
HOUSE BILL 2104

State of Washington

58th Legislature

2003 Regular Session

By Representatives Grant, Linville and Eickmeyer

Read first time 02/25/2003. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to agricultural use of water; and amending RCW
2 90.03.380.

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

4 **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
5 as follows:

6 (1) The right to the use of water which has been applied to a
7 beneficial use in the state shall be and remain appurtenant to the land
8 or place upon which the same is used: PROVIDED, HOWEVER, That the
9 right may be transferred to another or to others and become appurtenant
10 to any other land or place of use without loss of priority of right
11 theretofore established if such change can be made without detriment or
12 injury to existing rights. The point of diversion of water for
13 beneficial use or the purpose of use may be changed, if such change can
14 be made without detriment or injury to existing rights. A change in
15 the place of use, point of diversion, and/or purpose of use of a water
16 right to enable irrigation of additional acreage or the addition of new
17 uses may be permitted if such change results in no increase in the
18 annual consumptive quantity of water used under the water right. For
19 purposes of this section, "annual consumptive quantity" means the

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

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

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

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

37 (5)(a) Pending applications for new water rights are not entitled

1 to protection from impairment, injury, or detriment when an application
2 relating to an existing surface or ground water right is considered.

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

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

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

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

28 (7)(a) If the conditions specified in (b) of this subsection are
29 satisfied:

30 (i) The holder of a perfected surface or ground water right for any
31 use of water that is within the general category of an agricultural use
32 of water may use the water under the right for any other use within the
33 general category of an agricultural use of water without seeking or
34 securing the approval of the department;

35 (ii) The place of use of a perfected surface or ground water right
36 within the general category of an agricultural use of water is the
37 place of use identified in the original water right, the lands

1 adjoining that place of use, or both the place identified in the
2 original water right and lands adjoining that place of use; and

3 (iii) The time that water may be used under a perfected surface or
4 ground water right within the general category of an agricultural use
5 of water may be altered without the holder of the right seeking or
6 securing the approval of the department as long as the use is within
7 the maximum instantaneous and annual quantities of water limitations
8 established for the original right.

9 (b) The authorities provided by (a) of this subsection apply if:
10 The source of the water for the water right is in a watershed for which
11 a watershed plan has been approved under chapter 90.82 RCW or for which
12 a comprehensive watershed plan has been adopted under RCW 90.54.040(1);
13 instream flows have been established by rule for the watershed; and
14 other water rights are not impaired.

15 (c) The general category of an agricultural use of water is
16 composed of the beneficial uses of water for agricultural irrigation,
17 for processing agricultural commodities, and for activities ancillary
18 to such a use of water.

19 (8) In revising the provisions of this section and adding
20 provisions to this section by chapter 237, Laws of 2001, the
21 legislature does not intend to imply legislative approval or
22 disapproval of any existing administrative policy regarding, or any
23 existing administrative or judicial interpretation of, the provisions
24 of this section not expressly added or revised.

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