

SSB 5575 - H COMM AMD

By Committee on Agriculture & Natural Resources

ADOPTED 04/18/2003

1       Strike everything after the enacting clause and insert the  
2 following:

3       "**Sec. 1.** RCW 90.03.370 and 2002 c 329 s 10 are each amended to  
4 read as follows:

5       (1)(a) All applications for reservoir permits are subject to the  
6 provisions of RCW 90.03.250 through 90.03.320. But the party or  
7 parties proposing to apply to a beneficial use the water stored in any  
8 such reservoir shall also file an application for a permit, to be known  
9 as the secondary permit, which shall be in compliance with the  
10 provisions of RCW 90.03.250 through 90.03.320. Such secondary  
11 application shall refer to such reservoir as its source of water supply  
12 and shall show documentary evidence that an agreement has been entered  
13 into with the owners of the reservoir for a permanent and sufficient  
14 interest in said reservoir to impound enough water for the purposes set  
15 forth in said application. When the beneficial use has been completed  
16 and perfected under the secondary permit, the department shall take the  
17 proof of the water users under such permit and the final certificate of  
18 appropriation shall refer to both the ditch and works described in the  
19 secondary permit and the reservoir described in the primary permit.  
20 The department may accept for processing a single application form  
21 covering both a proposed reservoir and a proposed secondary permit or  
22 permits for use of water from that reservoir.

23       (b) The department shall expedite processing applications for the  
24 following types of storage proposals:

25       (i) Development of storage facilities that will not require a new  
26 water right for diversion or withdrawal of the water to be stored;

27       (ii) Adding or changing one or more purposes of use of stored  
28 water;

29       (iii) Adding to the storage capacity of an existing storage  
30 facility; and

1 (iv) Applications for secondary permits to secure use from existing  
2 storage facilities.

3 (c) A secondary permit for the beneficial use of water shall not be  
4 required for use of water stored in a reservoir where the water right  
5 for the source of the stored water authorizes the beneficial use.

6 (2)(a) For the purposes of this section, "reservoir" includes, in  
7 addition to any surface reservoir, any naturally occurring underground  
8 geological formation where water is collected and stored for subsequent  
9 use as part of an underground artificial storage and recovery project.  
10 To qualify for issuance of a reservoir permit an underground geological  
11 formation must meet standards for review and mitigation of adverse  
12 impacts identified, for the following issues:

13 (i) Aquifer vulnerability and hydraulic continuity;

14 (ii) Potential impairment of existing water rights;

15 (iii) Geotechnical impacts and aquifer boundaries and  
16 characteristics;

17 (iv) Chemical compatibility of surface waters and ground water;

18 (v) Recharge and recovery treatment requirements;

19 (vi) System operation;

20 (vii) Water rights and ownership of water stored for recovery; and

21 (viii) Environmental impacts.

22 (b) Standards for review and standards for mitigation of adverse  
23 impacts for an underground artificial storage and recovery project  
24 shall be established by the department by rule. Notwithstanding the  
25 provisions of RCW 90.03.250 through 90.03.320, analysis of each  
26 underground artificial storage and recovery project and each  
27 underground geological formation for which an applicant seeks the  
28 status of a reservoir shall be through applicant-initiated studies  
29 reviewed by the department.

30 (3) For the purposes of this section, "underground artificial  
31 storage and recovery project" means any project in which it is intended  
32 to artificially store water in the ground through injection, surface  
33 spreading and infiltration, or other department-approved method, and to  
34 make subsequent use of the stored water. However, (a) this subsection  
35 does not apply to irrigation return flow, or to operational and seepage  
36 losses that occur during the irrigation of land, or to water that is  
37 artificially stored due to the construction, operation, or maintenance

1 of an irrigation district project, or to projects involving water  
2 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130  
3 applies to those instances of claimed artificial recharge occurring due  
4 to the construction, operation, or maintenance of an irrigation  
5 district project or operational and seepage losses that occur during  
6 the irrigation of land, as well as other forms of claimed artificial  
7 recharge already existing at the time a ground water subarea is  
8 established.

9 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of  
10 existing law governing issuance of permits to appropriate or withdraw  
11 the waters of the state.

12 (5) The department shall report to the legislature by December 31,  
13 2001, on the standards for review and standards for mitigation  
14 developed under subsection (3) of this section and on the status of any  
15 applications that have been filed with the department for underground  
16 artificial storage and recovery projects by that date.

17 (6) Where needed to ensure that existing storage capacity is  
18 effectively and efficiently used to meet multiple purposes, the  
19 department may authorize reservoirs to be filled more than once per  
20 year or more than once per season of use.

21 (7) This section does not apply to facilities to recapture and  
22 reuse return flow from irrigation operations serving a single farm  
23 under an existing water right as long as the acreage irrigated is not  
24 increased beyond the acreage allowed to be irrigated under the water  
25 right.

26 (8) In addition to the facilities exempted under subsection (7) of  
27 this section, this section does not apply to small irrigation  
28 impoundments. For purposes of this section, "small irrigation  
29 impoundments" means lined surface storage ponds less than ten acre feet  
30 in volume used to impound irrigation water under an existing water  
31 right where use of the impoundment: (a)(i) Facilitates efficient use  
32 of water; or (ii) promotes compliance with an approved recovery plan  
33 for endangered or threatened species; and (b) does not expand the  
34 number of acres irrigated or the annual consumptive quantity of water  
35 used. Such ponds must be lined unless a licensed engineer determines  
36 that a liner is not needed to retain water in the pond and to prevent  
37 ground water contamination. Although it may also be composed of other

1 materials, a properly maintained liner may be composed of bentonite.  
2 Water remaining in a small irrigation impoundment at the end of an  
3 irrigation season may be carried over for use in the next season.  
4 However, the limitations of this subsection (8) apply. Development and  
5 use of a small irrigation impoundment does not constitute a change or  
6 amendment for purposes of RCW 90.03.380 or 90.44.055.

