
HOUSE BILL 2185

State of Washington

56th Legislature

1999 Regular Session

By Representatives Linville, G. Chandler and Grant

Read first time 02/17/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water rights; amending RCW 90.03.330, 90.03.380,
2 and 90.44.100; and adding new sections to chapter 90.03 RCW.

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

4 **Sec. 1.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
5 as follows:

6 (1) Upon a showing satisfactory to the department that any
7 appropriation has been perfected in accordance with the provisions of
8 this chapter, it shall be the duty of the department to issue to the
9 applicant a certificate stating such facts in a form to be prescribed
10 by ~~((him))~~ the department, and such certificate shall thereupon be
11 recorded with the department. Any original water right certificate
12 issued, as provided by this chapter, shall be recorded with the
13 department and thereafter, at the expense of the party receiving the
14 same, be by the department transmitted to the county auditor of the
15 county or counties where the distributing system or any part thereof is
16 located, and be recorded in the office of such county auditor, and
17 thereafter be transmitted to the owner thereof.

18 (2) Each water right documented by a certificate issued under this
19 chapter or chapter 90.44 RCW or by a claim filed in the state's water

1 rights claims registry under chapter 90.14 RCW is composed of two
2 fundamental parts. One part is the portion of the right that has been
3 beneficially used. The second is the inchoate portion of the right.
4 The inchoate portion of the right may be exercised only as provided in
5 section 2 of this act for water rights held by public water systems for
6 the purposes of public water systems or as provided in section 3 of
7 this act for water rights held by any other person or entity or for any
8 other purpose or use. The sum of these parts for any water right shall
9 not exceed instantaneously or annually the extent of the right stated
10 on the certificate or the extent of the right stated on the statement
11 of claim filed for the right under chapter 90.14 RCW. The priority
12 date for the beneficially used portion of a water right developed by
13 exercising an inchoate portion of the water right under section 2 or 3
14 of this act is the priority date of the original water right.

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

17 The inchoate portion of a water right held by a public water system
18 for public water system purposes as described in RCW 90.03.330(2) may
19 be exercised only as provided in this section.

20 (1) The amount of water diverted or withdrawn for beneficial use
21 under the water right shall not exceed the amount represented by the
22 capacity of the water diversion, withdrawal, or distribution facilities
23 constructed for using the right on the effective date of this section
24 or on the date a certificate is issued for a new right under this
25 chapter or chapter 90.44 RCW, whichever date is later.

26 (2) The population served by the right, the number of service
27 connections, and the amount of water beneficially used under the right
28 may be expanded through the conversion of an inchoate portion of the
29 right to a beneficially used portion of the right within the place of
30 use listed on the certificate or in the statement of claim if the
31 conditions listed in subsection (3) of this section are satisfied.

32 (3) If the place of use of the public water system's water right
33 includes an area that is:

34 (a) Within the boundaries of a critical water supply service area
35 designated under chapter 70.116 RCW for which a coordinated water
36 system plan has been adopted, the public water system shall satisfy
37 requests for service within the area dedicated to service by the system

1 under the plan before use of water under the inchoate portion of the
2 system's water right may be expanded for use elsewhere; or

3 (b) Within the corporate limits of a city or town or within the
4 boundaries of an urban growth area as designated under chapter 36.70A
5 RCW, the first priority for expanding use of water under the inchoate
6 portion of the system's water right shall be, except as provided in (a)
7 of this subsection, use within those limits or boundaries and this
8 priority shall be clearly documented in any water system plan submitted
9 by the public water system for review by the department of health or
10 the plan shall not be approved by the department of health.

11 (4) If a portion of the area governed by a coordinated water system
12 plan or area within a city or town or urban growth area is within the
13 place of use for a public system's water right as described in
14 subsection (3) of this section, any part of the inchoate portion of the
15 system's right may be transferred or changed to use for public water
16 system purposes within any other part of the critical water supply
17 service area or any other area within the corporate boundaries of the
18 city or town or within the urban growth area if all conservation
19 measures in guidelines of the department of health that apply to the
20 distribution systems of public water systems are incorporated into the
21 distribution of the water within such an expanded place of use.

