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HOUSE BILL 2415

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Buys, Blake, Chandler, Hinkle, Overstreet, Lytton, Johnson, Moeller, Haler, and Parker

Read first time 01/13/12. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to amending the water rights transfer protocols to  
2 fairly accommodate de facto changes in irrigation practices from  
3 classic irrigation methods to the more conservation-minded  
4 microirrigation methods; amending RCW 90.03.380 and 90.03.380; adding  
5 a new section to chapter 90.03 RCW; creating a new section; providing  
6 an effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the current  
9 system for calculating annual consumptive quantity under the state  
10 water code does not always function to fairly reward water conservation  
11 both in the past and into the future. There have been significant  
12 conversions in Washington from inefficient overhead irrigation to  
13 microirrigation once microirrigation technology was perfected and  
14 introduced to the area beginning in the mid-1980's. This conversion  
15 has resulted in significant decreases in water use and related benefits  
16 to instream resources. However, the reduced water use numbers function  
17 in a punitive manner under the current annual consumptive quantity  
18 calculation process because the calculation of the amount of water that

1 is available to transfer is drastically reduced by the reduction in  
2 water use that accompanied the improvement in irrigation efficiency.

3 (2) It is the intent of the legislature to base the annual  
4 consumptive quantity determination in these cases on the five years of  
5 water use that preceded the change to more efficient irrigation. This  
6 change is consistent with the original intent of the annual consumptive  
7 quantity process and will allow those who improved their irrigation  
8 efficiency the opportunity to retain some of their water for  
9 application to beneficial use.

10 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to read  
11 as follows:

12 (1)(a) The right to the use of water which has been applied to a  
13 beneficial use in the state shall be and remain appurtenant to the land  
14 or place upon which the same is used(~~(-PROVIDED-)~~). However,  
15 ((That)) the right may be transferred, consistent with this section and  
16 section 4 of this act, to another or to others and become appurtenant  
17 to any other land or place of use without loss of priority of right  
18 theretofore established if such change can be made without detriment or  
19 injury to existing rights. The point of diversion of water for  
20 beneficial use or the purpose of use may be changed, if such change can  
21 be made without detriment or injury to existing rights.

22 (b) A change in the place of use, point of diversion, and/or  
23 purpose of use of a water right to enable irrigation of additional  
24 acreage or the addition of new uses may be permitted if such change  
25 results in no increase in the annual consumptive quantity of water used  
26 under the water right. For purposes of this section, "annual  
27 consumptive quantity" means, except as otherwise provided in (e) and  
28 (f) of this subsection or section 4 of this act, the estimated or  
29 actual annual amount of water diverted pursuant to the water right,  
30 reduced by the estimated annual amount of return flows, averaged over  
31 the two years of greatest use within the most recent five-year period  
32 of continuous beneficial use of the water right.

33 (c) Before any transfer of such right to use water or change of the  
34 point of diversion of water or change of purpose of use can be made,  
35 any person having an interest in the transfer or change, shall file a  
36 written application therefor with the department, and the application

1 shall not be granted until notice of the application is published as  
2 provided in RCW 90.03.280.

3 (d) If it (~~shall~~) appears that such transfer or such change may  
4 be made without injury or detriment to existing rights, the department  
5 shall issue to the applicant a certificate in duplicate granting the  
6 right for such transfer or for such change of point of diversion or of  
7 use. The certificate so issued shall be filed and be made a record  
8 with the department and the duplicate certificate issued to the  
9 applicant may be filed with the county auditor in like manner and with  
10 the same effect as provided in the original certificate or permit to  
11 divert water.

12 (e) The time period that the water right was banked under RCW  
13 90.92.070, in an approved local water plan created under RCW 90.92.090,  
14 or the water right was subject to an agreement to not divert under RCW  
15 90.92.050 will not be included in the most recent five-year period of  
16 continuous beneficial use for the purpose of determining the annual  
17 consumptive quantity under this section.

18 (f) If the water right has not been used during the previous five  
19 years but the nonuse of which qualifies for one or more of the  
20 statutory good causes or exceptions to relinquishment in RCW 90.14.140  
21 and 90.44.520, the period of nonuse is not included in the most recent  
22 five-year period of continuous beneficial use for purposes of  
23 determining the annual consumptive quantity of water under this  
24 section.

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

31 (3) A change in place of use by an individual water user or users  
32 of water provided by an irrigation district need only receive approval  
33 for the change from the board of directors of the district if the use  
34 of water continues within the irrigation district, and when water is  
35 provided by an irrigation entity that is a member of a board of joint  
36 control created under chapter 87.80 RCW, approval need only be received  
37 from the board of joint control if the use of water continues within

1 the area of jurisdiction of the joint board and the change can be made  
2 without detriment or injury to existing rights.

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

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

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

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

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

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

34 (7) In revising the provisions of this section and adding  
35 provisions to this section by chapter 237, Laws of 2001, the  
36 legislature does not intend to imply legislative approval or  
37 disapproval of any existing administrative policy regarding, or any

1 existing administrative or judicial interpretation of, the provisions  
2 of this section not expressly added or revised.

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

9 (9) This section does not apply to a water right involved in an  
10 approved local water plan created under RCW 90.92.090, a water right  
11 that is subject to an agreement not to divert under RCW 90.92.050, or  
12 a banked water right under RCW 90.92.070.

13 (10)(a) The department may only approve an application submitted  
14 after July 22, 2011, for an interbasin water rights transfer after  
15 providing notice electronically to the board of county commissioners in  
16 the county of origin upon receipt of an application.

17 (b) For the purposes of this subsection:

18 (i) "Interbasin water rights transfer" means a transfer of a water  
19 right for which the proposed point of diversion is in a different basin  
20 than the proposed place of beneficial use.

