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HOUSE BILL 1504

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State of Washington

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By Representatives G. Chandler, Linville, B. Chandler, Grant, Schoesler, Sump, Armstrong and Delvin

Read first time 01/29/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to agricultural use of water; and amending RCW  
2 90.03.380 and 90.44.100.

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

4 **Sec. 1.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
5 read as follows:

6 (1) The right to the use of water which has been applied to a  
7 beneficial use in the state shall be and remain appurtenant to the land  
8 or place upon which the same is used: PROVIDED, HOWEVER, That the  
9 right may be transferred to another or to others and become appurtenant  
10 to any other land or place of use without loss of priority of right  
11 theretofore established if such change can be made without detriment or  
12 injury to existing rights. The point of diversion of water for  
13 beneficial use or the purpose of use may be changed, if such change can  
14 be made without detriment or injury to existing rights. A change in  
15 the place of use, point of diversion, and/or purpose of use of a water  
16 right to enable irrigation of additional acreage or the addition of new  
17 uses may be permitted if such change results in no increase in the  
18 annual consumptive quantity of water used under the water right. For  
19 purposes of this section, "annual consumptive quantity" means the

1 estimated or actual annual amount of water diverted pursuant to the  
2 water right, reduced by the estimated annual amount of return flows,  
3 averaged over the most recent five-year period of continuous beneficial  
4 use of the water right. Before any transfer of such right to use water  
5 or change of the point of diversion of water or change of purpose of  
6 use can be made, any person having an interest in the transfer or  
7 change, shall file a written application therefor with the department,  
8 and the application shall not be granted until notice of the  
9 application is published as provided in RCW 90.03.280. If it shall  
10 appear that such transfer or such change may be made without injury or  
11 detriment to existing rights, the department shall issue to the  
12 applicant a certificate in duplicate granting the right for such  
13 transfer or for such change of point of diversion or of use. The  
14 certificate so issued shall be filed and be made a record with the  
15 department and the duplicate certificate issued to the applicant may be  
16 filed with the county auditor in like manner and with the same effect  
17 as provided in the original certificate or permit to divert water.

18 (2) If an application for change proposes to transfer water rights  
19 from one irrigation district to another, the department shall, before  
20 publication of notice, receive concurrence from each of the irrigation  
21 districts that such transfer or change will not adversely affect the  
22 ability to deliver water to other landowners or impair the financial  
23 integrity of either of the districts.

24 (3) A change in place of use by an individual water user or users  
25 of water provided by an irrigation district need only receive approval  
26 for the change from the board of directors of the district if the use  
27 of water continues within the irrigation district, and when water is  
28 provided by an irrigation entity that is a member of a board of joint  
29 control created under chapter 87.80 RCW, approval need only be received  
30 from the board of joint control if the use of water continues within  
31 the area of jurisdiction of the joint board and the change can be made  
32 without detriment or injury to existing rights.

33 (4) This section shall not apply to trust water rights acquired by  
34 the state through the funding of water conservation projects under  
35 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

36 (5) The right to use water for any beneficial use within the  
37 general category of an agricultural use includes the right to use the  
38 water, without applying to the department or any other governmental  
39 entity for approval, for any other beneficial use within the general

1 category of an agricultural use. The general category of an  
2 agricultural use of water includes, but is not limited to, the  
3 beneficial use of water for stock watering, agricultural irrigation,  
4 agricultural frost control, processing agricultural commodities into  
5 agricultural products, and other agricultural uses.

6 **Sec. 2.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
7 as follows:

8 (1) After an application to, and upon the issuance by the  
9 department of an amendment to the appropriate permit or certificate of  
10 ground water right, the holder of a valid right to withdraw public  
11 ground waters may, without losing the holder's priority of right,  
12 construct wells or other means of withdrawal at a new location in  
13 substitution for or in addition to those at the original location, or  
14 the holder may change the manner or the place of use of the water.

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

34 (3) The construction of a replacement or new additional well or  
35 wells at the location of the original well or wells shall be allowed  
36 without application to the department for an amendment. However, the  
37 following apply to such a replacement or new additional well: (a) The  
38 well shall tap the same body of public ground water as the original

1 well or wells; (b) if a replacement well is constructed, the use of the  
2 original well or wells shall be discontinued and the original well or  
3 wells shall be properly decommissioned as required under chapter 18.104  
4 RCW; (c) if a new additional well is constructed, the original well or  
5 wells may continue to be used, but the combined total withdrawal from  
6 the original and additional well or wells shall not enlarge the right  
7 conveyed by the original water use permit or certificate; (d) the  
8 construction and use of the well shall not interfere with or impair  
9 water rights with an earlier date of priority than the water right or  
10 rights for the original well or wells; (e) the replacement or  
11 additional well shall be located no closer than the original well to a  
12 well it might interfere with; (f) the department may specify an  
13 approved manner of construction of the well; and (g) the department  
14 shall require a showing of compliance with the conditions of this  
15 subsection (3).

16 (4) As used in this section, the "location of the original well or  
17 wells" is the area described as the point of withdrawal in the original  
18 public notice published for the application for the water right for the  
19 well.

20 (5) The right to use water for any beneficial use within the  
21 general category of an agricultural use includes the right to use the  
22 water, without applying to the department or any other governmental  
23 entity for approval, for any other beneficial use within the general  
24 category of an agricultural use. The general category of an  
25 agricultural use of water includes, but is not limited to, the  
26 beneficial use of water for stock watering, agricultural irrigation,  
27 agricultural frost control, processing agricultural commodities into  
28 agricultural products, and other agricultural uses.

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