
HOUSE BILL 2913

State of Washington

58th Legislature

2004 Regular Session

By Representatives Hinkle and Newhouse

Read first time 01/22/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the diversion of a water right; and amending RCW
2 90.03.380.

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

4 **Sec. 1.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
5 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 two years of greatest use within the most recent~~
4 ~~five-year period of continuous beneficial use of the water right)) the~~
5 ~~amount of water that may be diverted under the right. The total amount~~
6 ~~of water eligible for diversion under the right or rights following the~~
7 ~~change is the same as the total amount that may be diverted under the~~
8 ~~right before the change.~~ Before any transfer of such right to use
9 water or change of the point of diversion of water or change of purpose
10 of use can be made, any person having an interest in the transfer or
11 change, shall file a written application therefor with the department,
12 and the application shall not be granted until notice of the
13 application is published as provided in RCW 90.03.280. If it shall
14 appear that such transfer or such change may be made without injury or
15 detriment to existing rights, the department shall issue to the
16 applicant a certificate in duplicate granting the right for such
17 transfer or for such change of point of diversion or of use. The
18 certificate so issued shall be filed and be made a record with the
19 department and the duplicate certificate issued to the applicant may be
20 filed with the county auditor in like manner and with the same effect
21 as provided in the original certificate or permit to divert water.

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

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

37 (4) This section shall not apply to trust water rights acquired by

1 the state through the funding of water conservation projects under
2 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

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

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

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

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

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

31 (7) In revising the provisions of this section and adding
32 provisions to this section by chapter 237, Laws of 2001, the
33 legislature does not intend to imply legislative approval or
34 disapproval of any existing administrative policy regarding, or any
35 existing administrative or judicial interpretation of, the provisions
36 of this section not expressly added or revised.

37 (8) The development and use of a small irrigation impoundment, as
38 defined in RCW 90.03.370(8), does not constitute a change or amendment

1 for the purposes of this section. The exemption expressly provided by
2 this subsection shall not be construed as requiring a change or
3 transfer of any existing water right to enable the holder of the right
4 to store water governed by the right.

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