22 Although the transfer or change shall be approved by the department
23 of ecology, the conditions provided by this subsection authorizing the
24 transfer or change are the exclusive tests to be used by the department
25 in approving the transfer or change.

26 (5) Any part of an inchoate portion of a public water system's
27 water right may be converted to a beneficially used portion of the
28 right through the transfer or change of the right to another public
29 water system through the use of an intertie or otherwise and for use
30 for public water system purposes if all conservation measures in
31 guidelines of the department of health that apply to the distribution
32 systems of public water systems are incorporated into the distribution
33 of the water within such an expanded place of use. Such a transfer or
34 change shall be made as provided in RCW 90.03.380, 90.03.383,
35 90.03.390, or 90.44.100.

36 (6) This section shall not be construed as permitting any use of
37 the right in a manner otherwise expressly restricted or prohibited by
38 the provisions or conditions listed on the certificate or in the
39 statement of claim.

1 (7) If the only place of use specified in a water right certificate
2 held by a public water system is the system's service area, the place
3 of use for the certificate for the purposes of this section is the
4 service area identified in the latest water system plan approved before
5 the effective date of this section by the department of health for the
6 public water system.

7 (8) If an inchoate portion of a water right is converted to a
8 beneficially used portion of the water right after the effective date
9 of this section and the holder of the water right is a public water
10 system with one thousand or more service connections, the system and
11 the department shall study the effects of such an action on habitat for
12 fish stocks listed or proposed for listing as threatened or endangered
13 under the federal endangered species act or as critical or depressed in
14 the state's salmon and steelhead stock inventory. The study shall be
15 completed within two years of the action. If the action would
16 adversely impact such habitat, the system shall, within one year of
17 completing the study, develop a plan for mitigating the adverse impacts
18 and for monitoring the effectiveness of the mitigation effort. This
19 subsection does not apply if use of the water right is regulated under
20 a license issued by the federal energy regulatory commission.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
22 to read as follows:

23 The inchoate portion of a water right other than a right to use
24 water for public water system purposes is the portion of the right that
25 becomes available for use by the holder of the water right through the
26 implementation of water distribution and use efficiency measures. Such
27 an inchoate portion of the water right may be transferred or changed to
28 use on other lands owned by the holder of the water right if:

29 (1) The amount of water diverted or withdrawn by the water right
30 holder for beneficial use under the original certificate or statement
31 of claim is not expanded;

32 (2) The water distribution and use efficiency measures employed by
33 the water right holder at such a new place of use are at least as
34 efficient as those employed at the original place of use;

35 (3) The place of use to which the water would be transferred is
36 within one mile of any part of the perimeter of the place of use under
37 the original right.

1 A transfer or change that satisfies the conditions of subsections
2 (1) through (3) of this section is presumed to be in the public
3 interest and is presumed to be neither detrimental nor injurious to
4 existing rights. The burden is on a challenging party or the
5 department to provide evidence that overcomes this presumption.

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

8 If funding for financing water efficiency measures is provided by
9 the state and the measures result in the ability of a water right
10 holder to use the inchoate portion of the holder's water right under
11 section 3 of this act, a portion of the inchoate right made usable
12 shall be transferred to the state trust water right system under
13 chapter 90.38 or 90.42 RCW that is equal to the proportion of the total
14 cost of the measures that is financed with state funding. Any water
15 rights received by the state shall be transferred to the state trust
16 water right system under chapter 90.38 or 90.42 RCW.

