

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE HOUSE BILL 2050

55th Legislature  
1997 Regular Session

Passed by the House April 22, 1997  
Yeas 60 Nays 38

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**Speaker of the  
House of Representatives**

Passed by the Senate April 18, 1997  
Yeas 31 Nays 16

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**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2050** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2050

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AS AMENDED BY THE SENATE

Passed Legislature - 1997 Regular Session

State of Washington                      55th Legislature                      1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Chandler, Clements and Honeyford)

Read first time 03/05/97.

1            AN ACT Relating to determining the impairment of water rights and  
2 uses; amending RCW 90.03.380, 90.44.100, 90.44.030, 90.44.035, and  
3 90.44.070; adding a new section to chapter 90.44 RCW; adding a new  
4 section to chapter 90.03 RCW; and creating a new section.

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

6            **Sec. 1.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to read  
7 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 land  
10 or place upon which the same is used: PROVIDED, HOWEVER, That said  
11 right may be transferred to another or to others and become appurtenant  
12 to any other land or place of use without loss of priority of right  
13 theretofore established if such change can be made without detriment or  
14 injury to existing rights. The point of diversion of water for  
15 beneficial use or the purpose of use may be changed, if such change can  
16 be made without detriment or injury to existing rights. Before any  
17 transfer of such right to use water or change of the point of diversion  
18 of water or change of purpose of use can be made, any person having an  
19 interest in the transfer or change, shall file a written application

1 therefor with the department, and said application shall not be granted  
2 until notice of said application shall be published as provided in RCW  
3 90.03.280. If it shall appear that such transfer or such change may be  
4 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 (2) If an application for change proposes to transfer water rights  
13 from one irrigation district to another, the department shall, before  
14 publication of notice, receive concurrence from each of the irrigation  
15 districts that such transfer or change will not adversely affect the  
16 ability to deliver water to other landowners or impair the financial  
17 integrity of either of the districts.

18 (3) A change in place of use by an individual water user or users  
19 of water provided by an irrigation district need only receive approval  
20 for the change from the board of directors of the district if the use  
21 of water continues within the irrigation district, and when water is  
22 provided by an irrigation entity that is a member of a board of joint  
23 control created under chapter 87.80 RCW, approval need only be received  
24 from the board of joint control if the use of water continues within  
25 the area of jurisdiction of the joint board and the change can be made  
26 without detriment or injury to existing rights.

27 (4) Any right represented by an application for a water right for  
28 which a permit for water use has not been issued by the time a transfer  
29 or change is approved under this section shall not be construed as  
30 being injured or detrimentally affected by the transfer or change.

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 **Sec. 2.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
35 read as follows:

36 After an application to, and upon the issuance by the department of  
37 an amendment to the appropriate permit or certificate of ground water  
38 right, the holder of a valid right to withdraw public ground waters

1 may, without losing his priority of right, construct wells or other  
2 means of withdrawal at a new location in substitution for or in  
3 addition to those at the original location, or he may change the manner  
4 or the place of use of the water: PROVIDED, HOWEVER, That such  
5 amendment shall be issued only after publication of notice of the  
6 application and findings as prescribed in the case of an original  
7 application. Such amendment shall be issued by the department only on  
8 the conditions that: (1) The additional or substitute well or wells  
9 shall tap the same body of public ground water as the original well or  
10 wells; (2) use of the original well or wells shall be discontinued upon  
11 construction of the substitute well or wells; (3) the construction of  
12 an additional well or wells shall not enlarge the right conveyed by the  
13 original permit or certificate; and (4) other existing rights shall not  
14 be impaired. The department may specify an approved manner of  
15 construction and shall require a showing of compliance with the terms  
16 of the amendment, as provided in RCW 90.44.080 in the case of an  
17 original permit.

18 Any right represented by an application for a water right for which  
19 a permit for water use has not been issued by the time an amendment is  
20 approved under this section shall not be construed as being impaired by  
21 the amendment.

22 **Sec. 3.** RCW 90.44.030 and 1945 c 263 s 2 are each amended to read  
23 as follows:

24 (1) The rights to appropriate the surface waters of the state and  
25 the rights acquired by the appropriation and use of surface waters  
26 shall not be affected or impaired by any of the provisions of this  
27 supplementary chapter and, to the extent that any underground water is  
28 part of or tributary to the source of any surface stream or lake, or  
29 that the withdrawal of ground water may affect the flow of any spring,  
30 water course, lake, or other body of surface water, the right of an  
31 appropriation and owner of surface water shall be superior to any  
32 subsequent right hereby authorized to be acquired in or to ground  
33 water.

34 (2) Rights acquired by appropriation of surface waters are affected  
35 or impaired by a ground water withdrawal from a confined aquifer only  
36 if:

37 (a) Withdrawal of ground water causes a measurable head reduction  
38 within fifty feet of the surface water body in question in the

1 shallowest unconfined water table aquifer that underlies that surface  
2 water body; or

3 (b) Withdrawal of ground water will cause a measurable reduction in  
4 the flow or level of the surface water body.

5 (3) If any of the conditions in subsection (2) of this section  
6 occur, then withdrawal of ground water affects or impairs existing  
7 surface water rights, including instream flow appropriations adopted by  
8 regulation, that are not being satisfied during the period of the  
9 occurrence.

10 NEW SECTION. Sec. 4. A new section is added to chapter 90.44 RCW  
11 to read as follows:

12 In addition to RCW 90.44.030(1), rights acquired by appropriation  
13 of surface waters are affected or impaired by a ground water withdrawal  
14 from an unconfined aquifer only if after no more than six months  
15 pumping, the surface water will lie within the cone of depression of a  
16 well tapping an unconfined aquifer.

