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**SUBSTITUTE HOUSE BILL 2201**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Mulliken, Honeyford, Robertson, Boldt and Goldsmith)

Read first time 01/18/96.

1 AN ACT Relating to water transfers and changes; amending RCW  
2 90.03.380, 90.44.100, 90.03.290, and 90.44.445; and adding a new  
3 section to chapter 90.03 RCW.

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

5 **Sec. 1.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read  
6 as follows:

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

1 application shall not be granted until notice of ~~((said))~~ the  
2 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If  
3 it shall appear that such transfer or such change may be made without  
4 injury or detriment to existing rights, the department shall issue to  
5 the applicant a certificate in duplicate granting the right for such  
6 transfer or for such change of point of diversion or of use. The  
7 certificate so issued shall be filed and be made a record with the  
8 department and the duplicate certificate issued to the applicant may be  
9 filed with the county auditor in like manner and with the same effect  
10 as provided in the original certificate or permit to divert water.

11 (2) If an application for change proposes to transfer water rights  
12 from one irrigation district to another, the department shall, before  
13 publication of notice, receive concurrence from each of the irrigation  
14 districts that such transfer or change will not adversely affect the  
15 ability to deliver water to other landowners or impair the financial or  
16 operational integrity of either of the districts.

17 (3) A change in place of use by an individual water user or users  
18 of water provided by an irrigation district need only receive approval  
19 for the change from the board of directors of the district if the use  
20 of water continues within the irrigation district. The board of  
21 directors may approve such a change if the board determines that the  
22 change: Will not adversely affect the district's ability to deliver  
23 water to other landowners; will not require the construction by the  
24 district of diversion or drainage facilities unless the board finds  
25 that the construction by the district is in the interest of the  
26 district; will not impair the financial or operational integrity of the  
27 district; and is consistent with the contractual obligations of the  
28 district.

29 (4) Subsections (1), (2), and (3) of this section do not apply to  
30 a change or transfer governed by section 2 of this act.

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

34 (6) The department may not initiate relinquishment proceedings  
35 under chapter 90.14 RCW regarding a water right for which an  
36 application for a transfer or change is filed under this section during  
37 the period beginning on the date the department receives the  
38 application and ending two years after the date the department approves  
39 or denies the application.

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

3        (1)(a) If a portion of the water governed by a water right is made  
4 surplus to the beneficial uses exercised under the right through the  
5 implementation of practices or technologies, including but not limited  
6 to conveyance practices or technologies, which are more efficient or  
7 more water use efficient than those under which the right was  
8 perfected, the right to use the surplus water may be changed as  
9 provided by subsection (2) or (3) of this section.

10       (b) If a portion of the water governed by a water right is made  
11 surplus to the beneficial uses exercised under the right through a  
12 change in the crops grown under the water right, the right to use the  
13 surplus water may be changed as provided by subsection (3) of this  
14 section. This subsection (1)(b) does not apply to water supplied by an  
15 irrigation district.

16       (c) This section applies only to a change of an agricultural use or  
17 portion of an agricultural use of water to an agricultural use of  
18 water.

19       (2) The use within an irrigation district of water supplied by the  
20 district and made surplus as provided in subsection (1)(a) of this  
21 section shall be regulated solely as provided by the board of directors  
22 of the irrigation district. Such a use requires the approval of the  
23 board of directors of the irrigation district or must otherwise be  
24 authorized by the board. The board may approve or authorize such a use  
25 only if the use does not impair the financial or operational integrity  
26 of the district. Water supplied by an irrigation district and made  
27 surplus as provided in subsection (1)(a) of this section through  
28 actions taken by an individual water user served by the district is not  
29 available for use as a matter of right by that individual water user,  
30 but may be used by the board for the benefit of the district generally.  
31 The district's board of directors may approve or otherwise authorize  
32 under this subsection uses of such surplus water that result in the  
33 total irrigated acreage within the district exceeding the irrigated  
34 acreage recorded with the department for the district's water right if  
35 the board notifies the department of the change in the irrigated  
36 acreage within the district. Such a notification provides a change in  
37 the district's water right and, upon receiving the notification, the  
38 department shall revise its records for the district's right to reflect  
39 the change.

