

2 **SHB 1775 - H AMD 153 ADOPTED 3/9/95**

3 By Representatives Chandler and Mastin

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 90.03.380 and 1991 c 347 s 15 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 the right may be transferred to another or to others and become
13 appurtenant to any other land or place of use without loss of priority
14 of right theretofore established if such change can be made without
15 detriment or injury to existing rights. The point of diversion of
16 water for beneficial use or the purpose of use may be changed, if such
17 change can be made without detriment or injury to existing rights.
18 Before any transfer of such right to use water or change of the point
19 of diversion of water or change of purpose of use can be made, any
20 person having an interest in the transfer or change, shall file a
21 written application therefor with the department, and ((said)) the
22 application shall not be granted until notice of ((said)) the
23 application ((shall be)) is published as provided in RCW 90.03.280. If
24 it shall appear that such transfer or such change may be made without
25 injury or detriment to existing rights, the department shall issue to
26 the applicant a certificate in duplicate granting the right for such
27 transfer or for such change of point of diversion or of use. The
28 certificate so issued shall be filed and be made a record with the
29 department and the duplicate certificate issued to the applicant may be
30 filed with the county auditor in like manner and with the same effect
31 as provided in the original certificate or permit to 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
36 ability to deliver water to other landowners or impair the financial or

1 operational integrity of either of the districts.

2 (3) A change in place of use by an individual water user or users
3 of water provided by an irrigation district need only receive approval
4 for the change from the board of directors of the district if the use
5 of water continues within the irrigation district. The board of
6 directors may approve such a change if the board determines that the
7 change: Will not adversely affect the district's ability to deliver
8 water to other landowners; will not require the construction by the
9 district of diversion or drainage facilities unless the board finds
10 that the construction by the district is in the interest of the
11 district; will not impair the financial or operational integrity of the
12 district; and is consistent with the contractual obligations of the
13 district.

14 (4) Subsections (1), (2), and (3) of this section do not apply to
15 a change regarding a portion of the water governed by a water right
16 that is made surplus to the beneficial uses exercised under the right
17 through the implementation of practices or technologies, including but
18 not limited to conveyance practices or technologies, which are more
19 efficient or more water use efficient than those under which the right
20 was perfected or through a change in the crops grown under the water
21 right. The use within an irrigation district of water supplied by the
22 district and made surplus as provided in this subsection shall be
23 regulated solely as provided by the board of directors of the
24 irrigation district except as follows: Such a use requires the
25 approval of the board of directors of the irrigation district or must
26 otherwise be authorized by the board; the board may approve or
27 authorize such a use only if the use does not impair the financial or
28 operational integrity of the district; and water made surplus through
29 a change in the crops grown with district-supplied water is not
30 available for use as a matter of right by the individual water user
31 making the change, but may be used by the board for the benefit of the
32 district generally. The district's board of directors may approve or
33 otherwise authorize under this subsection uses of such surplus water
34 that result in the total irrigated acreage within the district
35 exceeding the irrigated acreage recorded with the department for the
36 district's water right if the board notifies the department of the
37 change in the irrigated acreage within the district. Such a
38 notification provides a change in the district's water right and, upon
39 receiving the notification, the department shall revise its records for

1 the district's right to reflect the change. The use of water other
2 than irrigation district-supplied water that is made surplus as
3 provided in this subsection is governed by section 2 of this act.

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

7 (6) The department may not initiate relinquishment proceedings
8 under chapter 90.14 RCW regarding a water right for which an
9 application for a transfer or change is filed under this section for a
10 period of two years after the date the department receives the filing.

11 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW
12 to read as follows:

13 If a portion of the water governed by a water right is made surplus
14 to the beneficial uses exercised under the right through the
15 implementation of practices or technologies, including but not limited
16 to conveyance practices or technologies, which are more efficient or
17 more water use efficient than those under which the right was perfected
18 or through a change in the crops grown under the water right, the right
19 to use the surplus water may be changed to use on other lands owned by
20 the holder of the water right that are contiguous to the lands upon
21 which the use of the water was authorized by the right before such a
22 change. Such a change shall be made without loss of priority of the
23 right. The holder of the water right shall notify the department of
24 such a change. The notification provides a change in the holder's
25 water right and, upon receiving the notification, the department shall
26 revise its records for the water right to reflect the change.

