
HOUSE BILL 2097

State of Washington 61st Legislature 2009 Regular Session

By Representatives McCoy, Blake, Van De Wege, Nelson, Jacks, Lias, Ormsby, Eddy, Carlyle, Chase, and Kessler

Read first time 02/10/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to rainwater collection facilities; amending RCW
2 90.03.250 and 90.03.370; and adding a new section to chapter 90.03 RCW.

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

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

6 (1) Any persons collecting and using rainwater before the effective
7 date of this section may continue to do so without obtaining a permit
8 under RCW 90.03.250 or 90.03.370. After the effective date of this
9 section, all new rainwater harvesting systems must comply with the
10 final rules or general permits.

11 (2) The owner of a rainwater harvesting system designed to capture,
12 store, and use rainwater runoff from roofs, paved areas, or other
13 artificial surfaces is exempt from the permit requirements of RCW
14 90.03.250 and 90.03.370 if:

15 (a) The water is put to use on the same property where it was
16 harvested; and

17 (b) The harvesting, storage, and use complies with all applicable
18 rules under subsection (3)(a) of this section.

1 (3)(a) The department shall adopt rules by June 30, 2010, that
2 delineate storage thresholds that qualify for the permit exemption
3 authorized in subsection (2) of this section.

4 (b) The department shall issue general permits that may address
5 specific geographic areas to specify conditions under which rainwater
6 harvesting systems may be constructed and operated in order to protect
7 existing water rights or to prevent harm, such as reduced instream
8 flows or significant reductions in flow levels to existing streams or
9 water bodies.

10 (c) In establishing the rules and general permits, the department
11 shall conduct a scientific study to substantiate all thresholds and
12 permit specifications.

13 (4) Rainwater harvested, stored, and used under this section does
14 not result in a water right under RCW 90.03.250 or 90.03.370.

15 **Sec. 2.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to read
16 as follows:

17 (1) Any person, municipal corporation, firm, irrigation district,
18 association, corporation, or water users' association hereafter
19 desiring to appropriate water for a beneficial use shall make an
20 application to the department for a permit to make such appropriation,
21 and shall not use or divert such waters until ~~((he))~~ the entity has
22 received a permit from the department as provided in this chapter
23 ~~((provided))~~. The construction of any ditch, canal, or works, or
24 performing any work in connection with said construction or
25 appropriation, or the use of any waters, shall not be an appropriation
26 of such water nor an act for the purpose of appropriating water unless
27 a permit to make said appropriation has first been granted by the
28 department ~~((~~PROVIDED~~, That))~~.

29 (2) A temporary permit may be granted upon a proper showing made to
30 the department to be valid only during the pendency of such application
31 for a permit unless sooner revoked by the department ~~((~~PROVIDED~~,~~
32 ~~FURTHER~~, That)).

33 (3) Nothing in this chapter ~~((contained))~~ shall be deemed to affect
34 RCW 90.40.010 through 90.40.080 except that the notice and certificate
35 ~~((therein))~~ provided for in RCW 90.40.030 shall be addressed to the
36 department, and the department shall exercise the powers and perform
37 the duties prescribed by RCW 90.40.030.

1 (4) The capture, storage, and use of runoff from roofs, paved
2 areas, and other artificial surfaces is exempt from the permit
3 requirement of this section if the water is put to use on the same
4 property where the runoff is collected and meets the requirements of
5 section 1 of this act.

6 (5) Runoff collected, stored, and used under subsection (4) of this
7 section does not result in a water right under this section or RCW
8 90.03.370.

9 **Sec. 3.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read
10 as follows:

11 (1)(a) All applications for reservoir permits are subject to the
12 provisions of RCW 90.03.250 through 90.03.320. But the party or
13 parties proposing to apply to a beneficial use the water stored in any
14 such reservoir shall also file an application for a permit, to be known
15 as the secondary permit, which shall be in compliance with the
16 provisions of RCW 90.03.250 through 90.03.320. Such secondary
17 application shall refer to such reservoir as its source of water supply
18 and shall show documentary evidence that an agreement has been entered
19 into with the owners of the reservoir for a permanent and sufficient
20 interest in said reservoir to impound enough water for the purposes set
21 forth in said application. When the beneficial use has been completed
22 and perfected under the secondary permit, the department shall take the
23 proof of the water users under such permit and the final certificate of
24 appropriation shall refer to both the ditch and works described in the
25 secondary permit and the reservoir described in the primary permit.
26 The department may accept for processing a single application form
27 covering both a proposed reservoir and a proposed secondary permit or
28 permits for use of water from that reservoir.