7 **Sec. 2.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
8 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 the  
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. A change in  
18 the place of use, point of diversion, and/or purpose of use of a water  
19 right to enable irrigation of additional acreage or the addition of new  
20 uses may be permitted if such change results in no increase in the  
21 annual consumptive quantity of water used under the water right. For  
22 purposes of this section, "annual consumptive quantity" means the  
23 estimated or actual annual amount of water diverted pursuant to the  
24 water right, reduced by the estimated annual amount of return flows,  
25 averaged over the two years of greatest use within the most recent  
26 five-year period of continuous beneficial use of the water right.  
27 Before any transfer of such right to use water or change of the point  
28 of diversion of water or change of purpose of use can be made, any  
29 person having an interest in the transfer or change, shall file a  
30 written application therefor with the department, and the application  
31 shall not be granted until notice of the application is published as  
32 provided in RCW 90.03.280. If it shall appear that such transfer or  
33 such change may be made without injury or detriment to existing rights,  
34 the department shall issue to the applicant a certificate in duplicate  
35 granting the right for such transfer or for such change of point of  
36 diversion or of use. The certificate so issued shall be filed and be

1 made a record with the department and the duplicate certificate issued  
2 to the applicant may be filed with the county auditor in like manner  
3 and with the same effect as provided in the original certificate or  
4 permit to divert water.

5 (2) If an application for change proposes to transfer water rights  
6 from one irrigation district to another, the department shall, before  
7 publication of notice, receive concurrence from each of the irrigation  
8 districts that such transfer or change will not adversely affect the  
9 ability to deliver water to other landowners or impair the financial  
10 integrity of either of the districts.

11 (3) A change in place of use by an individual water user or users  
12 of water provided by an irrigation district need only receive approval  
13 for the change from the board of directors of the district if the use  
14 of water continues within the irrigation district, and when water is  
15 provided by an irrigation entity that is a member of a board of joint  
16 control created under chapter 87.80 RCW, approval need only be received  
17 from the board of joint control if the use of water continues within  
18 the area of jurisdiction of the joint board and the change can be made  
19 without detriment or injury to existing rights.

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

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

26 (b) Applications relating to existing surface or ground water  
27 rights may be processed and decisions on them rendered independently of  
28 processing and rendering decisions on pending applications for new  
29 water rights within the same source of supply without regard to the  
30 date of filing of the pending applications for new water rights.

31 (c) Notwithstanding any other existing authority to process  
32 applications, including but not limited to the authority to process  
33 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
34 application relating to an existing surface or ground water right may  
35 be processed ahead of a previously filed application relating to an  
36 existing right when sufficient information for a decision on the  
37 previously filed application is not available and the applicant for the

1 previously filed application is sent written notice that explains what  
2 information is not available and informs the applicant that processing  
3 of the next application will begin. The previously filed application  
4 does not lose its priority date and if the information is provided by  
5 the applicant within sixty days, the previously filed application shall  
6 be processed at that time. This subsection (5)(c) does not affect any  
7 other existing authority to process applications.

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

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

14 (7) In revising the provisions of this section and adding  
15 provisions to this section by chapter 237, Laws of 2001, the  
16 legislature does not intend to imply legislative approval or  
17 disapproval of any existing administrative policy regarding, or any  
18 existing administrative or judicial interpretation of, the provisions  
19 of this section not expressly added or revised.

20 (8) The development and use of a small irrigation impoundment, as  
21 defined in RCW 90.03.370(8), does not constitute a change or amendment  
22 for the purposes of this section. The exemption expressly provided by  
23 this subsection shall not be construed as requiring a change or  
24 transfer of any existing water right to enable the holder of the right  
25 to store water governed by the right.

26 **Sec. 3.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
27 as follows:

28 (1) After an application to, and upon the issuance by the  
29 department of an amendment to the appropriate permit or certificate of  
30 ground water right, the holder of a valid right to withdraw public  
31 ground waters may, without losing the holder's priority of right,  
32 construct wells or other means of withdrawal at a new location in  
33 substitution for or in addition to those at the original location, or  
34 the holder may change the manner or the place of use of the water.

35 (2) An amendment to construct replacement or a new additional well  
36 or wells at a location outside of the location of the original well or

1 wells or to change the manner or place of use of the water shall be  
2 issued only after publication of notice of the application and findings  
3 as prescribed in the case of an original application. Such amendment  
4 shall be issued by the department only on the conditions that: (a) The  
5 additional or replacement well or wells shall tap the same body of  
6 public ground water as the original well or wells; (b) where a  
7 replacement well or wells is approved, the use of the original well or  
8 wells shall be discontinued and the original well or wells shall be  
9 properly decommissioned as required under chapter 18.104 RCW; (c) where  
10 an additional well or wells is constructed, the original well or wells  
11 may continue to be used, but the combined total withdrawal from the  
12 original and additional well or wells shall not enlarge the right  
13 conveyed by the original permit or certificate; and (d) other existing  
14 rights shall not be impaired. The department may specify an approved  
15 manner of construction and shall require a showing of compliance with  
16 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
17 an original permit.

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

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

5 (5) The development and use of a small irrigation impoundment, as  
6 defined in RCW 90.03.370(8), does not constitute a change or amendment  
7 for the purposes of this section. The exemption expressly provided by  
8 this subsection shall not be construed as requiring an amendment of any  
9 existing water right to enable the holder of the right to store water  
10 governed by the right."

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