
HOUSE BILL 2653

State of Washington

58th Legislature

2004 Regular Session

By Representatives Upthegrove, Simpson, G., Romero, Schual-Berke, Hunt, Nixon, McDermott, Priest and Chase

Read first time 01/19/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to exempting the use of certain water storage
2 facilities, with a capacity not exceeding ten thousand gallons, from
3 the water code permitting requirements; and amending RCW 90.03.250 and
4 90.03.370.

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

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

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

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

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

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

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

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

17 **Sec. 2.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read
18 as follows:

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

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

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

5 (ii) Adding or changing one or more purposes of use of stored
6 water;

7 (iii) Adding to the storage capacity of an existing storage
8 facility; and

9 (iv) Applications for secondary permits to secure use from existing
10 storage facilities.

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

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

21 (i) Aquifer vulnerability and hydraulic continuity;

22 (ii) Potential impairment of existing water rights;

23 (iii) Geotechnical impacts and aquifer boundaries and
24 characteristics;

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

26 (v) Recharge and recovery treatment requirements;

27 (vi) System operation;

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

29 (viii) Environmental impacts.

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

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

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

20 (5) The department shall report to the legislature by December 31,
21 2001, on the standards for review and standards for mitigation
22 developed under subsection (3) of this section and on the status of any
23 applications that have been filed with the department for underground
24 artificial storage and recovery projects by that date.

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

29 (7) This section does not apply to facilities to recapture and
30 reuse return flow from irrigation operations serving a single farm
31 under an existing water right as long as the acreage irrigated is not
32 increased beyond the acreage allowed to be irrigated under the water
33 right.

34 (8) In addition to the facilities exempted under subsection (7) of
35 this section, this section does not apply to small irrigation
36 impoundments. For purposes of this section, "small irrigation
37 impoundments" means lined surface storage ponds less than ten acre feet
38 in volume used to impound irrigation water under an existing water

1 right where use of the impoundment: (a)(i) Facilitates efficient use
2 of water; or (ii) promotes compliance with an approved recovery plan
3 for endangered or threatened species; and (b) does not expand the
4 number of acres irrigated or the annual consumptive quantity of water
5 used. Such ponds must be lined unless a licensed engineer determines
6 that a liner is not needed to retain water in the pond and to prevent
7 ground water contamination. Although it may also be composed of other
8 materials, a properly maintained liner may be composed of bentonite.
9 Water remaining in a small irrigation impoundment at the end of an
10 irrigation season may be carried over for use in the next season.
11 However, the limitations of this subsection (8) apply. Development and
12 use of a small irrigation impoundment does not constitute a change or
13 amendment for purposes of RCW 90.03.380 or 90.44.055.

14 (9) Rain barrels, cisterns, and other similar facilities for
15 capturing runoff from roofs, paved areas, and other hard surfaces on a
16 single residential, commercial, or industrial property or public
17 facility are exempt from the reservoir and secondary permit
18 requirements of this chapter when the:

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

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

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