

SB 5106 - S AMD 86

By Senators Morton, T. Sheldon, Swecker, Rasmussen, Honeyford

ADOPTED 03/11/2003

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

3 "Sec. 1. RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
4 as follows:

5 (1) The right to the use of water which has been applied to a
6 beneficial use in the state shall be and remain appurtenant to the land
7 or place upon which the same is used: PROVIDED, HOWEVER, That the
8 right may be transferred to another or to others and become appurtenant
9 to any other land or place of use without loss of priority of right
10 theretofore established if such change can be made without detriment or
11 injury to existing rights. The point of diversion of water for
12 beneficial use or the purpose of use may be changed, if such change can
13 be made without detriment or injury to existing rights. A change in
14 the place of use, point of diversion, and/or purpose of use of a water
15 right to enable irrigation of additional acreage or the addition of new
16 uses may be permitted if such change results in no increase in the
17 annual consumptive quantity of water used under the water right. For
18 purposes of this section, "annual consumptive quantity" means the
19 estimated or actual annual amount of water diverted pursuant to the
20 water right, reduced by the estimated annual amount of return flows(~~(~~
21 ~~averaged over the two years of greatest use within the most recent~~
22 ~~five year period of continuous beneficial use of the water right)~~).
23 The annual consumptive quantity of a water right may not be deemed to
24 be less than the actual peak historic use of a water right, even if the
25 right is not being fully exercised at the time of change or transfer,
26 if: (a) The reduced use is due to cropping patterns or system
27 efficiencies; (b) the water right holder intends to fully exercise the
28 right; and (c) the water right holder has the facilities in place to
29 make beneficial use of the full right. Before any transfer of such

1 right to use water or change of the point of diversion of water or
2 change of purpose of use can be made, any person having an interest in
3 the transfer or change, shall file a written application therefor with
4 the department, and the application shall not be granted until notice
5 of the application is published as provided in RCW 90.03.280. If it
6 shall appear that such transfer or such change may be made without
7 injury or detriment to existing rights, the department shall issue to
8 the applicant a certificate in duplicate granting the right for such
9 transfer or for such change of point of diversion or of use. The
10 certificate so issued shall be filed and be made a record with the
11 department and the duplicate certificate issued to the applicant may be
12 filed with the county auditor in like manner and with the same effect
13 as provided in the original certificate or permit to divert water.

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

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

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

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

35 (b) Applications relating to existing surface or ground water
36 rights may be processed and decisions on them rendered independently of
37 processing and rendering decisions on pending applications for new

1 water rights within the same source of supply without regard to the
2 date of filing of the pending applications for new water rights.

3 (c) Notwithstanding any other existing authority to process
4 applications, including but not limited to the authority to process
5 applications under WAC 173-152-050 as it existed on January 1, 2001, an
6 application relating to an existing surface or ground water right may
7 be processed ahead of a previously filed application relating to an
8 existing right when sufficient information for a decision on the
9 previously filed application is not available and the applicant for the
10 previously filed application is sent written notice that explains what
11 information is not available and informs the applicant that processing
12 of the next application will begin. The previously filed application
13 does not lose its priority date and if the information is provided by
14 the applicant within sixty days, the previously filed application shall
15 be processed at that time. This subsection (5)(c) does not affect any
16 other existing authority to process applications.

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

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

23 (7) In revising the provisions of this section and adding
24 provisions to this section by chapter 237, Laws of 2001, the
25 legislature does not intend to imply legislative approval or
26 disapproval of any existing administrative policy regarding, or any
27 existing administrative or judicial interpretation of, the provisions
28 of this section not expressly added or revised.

29 (8) The right to use water for any beneficial use within the
30 general category of an agricultural use includes the right to use the
31 water, without applying to the department or any other governmental
32 entity for approval, for any other beneficial use within the general
33 category of an agricultural use. The general category of an
34 agricultural use of water includes, but is not limited to, the
35 beneficial use of water for stock watering, agricultural irrigation,
36 agricultural frost control, processing agricultural commodities into
37 agricultural products, and other agricultural uses.

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

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

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

29 (3) The construction of a replacement or new additional well or
30 wells at the location of the original well or wells shall be allowed
31 without application to the department for an amendment. However, the
32 following apply to such a replacement or new additional well: (a) The
33 well shall tap the same body of public ground water as the original
34 well or wells; (b) if a replacement well is constructed, the use of the
35 original well or wells shall be discontinued and the original well or
36 wells shall be properly decommissioned as required under chapter 18.104
37 RCW; (c) if a new additional well is constructed, the original well or
38 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not enlarge the right
2 conveyed by the original water use permit or certificate; (d) the
3 construction and use of the well shall not interfere with or impair
4 water rights with an earlier date of priority than the water right or
5 rights for the original well or wells; (e) the replacement or
6 additional well shall be located no closer than the original well to a
7 well it might interfere with; (f) the department may specify an
8 approved manner of construction of the well; and (g) the department
9 shall require a showing of compliance with the conditions of this
10 subsection (3).

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

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

24 NEW SECTION. Sec. 3. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately."

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28 On page 1, line 1 of the title, after "rights;" strike the
29 remainder of the title and insert "amending RCW 90.03.380 and
30 90.44.100; and declaring an emergency."

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