21 (ii) "County of origin" means the county from which a water right  
22 is transferred or proposed to be transferred.

23 (c) This subsection applies to counties located east of the crest  
24 of the Cascade mountains.

25 **Sec. 3.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to read  
26 as follows:

27 (1)(a) The right to the use of water which has been applied to a  
28 beneficial use in the state shall be and remain appurtenant to the land  
29 or place upon which the same is used(~~(+—PROVIDED,)~~). However,  
30 ((That)) the right may be transferred, consistent with this section and  
31 section 4 of this act, to another or to others and become appurtenant  
32 to any other land or place of use without loss of priority of right  
33 theretofore established if such change can be made without detriment or  
34 injury to existing rights. The point of diversion of water for  
35 beneficial use or the purpose of use may be changed, if such change can  
36 be made without detriment or injury to existing rights.

1       **(b)** A change in the place of use, point of diversion, and/or  
2 purpose of use of a water right to enable irrigation of additional  
3 acreage or the addition of new uses may be permitted if such change  
4 results in no increase in the annual consumptive quantity of water used  
5 under the water right. For purposes of this section, "annual  
6 consumptive quantity" means, except as otherwise provided in section 4  
7 of this act, the estimated or actual annual amount of water diverted  
8 pursuant to the water right, reduced by the estimated annual amount of  
9 return flows, averaged over the two years of greatest use within the  
10 most recent five-year period of continuous beneficial use of the water  
11 right.

12       **(c)** Before any transfer of such right to use water or change of the  
13 point of diversion of water or change of purpose of use can be made,  
14 any person having an interest in the transfer or change, shall file a  
15 written application therefor with the department, and the application  
16 shall not be granted until notice of the application is published as  
17 provided in RCW 90.03.280.

18       **(d)** If it (~~shall~~) appears that such transfer or such change may  
19 be made without injury or detriment to existing rights, the department  
20 shall issue to the applicant a certificate in duplicate granting the  
21 right for such transfer or for such change of point of diversion or of  
22 use. The certificate so issued shall be filed and be made a record  
23 with the department and the duplicate certificate issued to the  
24 applicant may be filed with the county auditor in like manner and with  
25 the same effect as provided in the original certificate or permit to  
26 divert water.

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

33       (3) A change in place of use by an individual water user or users  
34 of water provided by an irrigation district need only receive approval  
35 for the change from the board of directors of the district if the use  
36 of water continues within the irrigation district, and when water is  
37 provided by an irrigation entity that is a member of a board of joint  
38 control created under chapter 87.80 RCW, approval need only be received

1 from the board of joint control if the use of water continues within  
2 the area of jurisdiction of the joint board and the change can be made  
3 without detriment or injury to existing rights.

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

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

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

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

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

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

35 (7) In revising the provisions of this section and adding  
36 provisions to this section by chapter 237, Laws of 2001, the  
37 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)(a) The department may only approve an application submitted  
11 after June 30, 2019, for an interbasin water rights transfer after  
12 providing notice electronically to the board of county commissioners in  
13 the county of origin upon receipt of an application.

14 (b) For the purposes of this subsection:

15 (i) "Interbasin water rights transfer" means a transfer of a water  
16 right for which the proposed point of diversion is in a different basin  
17 than the proposed place of beneficial use.

18 (ii) "County of origin" means the county from which a water right  
19 is transferred or proposed to be transferred.

20 (c) This subsection applies to counties located east of the crest  
21 of the Cascade mountains.

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

24 (1) Applications for a change in the place of water use, point of  
25 water diversion, and/or purpose of water right use under RCW 90.03.380  
26 that occurred without the required prior approval from the department,  
27 that were intended to enable the irrigation of additional acreage or  
28 the addition of new uses, and that improved water use efficiency and  
29 reduced direct impacts on instream resources must be submitted to the  
30 department consistent with this section.

31 (2) All applications affected by this section must:

32 (a) Indicate the date or dates on which the actual changes in water  
33 use occurred; and

34 (b) Identify the nature and extent of the changes, including any  
35 improvements in water use efficiency or reductions in direct impact on  
36 instream resources.



1 (3)(a) It is the responsibility of the applicant to provide  
2 evidence of:

3 (i) Water use both before and after the de facto changes; and

4 (ii) The prechange and final points of diversion or withdrawal and  
5 place of use.

6 (b) Evidence that may be submitted for a change may include crop  
7 receipts, seed receipts, harvest-related receipts, aerial and other  
8 photographs showing land in agricultural production or showing  
9 irrigation facilities, irrigation equipment receipts, metering records,  
10 or any other form of data acceptable to the department.

11 (4) In determining the amount of water diverted and withdrawn and  
12 accurately assessing the quantity of water actually applied to  
13 beneficial use, the applicant may submit, and the department must  
14 consider, information related to the amount of land physically  
15 contacted by irrigation water and the type of irrigation, row spacing,  
16 and other variables.

17 (5) For the purposes of this section and an application submitted  
18 under this section, "annual consumptive quantity" means the estimated  
19 or actual consumptive quantity for a water right, reduced by the  
20 estimated annual amount of return flows in the years of greatest use  
21 within the most recent five-year period of continuous beneficial use of  
22 the water right, immediately preceding the actual changes to water use  
23 that occurred and which are documented in the water right change  
24 application as required in this section.

25 (6) Except as otherwise provided by this section, the provisions of  
26 RCW 90.03.380 apply to applications and transfers under this section.

27 NEW SECTION. **Sec. 5.** Section 2 of this act expires June 30, 2019.

28 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect June 30,  
29 2019.

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