17 **Sec. 5.** RCW 90.44.035 and 1987 c 109 s 107 are each amended to  
18 read as follows:

19 For purposes of this chapter:

20 (1) "Department" means the department of ecology;

21 (2) "Director" means the director of ecology;

22 (3) "Ground waters" means all waters that exist beneath the land  
23 surface or beneath the bed of any stream, lake or reservoir, or other  
24 body of surface water within the boundaries of this state, whatever may  
25 be the geological formation or structure in which such water stands or  
26 flows, percolates or otherwise moves. There is a recognized  
27 distinction between natural ground water and artificially stored ground  
28 water;

29 (4) "Natural ground water" means water that exists in underground  
30 storage owing wholly to natural processes; ((and))

31 (5) "Artificially stored ground water" means water that is made  
32 available in underground storage artificially, either intentionally, or  
33 incidentally to irrigation and that otherwise would have been  
34 dissipated by natural waste;

35 (6) "Confined aquifer" means an aquifer in which ground water is  
36 under sufficient hydrostatic head to rise above the bottom of the  
37 overlying confining bed;

1       (7) "Confining bed" means a layer of low permeability material  
2 immediately overlying a confined aquifer; and

3       (8) "Measurable" means capable of being measured in the field with  
4 the use of equipment normally used by professionals for the measurement  
5 in question.

6       **Sec. 6.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to  
7 read as follows:

8       (1) No permit shall be granted for the development or withdrawal of  
9 public ground waters beyond the capacity of the underground bed or  
10 formation in the given basin, district, or locality to yield such water  
11 within a reasonable or feasible pumping lift in case of pumping  
12 developments, or within a reasonable or feasible reduction of pressure  
13 in the case of artesian developments. The department shall have the  
14 power to determine whether the granting of any such permit will injure  
15 or damage any vested or existing right or rights under prior permits  
16 and may in addition to the records of the department, require further  
17 evidence, proof, and testimony before granting or denying any such  
18 permits.

19       (2) No permit for the development or withdrawal of public ground  
20 waters from a confined aquifer may be denied or conditioned due to  
21 injury to, impairment of, or conflict with an existing surface water  
22 right unless the ground water withdrawal in question will impair the  
23 surface water right pursuant to RCW 90.44.030(2): PROVIDED, That this  
24 section does not affect the ability of the department to limit or  
25 restrict future ground water appropriations by adopting rules after  
26 following the procedures of RCW 90.44.180 or 90.44.400 through  
27 90.44.420 or chapter 90.54 RCW.

28       (3) The department may grant a ground water permit for a withdrawal  
29 that will impair a surface water right if the applicant has proposed a  
30 satisfactory plan for mitigating the impairment. Mitigation may  
31 include, but is not limited to: Reduction in pumping rates, limitation  
32 of pumping to times that will not lead to impairment, increased  
33 recharge of the ground water, and augmentation of stream flows either  
34 through release of stored water or the import of water from out of the  
35 basin.

36       NEW SECTION. **Sec. 7.** A new section is added to chapter 90.03 RCW  
37 to read as follows:

1 (1) The existence of hydraulic continuity between ground water and  
2 a surface body of water does not, in itself, constitute the impairment  
3 of an existing water right in the surface water body by a proposed  
4 permit for a ground water right or an amendment to a ground water  
5 right.

6 (2) In making a determination as to whether an application to  
7 appropriate public water will impair existing rights the department  
8 shall take into consideration:

9 (a) The availability of water and the effect of granting a water  
10 right permit, transfer, change, or amendment are those that exist with  
11 the incorporation of the effects of any offset to be provided by the  
12 applicant under RCW 90.03.255 or 90.44.055 or any other water supply  
13 augmentation or mitigation to be provided by the applicant as part of  
14 his or her application for a water right permit, transfer, change, or  
15 amendment;

16 (b) Seasonal variations in water supply and in the recharge of  
17 surface and ground water bodies; and

18 (c) The provisions of RCW 90.44.030.

19 (3) The standards governing impairment of existing surface water  
20 rights by applications to appropriate public ground water in RCW  
21 90.44.030(2), this subsection, and RCW 90.44.070(2) apply only to the  
22 determinations to be made by the department in ruling upon such  
23 applications, and reflect the uncertainties inherent in making  
24 tentative determinations regarding future impacts of withdrawing ground  
25 water. Any person claiming that a senior water right is injured by one  
26 or more junior water rights may file an action to enjoin the junior  
27 water rights in the superior court of the county where the claimed  
28 senior water right is located. The superior court shall hear such  
29 action de novo, and if it finds by a preponderance of the evidence that  
30 one or more junior water rights is causing or contributing to the  
31 injury of a senior water right, the court may enjoin use of the junior  
32 water rights in reverse order of priority in the manner it deems  
33 necessary to protect the senior water right. This section does not  
34 apply where the claimed senior water right consists of a minimum flow  
35 or level or the closure of a surface water body.

36 NEW SECTION. **Sec. 8.** Any person whose application to appropriate  
37 public ground water was denied by the department of ecology between  
38 November 1, 1995, and the effective date of this section, when one of

1 the grounds for denial was that the proposed ground water withdrawal  
2 would impair, or conflict with, surface water closures or surface water  
3 rights including minimum flows, may have his or her application  
4 reconsidered in accordance with this section. Any such person desiring  
5 reconsideration shall resubmit his or her application to the department  
6 of ecology within thirty days of the effective date of this section.  
7 The department of ecology shall accord any such resubmitted application  
8 its original priority date and shall reconsider the application on a  
9 priority basis, applying the standards of this act. The decision of  
10 the department of ecology may be appealed in the manner provided by law  
11 for appeals of decisions on applications to appropriate public water.

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