
ENGROSSED HOUSE BILL 1376

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By Representatives Romero, Dickerson, Schoesler, Hunt, Linville, Eickmeyer, Lantz, Wallace and Kenney

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1 AN ACT Relating to exempting the use of certain water storage
2 facilities from the water code permitting requirements; and amending
3 RCW 90.03.250, 90.03.370, 90.03.380, and 90.44.100.

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

5 **Sec. 1.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to read
6 as follows:

7 (1) Any person, municipal corporation, firm, irrigation district,
8 association, corporation, or water users' association hereafter
9 desiring to appropriate water for a beneficial use shall make an
10 application to the department for a permit to make such appropriation,
11 and shall not use or divert such waters until he or she has received a
12 permit from the department as in this chapter provided. The
13 construction of any ditch, canal, or works, or performing any work in
14 connection with said construction or appropriation, or the use of any
15 waters, shall not be an appropriation of such water nor an act for the
16 purpose of appropriating water unless a permit to make said

1 appropriation has first been granted by the department(~~(;—PROVIDED,~~
2 ~~That))~~).

3 (2) A temporary permit may be granted upon a proper showing made to
4 the department to be valid only during the pendency of such application
5 for a permit unless sooner revoked by the department(~~(;—PROVIDED,~~
6 ~~FURTHER, That))~~).

7 (3) Nothing in this chapter (~~(contained)~~) shall be deemed to affect
8 RCW 90.40.010 through 90.40.080 except that the notice and certificate
9 (~~(therein)~~) provided for in RCW 90.40.030 shall be addressed to the
10 department, and the department shall exercise the powers and perform
11 the duties prescribed by RCW 90.40.030.

12 (4) This section does not apply to rain barrels, cisterns, and
13 other similar facilities for capturing runoff from roofs, paved areas,
14 and other hard surfaces on a single residential, commercial, or
15 industrial property or public facility when the:

16 (a) Total amount of water storage does not exceed ten thousand
17 gallons; and

18 (b) Water stored is intended to be put to beneficial use.

19 **Sec. 2.** RCW 90.03.370 and 2002 c 329 s 10 are each amended to read
20 as follows:

21 (1)(a) All applications for reservoir permits are subject to the
22 provisions of RCW 90.03.250 through 90.03.320. But the party or
23 parties proposing to apply to a beneficial use the water stored in any
24 such reservoir shall also file an application for a permit, to be known
25 as the secondary permit, which shall be in compliance with the
26 provisions of RCW 90.03.250 through 90.03.320. Such secondary
27 application shall refer to such reservoir as its source of water supply
28 and shall show documentary evidence that an agreement has been entered
29 into with the owners of the reservoir for a permanent and sufficient
30 interest in said reservoir to impound enough water for the purposes set
31 forth in said application. When the beneficial use has been completed
32 and perfected under the secondary permit, the department shall take the
33 proof of the water users under such permit and the final certificate of
34 appropriation shall refer to both the ditch and works described in the
35 secondary permit and the reservoir described in the primary permit.
36 The department may accept for processing a single application form

1 covering both a proposed reservoir and a proposed secondary permit or
2 permits for use of water from that reservoir.

3 (b) The department shall expedite processing applications for the
4 following types of storage proposals:

5 (i) Development of storage facilities that will not require a new
6 water right for diversion or withdrawal of the water to be stored;

7 (ii) Adding or changing one or more purposes of use of stored
8 water;

9 (iii) Adding to the storage capacity of an existing storage
10 facility; and

11 (iv) Applications for secondary permits to secure use from existing
12 storage facilities.

13 (c) A secondary permit for the beneficial use of water shall not be
14 required for use of water stored in a reservoir where the water right
15 for the source of the stored water authorizes the beneficial use.

16 (2)(a) For the purposes of this section, "reservoir" includes, in
17 addition to any surface reservoir, any naturally occurring underground
18 geological formation where water is collected and stored for subsequent
19 use as part of an underground artificial storage and recovery project.
20 To qualify for issuance of a reservoir permit an underground geological
21 formation must meet standards for review and mitigation of adverse
22 impacts identified, for the following issues:

23 (i) Aquifer vulnerability and hydraulic continuity;

24 (ii) Potential impairment of existing water rights;

25 (iii) Geotechnical impacts and aquifer boundaries and
26 characteristics;

27 (iv) Chemical compatibility of surface waters and ground water;

28 (v) Recharge and recovery treatment requirements;

29 (vi) System operation;

30 (vii) Water rights and ownership of water stored for recovery; and

31 (viii) Environmental impacts.

32 (b) Standards for review and standards for mitigation of adverse
33 impacts for an underground artificial storage and recovery project
34 shall be established by the department by rule. Notwithstanding the
35 provisions of RCW 90.03.250 through 90.03.320, analysis of each
36 underground artificial storage and recovery project and each
37 underground geological formation for which an applicant seeks the

1 status of a reservoir shall be through applicant-initiated studies
2 reviewed by the department.

