
SENATE BILL 5481

State of Washington

58th Legislature

2003 Regular Session

By Senators Honeyford, Hewitt, Jacobsen, Swecker, Rasmussen and Shin

Read first time 01/27/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to agricultural use of water; and amending RCW
2 90.03.380 and 90.44.100.

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

4 **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 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.
5 Before any transfer of such right to use water or change of the point
6 of diversion of water or change of purpose of use can be made, any
7 person having an interest in the transfer or change, shall file a
8 written application therefor with the department, and the application
9 shall not be granted until notice of the application is published as
10 provided in RCW 90.03.280. If it shall appear that such transfer or
11 such change may be made without injury or detriment to existing rights,
12 the department shall issue to the applicant a certificate in duplicate
13 granting the right for such transfer or for such change of point of
14 diversion or of use. The certificate so issued shall be filed and be
15 made a record with the department and the duplicate certificate issued
16 to the applicant may be filed with the county auditor in like manner
17 and with the same effect as provided in the original certificate or
18 permit to divert water.

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

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

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

37 (5)(a) Pending applications for new water rights are not entitled

1 to protection from impairment, injury, or detriment when an application
2 relating to an existing surface or ground water right is considered.

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

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

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

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

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

34 (8) The right to use water for any beneficial use within the
35 general category of an agricultural use includes the right to use the
36 water, without applying to the department or any other governmental
37 entity for approval, for any other beneficial use within the general
38 category of an agricultural use. The general category of an

1 agricultural use of water includes, but is not limited to, the
2 beneficial use of water for stock watering, agricultural irrigation,
3 agricultural frost control, processing agricultural commodities into
4 agricultural products, and other agricultural uses.

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

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

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

33 (3) The construction of a replacement or new additional well or
34 wells at the location of the original well or wells shall be allowed
35 without application to the department for an amendment. However, the
36 following apply to such a replacement or new additional well: (a) The
37 well shall tap the same body of public ground water as the original

1 well or wells; (b) if a replacement well is constructed, the use of the
2 original well or wells shall be discontinued and the original well or
3 wells shall be properly decommissioned as required under chapter 18.104
4 RCW; (c) if a new additional well is constructed, the original well or
5 wells may continue to be used, but the combined total withdrawal from
6 the original and additional well or wells shall not enlarge the right
7 conveyed by the original water use permit or certificate; (d) the
8 construction and use of the well shall not interfere with or impair
9 water rights with an earlier date of priority than the water right or
10 rights for the original well or wells; (e) the replacement or
11 additional well shall be located no closer than the original well to a
12 well it might interfere with; (f) the department may specify an
13 approved manner of construction of the well; and (g) the department
14 shall require a showing of compliance with the conditions of this
15 subsection (3).

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

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

--- END ---