29 (b) The department shall expedite processing applications for the
30 following types of storage proposals:

31 (i) Development of storage facilities that will not require a new
32 water right for diversion or withdrawal of the water to be stored;

33 (ii) Adding or changing one or more purposes of use of stored
34 water;

35 (iii) Adding to the storage capacity of an existing storage
36 facility; and

1 (iv) Applications for secondary permits to secure use from existing
2 storage facilities.

3 (c) A secondary permit for the beneficial use of water shall not be
4 required for use of water stored in a reservoir where the water right
5 for the source of the stored water authorizes the beneficial use.

6 (2)(a) For the purposes of this section, "reservoir" includes, in
7 addition to any surface reservoir, any naturally occurring underground
8 geological formation where water is collected and stored for subsequent
9 use as part of an underground artificial storage and recovery project.
10 To qualify for issuance of a reservoir permit an underground geological
11 formation must meet standards for review and mitigation of adverse
12 impacts identified, for the following issues:

13 (i) Aquifer vulnerability and hydraulic continuity;

14 (ii) Potential impairment of existing water rights;

15 (iii) Geotechnical impacts and aquifer boundaries and
16 characteristics;

17 (iv) Chemical compatibility of surface waters and groundwater;

18 (v) Recharge and recovery treatment requirements;

19 (vi) System operation;

20 (vii) Water rights and ownership of water stored for recovery; and

21 (viii) Environmental impacts.

22 (b) Standards for review and standards for mitigation of adverse
23 impacts for an underground artificial storage and recovery project
24 shall be established by the department by rule. Notwithstanding the
25 provisions of RCW 90.03.250 through 90.03.320, analysis of each
26 underground artificial storage and recovery project and each
27 underground geological formation for which an applicant seeks the
28 status of a reservoir shall be through applicant-initiated studies
29 reviewed by the department.

30 (3) For the purposes of this section, "underground artificial
31 storage and recovery project" means any project in which it is intended
32 to artificially store water in the ground through injection, surface
33 spreading and infiltration, or other department-approved method, and to
34 make subsequent use of the stored water. However, (a) this subsection
35 does not apply to irrigation return flow, or to operational and seepage
36 losses that occur during the irrigation of land, or to water that is
37 artificially stored due to the construction, operation, or maintenance
38 of an irrigation district project, or to projects involving water

1 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130
2 applies to those instances of claimed artificial recharge occurring due
3 to the construction, operation, or maintenance of an irrigation
4 district project or operational and seepage losses that occur during
5 the irrigation of land, as well as other forms of claimed artificial
6 recharge already existing at the time a groundwater subarea is
7 established.

8 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of
9 existing law governing issuance of permits to appropriate or withdraw
10 the waters of the state.

11 (5) The department shall report to the legislature by December 31,
12 2001, on the standards for review and standards for mitigation
13 developed under subsection (3) of this section and on the status of any
14 applications that have been filed with the department for underground
15 artificial storage and recovery projects by that date.

16 (6) Where needed to ensure that existing storage capacity is
17 effectively and efficiently used to meet multiple purposes, the
18 department may authorize reservoirs to be filled more than once per
19 year or more than once per season of use.

20 (7) This section does not apply to facilities to recapture and
21 reuse return flow from irrigation operations serving a single farm
22 under an existing water right as long as the acreage irrigated is not
23 increased beyond the acreage allowed to be irrigated under the water
24 right.

25 (8) In addition to the facilities exempted under subsection (7) of
26 this section, this section does not apply to small irrigation
27 impoundments. For purposes of this section, "small irrigation
28 impoundments" means lined surface storage ponds less than ten acre feet
29 in volume used to impound irrigation water under an existing water
30 right where use of the impoundment: (a)(i) Facilitates efficient use
31 of water; or (ii) promotes compliance with an approved recovery plan
32 for endangered or threatened species; and (b) does not expand the
33 number of acres irrigated or the annual consumptive quantity of water
34 used. Such ponds must be lined unless a licensed engineer determines
35 that a liner is not needed to retain water in the pond and to prevent
36 groundwater contamination. Although it may also be composed of other
37 materials, a properly maintained liner may be composed of bentonite.
38 Water remaining in a small irrigation impoundment at the end of an

1 irrigation season may be carried over for use in the next season.
2 However, the limitations of this subsection (8) apply. Development and
3 use of a small irrigation impoundment does not constitute a change or
4 amendment for purposes of RCW 90.03.380 or 90.44.055.

5 (9) The capture, storage, and use of runoff from roofs, paved
6 areas, and other artificial surfaces is exempt from the permit
7 requirement of this section if the water is put to use on the same
8 property where the runoff is collected and meets the requirements of
9 section 1 of this act.

10 (10) Runoff collected, stored, and used under subsection (9) of
11 this section does not result in a water right under this section or RCW
12 90.03.250.

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