
SENATE BILL 5519

State of Washington 60th Legislature 2007 Regular Session

By Senators Delvin, Poulsen, Honeyford, McCaslin, Shin and Rasmussen

Read first time 01/23/2007. Referred to Committee on Water, Energy & Telecommunications.

1 AN ACT Relating to changes in the point of diversion under a water
2 right; amending RCW 90.03.380, 90.03.395, and 90.03.397; adding a new
3 section to chapter 90.03 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The purpose of this act is to authorize and
6 direct the department of ecology to approve changes in the point of
7 diversion under a water right, as defined in section 5 of this act,
8 from any point within a pool, or hydraulically connected groundwater,
9 to any other point within the same pool, or hydraulically connected
10 groundwater, and to adopt a conclusive presumption that the changes do
11 not impair any other water right and are in the public interest.

12 **Sec. 2.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
13 as follows:

14 (1) The right to the use of water which has been applied to a
15 beneficial use in the state shall be and remain appurtenant to the land
16 or place upon which the same is used: PROVIDED, HOWEVER, That the
17 right may be transferred to another or to others and become appurtenant
18 to any other land or place of use without loss of priority of right

1 theretofore established if such change can be made without detriment or
2 injury to existing rights. The point of diversion of water for
3 beneficial use or the purpose of use may be changed, if such change can
4 be made without detriment or injury to existing rights. A change in
5 the place of use, point of diversion, and/or purpose of use of a water
6 right to enable irrigation of additional acreage or the addition of new
7 uses may be permitted if such change results in no increase in the
8 annual consumptive quantity of water used under the water right. For
9 purposes of this section, "annual consumptive quantity" means the
10 estimated or actual annual amount of water diverted pursuant to the
11 water right, reduced by the estimated annual amount of return flows,
12 averaged over the two years of greatest use within the most recent
13 five-year period of continuous beneficial use of the water right.
14 Before any transfer of such right to use water or change of the point
15 of diversion of water or change of purpose of use can be made, any
16 person having an interest in the transfer or change, shall file a
17 written application therefor with the department, and the application
18 shall not be granted until notice of the application is published as
19 provided in RCW 90.03.280. If it shall appear that such transfer or
20 such change may be made without injury or detriment to existing rights,
21 the department shall issue to the applicant a certificate in duplicate
22 granting the right for such transfer or for such change of point of
23 diversion or of use. The certificate so issued shall be filed and be
24 made a record with the department and the duplicate certificate issued
25 to the applicant may be filed with the county auditor in like manner
26 and with the same effect as provided in the original certificate or
27 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 groundwater right is considered.

11 (b) Applications relating to existing surface or groundwater rights
12 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 groundwater right may be
20 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 (9) No provision of this section may be construed as limiting or
11 precluding the authorities of the department under section 5 of this
12 act.

13 **Sec. 3.** RCW 90.03.395 and 1999 c 232 s 1 are each amended to read
14 as follows:

15 The legislature intends to allow modification of the point of
16 diversion in a water right permit when such a modification will provide
17 both environmental benefits and water supply benefits and nothing in
18 RCW 90.03.397 is to be construed as allowing any other change or
19 transfer of a right to the use of surface water which has not been
20 applied to a beneficial use. No provision of this section may be
21 construed as limiting or precluding the authorities of the department
22 under section 5 of this act.

23 **Sec. 4.** RCW 90.03.397 and 1999 c 232 s 2 are each amended to read
24 as follows:

25 The department may approve a change of the point of diversion
26 prescribed in a permit to appropriate water for a beneficial use to a
27 point of diversion that is located downstream and is an existing
28 approved intake structure with capacity to transport the additional
29 diversion, if the ownership, purpose of use, season of use, and place
30 of use of the permit remain the same.

31 This section may not be construed as limiting in any manner
32 whatsoever other authorities of the department under RCW 90.03.380 or
33 other changes that may be approved under RCW 90.03.380 under
34 authorities existing before July 25, 1999, or under section 5 of this
35 act.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Main stem" means the main stem of the Columbia and Snake
6 rivers from the Bonneville dam to the upper limits of the pool behind
7 the Chief Joseph dam on the Columbia river, from the confluence of the
8 Snake river and the Columbia river to the upper limits of the pool
9 behind the Ice Harbor dam, and any groundwater determined by the
10 department to be in direct hydraulic continuity with each main stem
11 pool for management purposes.

12 (b) "Pool" means any surface water reservoir or impoundment on the
13 main stem where water is collected and stored for subsequent beneficial
14 use pursuant to a water right and any groundwater determined by the
15 department to be in direct hydraulic continuity with each pool for
16 management purposes.

17 (c) "Water right" means any surface or groundwater permit to
18 appropriate water for beneficial use from a pool, whether or not water
19 has actually been applied to beneficial use pursuant to the permit, and
20 any surface or groundwater certificate authorizing the holder to
21 appropriate water for beneficial use from a pool.

22 (2) The department shall approve any application filed by a water
23 right holder to change the point of diversion prescribed in any water
24 right to any other point of diversion located in the same pool.
25 Changes in a point of diversion within a pool, as authorized in this
26 section, shall be conclusively presumed not to impair any other water
27 right, within or without the pool, and to be in the public interest.
28 For purposes of clarity, it is intended that this section be
29 interpreted to include requests to change a surface water diversion to
30 another surface diversion, or to a groundwater diversion and to change
31 a groundwater diversion to another groundwater diversion or to a
32 surface water diversion, as long as the change is within the same pool.

33 (3) This section may not be construed as repealing other
34 authorities of the department under RCW 90.03.380, 90.03.395,
35 90.03.397, or any provision in chapter 90.44 RCW. However, to the
36 extent that the application of this section is determined to be

1 inconsistent with or in conflict with RCW 90.03.380, 90.03.395,
2 90.03.397, or chapter 90.44 RCW, this section shall prevail.

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