

HB 1376 - H AMD 24

By Representative Linville

ADOPTED 02/19/2003

1 On page 4, after line 36, insert the following:

2 "(8) This section does not apply to facilities to recapture and
3 reuse return flow from irrigation operations serving a single farm
4 under an existing water right as long as the acreage irrigated is not
5 increased beyond the acreage allowed to be irrigated under the water
6 right that applies to the property.

7 (9) In addition to the facilities exempted under subsection (8) of
8 this section, this section does not apply to small irrigation
9 impoundments. For purposes of this subsection, "small irrigation
10 impoundments" means surface storage ponds less than ten acre feet in
11 volume used to impound irrigation water under an existing water right
12 where use of the impoundment: (a)(i) Facilitates efficient use of
13 water; or (ii) promotes compliance with an approved recovery plan for
14 endangered or threatened species; and (b) does not expand the number of
15 acres irrigated or the annual consumptive quantity of water used.
16 Water remaining in a small irrigation impoundment at the end of an
17 irrigation season may be carried over for use in the next season;
18 however, the limitations of this subsection (9) apply to such a carry
19 over. Development and use of a small irrigation impoundment does not
20 constitute a change or amendment for purposes of RCW 90.03.380 or
21 90.44.055.

22 **Sec. 3.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
23 as follows:

24 (1) The right to the use of water which has been applied to a
25 beneficial use in the state shall be and remain appurtenant to the land
26 or place upon which the same is used: PROVIDED, HOWEVER, That the
27 right may be transferred to another or to others and become appurtenant
28 to any other land or place of use without loss of priority of right
29 theretofore established if such change can be made without detriment or
30 injury to existing rights. The point of diversion of water for

1 beneficial use or the purpose of use may be changed, if such change can
2 be made without detriment or injury to existing rights. A change in
3 the place of use, point of diversion, and/or purpose of use of a water
4 right to enable irrigation of additional acreage or the addition of new
5 uses may be permitted if such change results in no increase in the
6 annual consumptive quantity of water used under the water right. For
7 purposes of this section, "annual consumptive quantity" means the
8 estimated or actual annual amount of water diverted pursuant to the
9 water right, reduced by the estimated annual amount of return flows,
10 averaged over the two years of greatest use within the most recent
11 five-year period of continuous beneficial use of the water right.
12 Before any transfer of such right to use water or change of the point
13 of diversion of water or change of purpose of use can be made, any
14 person having an interest in the transfer or change, shall file a
15 written application therefor with the department, 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

1 from the board of joint control if the use of water continues within
2 the area of jurisdiction of the joint board and the change can be made
3 without detriment or injury to existing rights.

4 (4) 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 (5)(a) Pending applications for new water rights are not entitled
8 to protection from impairment, injury, or detriment when an application
9 relating to an existing surface or ground water right is considered.

10 (b) Applications relating to existing surface or ground water
11 rights may be processed and decisions on them rendered independently of
12 processing and rendering decisions on pending applications for new
13 water rights within the same source of supply without regard to the
14 date of filing of the pending applications for new water rights.

15 (c) Notwithstanding any other existing authority to process
16 applications, including but not limited to the authority to process
17 applications under WAC 173-152-050 as it existed on January 1, 2001, an
18 application relating to an existing surface or ground water right may
19 be processed ahead of a previously filed application relating to an
20 existing right when sufficient information for a decision on the
21 previously filed application is not available and the applicant for the
22 previously filed application is sent written notice that explains what
23 information is not available and informs the applicant that processing
24 of the next application will begin. The previously filed application
25 does not lose its priority date and if the information is provided by
26 the applicant within sixty days, the previously filed application shall
27 be processed at that time. This subsection (5)(c) does not affect any
28 other existing authority to process applications.

29 (d) Nothing in this subsection (5) is intended to stop the
30 processing of applications for new water rights.

31 (6) No applicant for a change, transfer, or amendment of a water
32 right may be required to give up any part of the applicant's valid
33 water right or claim to a state agency, the trust water rights program,
34 or to other persons as a condition of processing the application.

35 (7) In revising the provisions of this section and adding
36 provisions to this section by chapter 237, Laws of 2001, the
37 legislature does not intend to imply legislative approval or

1 disapproval of any existing administrative policy regarding, or any
2 existing administrative or judicial interpretation of, the provisions
3 of this section not expressly added or revised.

4 (8) The development and use of a facility described in RCW
5 90.03.370(8) or of a small irrigation impoundment, as defined in RCW
6 90.03.370(9), does not constitute a change or amendment for the
7 purposes of this section.

8 **Sec. 4.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
9 as follows:

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

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

36 (3) The construction of a replacement or new additional well or
37 wells at the location of the original well or wells shall be allowed

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

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

23 (5) The development and use of a facility described in RCW
24 90.03.370(8) or of a small irrigation impoundment, as defined in RCW
25 90.03.370(9), does not constitute a change or amendment for the
26 purposes of this section."

27 Correct the title.

EFFECT: Exempts from reservoir and secondary use permit requirements, under certain specified circumstances: Facilities for recapturing and reusing return flow from the irrigation operations for a single farm under an existing water right; and surface storage ponds less than 10 acre feet in volume used to impound irrigation water under an existing water right. The development and use of such an exempted pond does not constitute a change or amendment of the water right involved.

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