certificate conditionally approving the amendment under
33 RCW 90.80.080. Decisions on applications shall be made by the board in
34 the order in which the applications are filed with it. The department
35 shall make decisions regarding the proposed certificates filed with it
36 by a board under RCW 90.80.080 in the order in which such certificates
37 are filed with the department by that board.

38 (5) As used in this section, the "location of the original well or
39 wells" is the area described as the point of withdrawal in the original

1 public notice published for the application for the water right for the
2 well.

3 **Sec. 6.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read
4 as follows:

5 The following definitions apply throughout this chapter, unless the
6 context clearly requires otherwise.

7 (1) "Board" means a water conservancy board created under this
8 chapter.

9 (2) "Commissioner" means a member of a water conservancy board.

10 (3) "Department" means the department of ecology.

11 (4) "Director" means the director of the department of ecology.

12 (5) "Transfer" means a transfer, change, or amendment to a water
13 right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

14 **Sec. 7.** RCW 90.80.040 and 1997 c 441 s 5 are each amended to read
15 as follows:

16 The director of the department may, as deemed necessary by the
17 director, adopt rules in accordance with chapter 34.05 RCW necessary to
18 carry out this chapter, including minimum requirements for the training
19 and continuing education of commissioners. Training courses for
20 commissioners shall include an overview of state water law and
21 hydrology. The training courses shall be provided by or through the
22 department. Prior to commissioners taking action on proposed water
23 right transfers, the commissioners shall comply with training
24 requirements that include state water law and hydrology.

25 **Sec. 8.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to read
26 as follows:

27 (1) A commissioner of a water conservancy board who has or is
28 proposed to have an ownership interest in a water right subject to an
29 application for approval of a transfer or change by the board, shall
30 not participate in the board's review or decision upon the application.

31 (2) A commissioner of a water conservancy board who also serves as
32 an employee or upon the governing body of a municipally owned water
33 system, shall not participate in the board's review or decision upon an
34 application for the transfer or change of a water right in which that
35 water system has or is proposed to have an ownership interest.

1 (3) If two or more applications for transfers or changes are
2 pending before the water conservancy board and an ownership interest or
3 municipal water system interest described in subsection (1) or (2) of
4 this section is held by a commissioner of the board in one of the
5 applications and the approval or disapproval of another of the
6 applications would affect the approval of the application in which the
7 commissioner has such an ownership or municipal system interest, the
8 commissioner shall not participate in the water conservancy board's
9 review or decision upon the other application.

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