1 If an irrigation district is within a federal reclamation project  
2 and the district's board of directors approves or otherwise authorizes  
3 under this subsection uses of such surplus water that result in the  
4 total irrigated acreage within the federal project exceeding the  
5 irrigated acreage recorded with the department for the federal  
6 project's water right, the board shall notify the department of the  
7 change in the irrigated acreage within the federal project. Such a  
8 notification provides a change in the federal reclamation project's  
9 water right and, upon receiving the notification, the department shall  
10 revise its records for the federal project's right to reflect the  
11 change except that the total irrigable acreage for a water right for a  
12 federal reclamation project may not exceed the total irrigable acreage  
13 authorized for the project by the United States and related repayment  
14 contracts.

15 (3) The right to use water made surplus as provided in subsection  
16 (1)(a) or (b) of this section but not supplied by an irrigation  
17 district may be changed to use on other lands owned by the holder of  
18 the water right that are contiguous to the lands upon which the use of  
19 the water was authorized by the right before such a change. The holder  
20 of the water right shall notify the department of such a change. The  
21 notification provides a change in the holder's water right and, upon  
22 receiving the notification, the department shall revise its records for  
23 the water right to reflect the change.

24 (4) A change governed by this section shall be made without loss of  
25 priority of the right.

26 (5) This section shall not be construed as authorizing the use of  
27 a junior water right in a manner that impairs or interferes with the  
28 use of a senior water right.

29 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
30 read as follows:

31 (1) After an application to, and upon the issuance by the  
32 department of an amendment to the appropriate permit or certificate of  
33 ground water right, the holder of a valid right to withdraw public  
34 ground waters may, without losing his priority of right, construct  
35 wells or other means of withdrawal at a new location in substitution  
36 for or in addition to those at the original location, or he may change  
37 the manner or the place of use of the water(~~(:—PROVIDED, HOWEVER, That~~  
38 ~~such)).~~ An amendment shall be issued only after publication of notice

1 of the application and findings as prescribed in the case of an  
2 original application. Such amendment shall be issued by the department  
3 only on the conditions that: ~~((+1))~~ (a) The additional or substitute  
4 well or wells shall tap the same body of public ground water as the  
5 original well or wells; ~~((+2))~~ (b) use of the original well or wells  
6 shall be discontinued upon construction of the substitute well or  
7 wells; ~~((+3))~~ (c) the construction of an additional well or wells  
8 shall not enlarge the right conveyed by the original permit or  
9 certificate; and ~~((+4))~~ (d) other existing rights shall not be  
10 impaired. The department may specify an approved manner of  
11 construction and shall require a showing of compliance with the terms  
12 of the amendment, as provided in RCW 90.44.080 in the case of an  
13 original permit.

14 (2) This section does not apply to a change in use governed by  
15 section 2 of this act.

16 (3) The department may not initiate relinquishment proceedings  
17 under chapter 90.14 RCW regarding a water right for which an  
18 application for a transfer or change is filed under this section during  
19 the period beginning on the date the department receives the  
20 application and ending two years after the date the department makes a  
21 decision on the application.