3 (3) For the purposes of this section, "underground artificial
4 storage and recovery project" means any project in which it is intended
5 to artificially store water in the ground through injection, surface
6 spreading and infiltration, or other department-approved method, and to
7 make subsequent use of the stored water. However, (a) this subsection
8 does not apply to irrigation return flow, or to operational and seepage
9 losses that occur during the irrigation of land, or to water that is
10 artificially stored due to the construction, operation, or maintenance
11 of an irrigation district project, or to projects involving water
12 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130
13 applies to those instances of claimed artificial recharge occurring due
14 to the construction, operation, or maintenance of an irrigation
15 district project or operational and seepage losses that occur during
16 the irrigation of land, as well as other forms of claimed artificial
17 recharge already existing at the time a ground water subarea is
18 established.

19 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of
20 existing law governing issuance of permits to appropriate or withdraw
21 the waters of the state.

22 (5) The department shall report to the legislature by December 31,
23 2001, on the standards for review and standards for mitigation
24 developed under subsection (3) of this section and on the status of any
25 applications that have been filed with the department for underground
26 artificial storage and recovery projects by that date.

27 (6) Where needed to ensure that existing storage capacity is
28 effectively and efficiently used to meet multiple purposes, the
29 department may authorize reservoirs to be filled more than once per
30 year or more than once per season of use.

31 (7) Rain barrels, cisterns, and other similar facilities for
32 capturing runoff from roofs, paved areas, and other hard surfaces on a
33 single residential, commercial, or industrial property or public
34 facility are exempt from the reservoir and secondary permit
35 requirements of this chapter when the:

36 (a) Total amount of water storage does not exceed ten thousand
37 gallons; and

38 (b) Water stored is intended to be put to beneficial use.

1 (8) This section does not apply to facilities to recapture and
2 reuse return flow from irrigation operations serving a single farm
3 under an existing water right as long as the acreage irrigated is not
4 increased beyond the acreage allowed to be irrigated under the water
5 right that applies to the property.

6 (9) In addition to the facilities exempted under subsection (8) of
7 this section, this section does not apply to small irrigation
8 impoundments. For purposes of this subsection, "small irrigation
9 impoundments" means surface storage ponds less than ten acre feet in
10 volume used to impound irrigation water under an existing water right
11 where use of the impoundment: (a)(i) Facilitates efficient use of
12 water; or (ii) promotes compliance with an approved recovery plan for
13 endangered or threatened species; and (b) does not expand the number of
14 acres irrigated or the annual consumptive quantity of water used.
15 Water remaining in a small irrigation impoundment at the end of an
16 irrigation season may be carried over for use in the next season;
17 however, the limitations of this subsection (9) apply to such a carry
18 over. Development and use of a small irrigation impoundment does not
19 constitute a change or amendment for purposes of RCW 90.03.380 or
20 90.44.055.

21 **Sec. 3.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
22 as follows:

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

1 water right, reduced by the estimated annual amount of return flows,
2 averaged over the two years of greatest use within the most recent
3 five-year period of continuous beneficial use of the water right.
4 Before any transfer of such right to use water or change of the point
5 of diversion of water or change of purpose of use can be made, any
6 person having an interest in the transfer or change, shall file a
7 written application therefor with the department, and the application
8 shall not be granted until notice of the application is published as
9 provided in RCW 90.03.280. If it shall appear that such transfer or
10 such change may be made without injury or detriment to existing rights,
11 the department shall issue to the applicant a certificate in duplicate
12 granting the right for such transfer or for such change of point of
13 diversion or of use. The certificate so issued shall be filed and be
14 made a record with the department and the duplicate certificate issued
15 to the applicant may be filed with the county auditor in like manner
16 and with the same effect as provided in the original certificate or
17 permit to divert water.

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

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

33 (4) 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 (5)(a) Pending applications for new water rights are not entitled
37 to protection from impairment, injury, or detriment when an application
38 relating to an existing surface or ground water right is considered.

1 (b) Applications relating to existing surface or ground water
2 rights may be processed and decisions on them rendered independently of
3 processing and rendering decisions on pending applications for new
4 water rights within the same source of supply without regard to the
5 date of filing of the pending applications for new water rights.

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

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

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

26 (7) In revising the provisions of this section and adding
27 provisions to this section by chapter 237, Laws of 2001, the
28 legislature does not intend to imply legislative approval or
29 disapproval of any existing administrative policy regarding, or any
30 existing administrative or judicial interpretation of, the provisions
31 of this section not expressly added or revised.

32 (8) The development and use of a facility described in RCW
33 90.03.370(8) or of a small irrigation impoundment, as defined in RCW
34 90.03.370(9), does not constitute a change or amendment for the
35 purposes of this section.

36 **Sec. 4.** 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

1 construction and use of the well shall not interfere with or impair
2 water rights with an earlier date of priority than the water right or
3 rights for the original well or wells; (e) the replacement or
4 additional well shall be located no closer than the original well to a
5 well it might interfere with; (f) the department may specify an
6 approved manner of construction of the well; and (g) the department
7 shall require a showing of compliance with the conditions of this
8 subsection (3).

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

13 (5) The development and use of a facility described in RCW
14 90.03.370(8) or of a small irrigation impoundment, as defined in RCW
15 90.03.370(9), does not constitute a change or amendment for the
16 purposes of this section.

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