17 **Sec. 5.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
18 read as follows:

19 (1) The right to the use of water which has been applied to a
20 beneficial use in the state shall be and remain appurtenant to the land
21 or place upon which the same is used: PROVIDED, HOWEVER, That the
22 right may be transferred to another or to others and become appurtenant
23 to any other land or place of use without loss of priority of right
24 theretofore established if such change can be made without detriment or
25 injury to existing rights. The point of diversion of water for
26 beneficial use or the purpose of use may be changed, if such change can
27 be made without detriment or injury to existing rights. Except as
28 provided in section 3 of this act, a change in the place of use, point
29 of diversion, and/or purpose of use of a water right to enable
30 irrigation of additional acreage or the addition of new uses may be
31 permitted if such change results in no increase in the annual
32 consumptive quantity of water used under the water right. For purposes
33 of this section, "annual consumptive quantity" means the estimated or
34 actual annual amount of water diverted pursuant to the water right,
35 reduced by the estimated annual amount of return flows, averaged over
36 the most recent five-year period of continuous beneficial use of the
37 water right. Before any transfer of such right to use water or change

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

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

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

29 (4) The tests provided by this section for determining whether a
30 transfer or change may be approved by the department are modified as
31 provided in sections 2(4) and 3 of this act for the circumstances
32 governed by sections 2(4) and 3 of this act.

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

36 **Sec. 6.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
37 as follows:

1 (1) After an application to, and upon the issuance by the
2 department of an amendment to the appropriate permit or certificate of
3 ground water right, the holder of a valid right to withdraw public
4 ground waters may, without losing the holder's priority of right,
5 construct wells or other means of withdrawal at a new location in
6 substitution for or in addition to those at the original location, or
7 the holder may change the manner or the place of use of the water.

8 (2) An amendment to construct replacement or a new additional well
9 or wells at a location outside of the location of the original well or
10 wells or to change the manner or place of use of the water shall be
11 issued only after publication of notice of the application and findings
12 as prescribed in the case of an original application. Such amendment
13 shall be issued by the department only on the conditions that: (a) The
14 additional or replacement well or wells shall tap the same body of
15 public ground water as the original well or wells; (b) where a
16 replacement well or wells is approved, the use of the original well or
17 wells shall be discontinued and the original well or wells shall be
18 properly decommissioned as required under chapter 18.104 RCW; (c) where
19 an additional well or wells is constructed, the original well or wells
20 may continue to be used, but the combined total withdrawal from the
21 original and additional well or wells shall not enlarge the right
22 conveyed by the original permit or certificate; and (d) other existing
23 rights shall not be impaired. The department may specify an approved
24 manner of construction and shall require a showing of compliance with
25 the terms of the amendment, as provided in RCW 90.44.080 in the case of
26 an original permit.

27 (3) The construction of a replacement or new additional well or
28 wells at the location of the original well or wells shall be allowed
29 without application to the department for an amendment. However, the
30 following apply to such a replacement or new additional well: (a) The
31 well shall tap the same body of public ground water as the original
32 well or wells; (b) if a replacement well is constructed, the use of the
33 original well or wells shall be discontinued and the original well or
34 wells shall be properly decommissioned as required under chapter 18.104
35 RCW; (c) if a new additional well is constructed, the original well or
36 wells may continue to be used, but the combined total withdrawal from
37 the original and additional well or wells shall not enlarge the right
38 conveyed by the original water use permit or certificate; (d) the
39 construction and use of the well shall not interfere with or impair

1 water rights with an earlier date of priority than the water right or
2 rights for the original well or wells; (e) the replacement or
3 additional well shall be located no closer than the original well to a
4 well it might interfere with; (f) the department may specify an
5 approved manner of construction of the well; and (g) the department
6 shall require a showing of compliance with the conditions of this
7 subsection (3).

8 (4) As used in this section, the "location of the original well or
9 wells" is the area described as the point of withdrawal in the original
10 public notice published for the application for the water right for the
11 well.

12 (5) The tests provided by this section for determining whether a
13 change or amendment may be approved by the department are modified as
14 provided in sections 2(4) and 3 of this act for the circumstances
15 governed by sections 2(4) and 3 of this act.

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