22 **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
23 as follows:

24 When an application complying with the provisions of this chapter  
25 and with the rules and regulations of the department has been filed,  
26 the same shall be placed on record with the department, and it shall be  
27 its duty to investigate the application, and determine what water, if  
28 any, is available for appropriation, and find and determine to what  
29 beneficial use or uses it can be applied. If it is proposed to  
30 appropriate water for irrigation purposes, the department shall  
31 investigate, determine and find what lands are capable of irrigation by  
32 means of water found available for appropriation. If it is proposed to  
33 appropriate water for the purpose of power development, the department  
34 shall investigate, determine and find whether the proposed development  
35 is likely to prove detrimental to the public interest, having in mind  
36 the highest feasible use of the waters belonging to the public. If the  
37 application does not contain, and the applicant does not promptly  
38 furnish sufficient information on which to base such findings, the

1 department may issue a preliminary permit, for a period of not to  
2 exceed three years, requiring the applicant to make such surveys,  
3 investigations, studies, and progress reports, as in the opinion of the  
4 department may be necessary. If the applicant fails to comply with the  
5 conditions of the preliminary permit, it and the application or  
6 applications on which it is based shall be automatically canceled and  
7 the applicant so notified. If the holder of a preliminary permit  
8 shall, before its expiration, file with the department a verified  
9 report of expenditures made and work done under the preliminary permit,  
10 which, in the opinion of the department, establishes the good faith,  
11 intent and ability of the applicant to carry on the proposed  
12 development, the preliminary permit may, with the approval of the  
13 governor, be extended, but not to exceed a maximum period of five years  
14 from the date of the issuance of the preliminary permit. The  
15 department shall make and file as part of the record in the matter,  
16 written findings of fact concerning all things investigated, and if it  
17 shall find that there is water available for appropriation for a  
18 beneficial use, and the appropriation thereof as proposed in the  
19 application will not impair existing rights or be detrimental to the  
20 public welfare, it shall issue a permit stating the amount of water to  
21 which the applicant shall be entitled and the beneficial use or uses to  
22 which it may be applied: PROVIDED, That where the water applied for is  
23 to be used for irrigation purposes, it shall become appurtenant only to  
24 such land as may be reclaimed thereby to the full extent of the soil  
25 for agricultural purposes. But where there is no unappropriated water  
26 in the proposed source of supply, or where the proposed use conflicts  
27 with existing rights, or threatens to prove detrimental to the public  
28 interest, having due regard to the highest feasible development of the  
29 use of the waters belonging to the public, it shall be duty of the  
30 department to reject such application and to refuse to issue the permit  
31 asked for. If the permit is refused because of conflict with existing  
32 rights and such applicant shall acquire same by purchase or  
33 condemnation under RCW 90.03.040, the department may thereupon grant  
34 such permit. Any application may be approved for a less amount of  
35 water than that applied for, if there exists substantial reason  
36 therefor, and in any event shall not be approved for more water than  
37 can be applied to beneficial use for the purposes named in the  
38 application. In determining whether or not a permit shall issue upon  
39 any application, it shall be the duty of the department to investigate

1 all facts relevant and material to the application. After the  
2 department approves said application in whole or in part and before any  
3 permit shall be issued thereon to the applicant, such applicant shall  
4 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
5 event a permit is issued by the department upon any application, it  
6 shall be its duty to notify the director of fish and wildlife of such  
7 issuance.

8 This section does not apply to changes made under section 2 of this  
9 act or to applications for transfers or changes made under RCW  
10 90.03.380 or 90.44.100.

11 **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
12 as follows:

13 In any acreage expansion program adopted by the department as an  
14 element of a ground water management program, the authorization for a  
15 water right certificate holder to participate in the program shall be  
16 on an annual basis for the first two years. After the two-year period,  
17 the department may authorize participation for ten-year periods. The  
18 department may authorize participation for ten-year periods for  
19 certificate holders who have already participated in an acreage  
20 expansion program for two years. The department may require annual  
21 certification that the certificate holder has complied with all  
22 requirements of the program. The department may terminate the  
23 authority of a certificate holder to participate in the program for one  
24 calendar year if the certificate holder fails to comply with the  
25 requirements of the program.

26 This section applies only in an area with a ground water area or  
27 subarea management program in effect on the effective date of this  
28 section. The provisions of section 2 of this act, RCW 90.03.380, and  
29 90.44.100 apply to transfers, changes, and amendments to permits or  
30 rights for the beneficial use of ground water in any other area.

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