27 This section does not apply to water supplied by an irrigation
28 district.

29 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
30 read as follows:

31 (1) After an application to, and upon the issuance by the
32 department of an amendment to the appropriate permit or certificate of
33 ground water right, the holder of a valid right to withdraw public
34 ground waters may, without losing his priority of right, construct
35 wells or other means of withdrawal at a new location in substitution
36 for or in addition to those at the original location, or he may change
37 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~

1 such)). An amendment shall be issued only after publication of notice
2 of the application and findings as prescribed in the case of an
3 original application. Such amendment shall be issued by the department
4 only on the conditions that: ~~((+1))~~ (a) The additional or substitute
5 well or wells shall tap the same body of public ground water as the
6 original well or wells; ~~((+2))~~ (b) use of the original well or wells
7 shall be discontinued upon construction of the substitute well or
8 wells; ~~((+3))~~ (c) the construction of an additional well or wells
9 shall not enlarge the right conveyed by the original permit or
10 certificate; and ~~((+4))~~ (d) other existing rights shall not be
11 impaired. The department may specify an approved manner of
12 construction and shall require a showing of compliance with the terms
13 of the amendment, as provided in RCW 90.44.080 in the case of an
14 original permit.

15 (2) This section does not apply to a change in use of a portion of
16 the water governed by a ground water right that is made surplus to the
17 beneficial uses exercised under the right through the implementation of
18 practices or technologies, including but not limited to conveyance
19 practices or technologies, which are more efficient or more water use
20 efficient than those under which the right was perfected or through a
21 change in the crops grown under the water right. RCW 90.03.380(4) and
22 section 2 of this act apply to water made surplus as provided in this
23 subsection.

24 (3) The department may not initiate relinquishment proceedings
25 under chapter 90.14 RCW regarding a water right for which an
26 application for a transfer or change is filed under this section for a
27 period of two years after the date the department receives the filing.

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

30 When an application complying with the provisions of this chapter
31 and with the rules and regulations of the department has been filed,
32 the same shall be placed on record with the department, and it shall be
33 its duty to investigate the application, and determine what water, if
34 any, is available for appropriation, and find and determine to what
35 beneficial use or uses it can be applied. If it is proposed to
36 appropriate water for irrigation purposes, the department shall
37 investigate, determine and find what lands are capable of irrigation by
38 means of water found available for appropriation. If it is proposed to

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

1 such permit. Any application may be approved for a less amount of
2 water than that applied for, if there exists substantial reason
3 therefor, and in any event shall not be approved for more water than
4 can be applied to beneficial use for the purposes named in the
5 application. In determining whether or not a permit shall issue upon
6 any application, it shall be the duty of the department to investigate
7 all facts relevant and material to the application. After the
8 department approves said application in whole or in part and before any
9 permit shall be issued thereon to the applicant, such applicant shall
10 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
11 event a permit is issued by the department upon any application, it
12 shall be its duty to notify the director of fish and wildlife of such
13 issuance.

14 This section does not apply to changes made under section 2 of this
15 act or to applications for transfers or changes made under RCW
16 90.03.380 or 90.44.100.

17 **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
18 as follows:

19 In any acreage expansion program adopted by the department as an
20 element of a ground water management program, the authorization for a
21 water right certificate holder to participate in the program shall be
22 on an annual basis for the first two years. After the two-year period,
23 the department may authorize participation for ten-year periods. The
24 department may authorize participation for ten-year periods for
25 certificate holders who have already participated in an acreage
26 expansion program for two years. The department may require annual
27 certification that the certificate holder has complied with all
28 requirements of the program. The department may terminate the
29 authority of a certificate holder to participate in the program for one
30 calendar year if the certificate holder fails to comply with the
31 requirements of the program.

32 This section applies only in an area with a ground water area or
33 subarea management program in effect on the effective date of this
34 section. The provisions of section 2 of this act, RCW 90.03.380, and
35 90.44.100 apply to transfers, changes, and amendments to permits or
36 rights for the beneficial use of ground water in any other area."

37 Correct the title accordingly.

1 EFFECT: (1) Places an irrigation district in charge of district-
2 supplied water made surplus by these activities; (2) precludes an
3 individual using irrigation district-supplied water from having a claim
4 to such water made surplus through a change in crops grown, but permits
5 the surplus water to be used for the benefit of the district generally;
6 (3) prohibits the Department of Ecology from initiating relinquishment
7 proceedings regarding a water right for which an application for a
8 transfer or change is filed for two years after the application is
9 filed; (4) permits water to be made surplus by practices or
10 technologies that are more efficient, not simply more water use
11 efficient; and (5) allows an irrigation district to construct
12 facilities to accommodate transfers or changes if the construction is
13 in the interest of the district.

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