
HOUSE BILL 3105

State of Washington 58th Legislature 2004 Regular Session

By Representatives Mastin, Grant, Chandler and Hinkle

Read first time 01/28/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to water rights; and amending RCW 90.03.380 and
2 90.44.100.

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. Such
5 an annual consumptive quantity is only a consumptive use portion of the
6 amount of water available under the right that may be spread to provide
7 water for both existing and new or expanded uses of the water; it does
8 not define the extent of the right. Before any transfer of such right
9 to use water or change of the point of diversion of water or change of
10 purpose of use can be made, any person having an interest in the
11 transfer or change, shall file a written application therefor with the
12 department, and the application shall not be granted until notice of
13 the application is published as provided in RCW 90.03.280. If the
14 application involves only a change in the point of diversion of the
15 right, a change in the place of use of the right, or both such changes,
16 and the purpose of use of the right was and remains under the
17 application the irrigation of one or more crops, the quantity of water
18 authorized to be used under such a change is the same as the quantity
19 of water authorized for use under the right before the change. If it
20 shall appear that such transfer or such change may be made without
21 injury or detriment to existing rights, the department shall issue to
22 the applicant a certificate in duplicate granting the right for such
23 transfer or for such change of point of diversion or of use. The
24 certificate so issued shall be filed and be made a record with the
25 department and the duplicate certificate issued to the applicant may be
26 filed with the county auditor in like manner and with the same effect
27 as provided in the original certificate or permit to divert water.

28 (2) If an application for change proposes to transfer water rights
29 from one irrigation district to another, the department shall, before
30 publication of notice, receive concurrence from each of the irrigation
31 districts that such transfer or change will not adversely affect the
32 ability to deliver water to other landowners or impair the financial
33 integrity of either of the districts.

34 (3) A change in place of use by an individual water user or users
35 of water provided by an irrigation district need only receive approval
36 for the change from the board of directors of the district if the use
37 of water continues within the irrigation district, and when water is
38 provided by an irrigation entity that is a member of a board of joint

1 control created under chapter 87.80 RCW, approval need only be received
2 from the board of joint control if the use of water continues within
3 the area of jurisdiction of the joint board and the change can be made
4 without detriment or injury to existing rights.

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

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

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

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

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

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

36 (7) In revising the provisions of this section and adding
37 provisions to this section by chapter 237, Laws of 2001, the
38 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 small irrigation impoundment, as
5 defined in RCW 90.03.370(8), does not constitute a change or amendment
6 for the purposes of this section. The exemption expressly provided by
7 this subsection shall not be construed as requiring a change or
8 transfer of any existing water right to enable the holder of the right
9 to store water governed by the right.

10 **Sec. 2.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
11 as follows:

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

19 (2) An amendment to construct replacement or a new additional well
20 or wells at a location outside of the location of the original well or
21 wells or to change the manner or place of use of the water shall be
22 issued only after publication of notice of the application and findings
23 as prescribed in the case of an original application. Such amendment
24 shall be issued by the department only on the conditions that: (a) The
25 additional or replacement well or wells shall tap the same body of
26 public ground water as the original well or wells; (b) where a
27 replacement well or wells is approved, the use of the original well or
28 wells shall be discontinued and the original well or wells shall be
29 properly decommissioned as required under chapter 18.104 RCW; (c) where
30 an additional well or wells is constructed, the original well or wells
31 may continue to be used, but the combined total withdrawal from the
32 original and additional well or wells shall not, except as provided in
33 subsection (6) of this section, enlarge the right conveyed by the
34 original permit or certificate; and (d) other existing rights shall not
35 be impaired. The department may specify an approved manner of
36 construction and shall require a showing of compliance with the terms

1 of the amendment, as provided in RCW 90.44.080 in the case of an
2 original permit.

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

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

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

33 (6) If an application filed or action taken under this section
34 involves only a change in the point of withdrawal of the right, a
35 change in the place of use of the right, or both such changes, and the
36 purpose of use of the right was and remains the irrigation of one or
37 more crops, the quantity of water authorized to be used under such a

1 change is the same as the quantity of water authorized for use under
2 the right before the change.

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