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HOUSE BILL 1752

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State of Washington

68th Legislature

2023 Regular Session

By Representatives Dye, Dent, Graham, and Eslick

Read first time 02/03/23. Referred to Committee on Agriculture and Natural Resources.

1 AN ACT Relating to modifying the application of the annual  
2 consumptive quantity calculation to change applications related to  
3 certain water rights held by the United States bureau of reclamation;  
4 and amending RCW 90.03.380.

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

6 **Sec. 1.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to  
7 read as follows:

8 (1) The right to the use of water which has been applied to a  
9 beneficial use in the state shall be and remain appurtenant to the  
10 land or place upon which the same is used: PROVIDED, HOWEVER, That  
11 the right may be transferred to another or to others and become  
12 appurtenant to any other land or place of use without loss of  
13 priority of right theretofore established if such change can be made  
14 without detriment or injury to existing rights. The point of  
15 diversion of water for beneficial use or the purpose of use may be  
16 changed, if such change can be made without detriment or injury to  
17 existing rights.

18 (a) A change in the place of use, point of diversion, and/or  
19 purpose of use of a water right to enable irrigation of additional  
20 acreage or the addition of new uses may be permitted if such change

1 results in no increase in the annual consumptive quantity of water  
2 used under the water right.

3 (b) For water rights held by the United States bureau of  
4 reclamation for water use within the boundaries of the Columbia Basin  
5 project, the bureau of reclamation may apply for and obtain approval  
6 for a change in the number of acres that may be irrigated with such  
7 water rights, so long as such a change does not result in any  
8 increase in the instantaneous or annual out-of-stream authorized  
9 quantity of such rights and so long as the department determines that  
10 such a change would not result in an impairment of any other water  
11 rights. The provisions of (a) of this subsection do not apply to a  
12 change application filed pursuant to this subsection (1)(b).

13 (c) For purposes of this section, "annual consumptive quantity"  
14 means the estimated or actual annual amount of water diverted  
15 pursuant to the water right, reduced by the estimated annual amount  
16 of return flows, averaged over the two years of greatest use within  
17 the most recent five-year period of continuous beneficial use of the  
18 water right.

19 (d) Before any transfer of such right to use water or change of  
20 the point of diversion of water or change of purpose of use can be  
21 made, any person having an interest in the transfer or change, shall  
22 file a written application therefor with the department, and the  
23 application shall not be granted until notice of the application is  
24 published as provided in RCW 90.03.280. If it shall appear that such  
25 transfer or such change may be made without injury or detriment to  
26 existing rights, the department shall issue to the applicant a  
27 certificate in duplicate granting the right for such transfer or for  
28 such change of point of diversion or of use. The certificate so  
29 issued shall be filed and be made a record with the department and  
30 the duplicate certificate issued to the applicant may be filed with  
31 the county auditor in like manner and with the same effect as  
32 provided in the original certificate or permit to divert water.

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

39 (3) A change in place of use by an individual water user or users  
40 of water provided by an irrigation district need only receive

1 approval for the change from the board of directors of the district  
2 if the use of water continues within the irrigation district, and  
3 when water is provided by an irrigation entity that is a member of a  
4 board of joint control created under chapter 87.80 RCW, approval need  
5 only be received from the board of joint control if the use of water  
6 continues within the area of jurisdiction of the joint board and the  
7 change can be made without detriment or injury to existing rights.

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

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

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

20 (c) Notwithstanding any other existing authority to process  
21 applications, including but not limited to the authority to process  
22 applications under WAC 173-152-050 as it existed on January 1, 2001,  
23 an application relating to an existing surface or ground water right  
24 may be processed ahead of a previously filed application relating to  
25 an existing right when sufficient information for a decision on the  
26 previously filed application is not available and the applicant for  
27 the previously filed application is sent written notice that explains  
28 what information is not available and informs the applicant that  
29 processing of the next application will begin. The previously filed  
30 application does not lose its priority date and if the information is  
31 provided by the applicant within (~~sixty~~) 60 days, the previously  
32 filed application shall be processed at that time. This subsection  
33 (5)(c) does not affect any other existing authority to process  
34 applications.

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

37 (6) No applicant for a change, transfer, or amendment of a water  
38 right may be required to give up any part of the applicant's valid  
39 water right or claim to a state agency, the trust water rights

1 program, or to other persons as a condition of processing the  
2 application.

3 (7) In revising the provisions of this section and adding  
4 provisions to this section by chapter 237, Laws of 2001, the  
5 legislature does not intend to imply legislative approval or  
6 disapproval of any existing administrative policy regarding, or any  
7 existing administrative or judicial interpretation of, the provisions  
8 of this section not expressly added or revised.

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

15 (9)(a) The department may only approve an application submitted  
16 after June 30, 2019, for an interbasin water rights transfer after  
17 providing notice electronically to the board of county commissioners  
18 in the county of origin upon receipt of an application.

19 (b) For the purposes of this subsection:

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

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

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

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