
HOUSE BILL 3033

State of Washington

58th Legislature

2004 Regular Session

By Representatives Chandler, Grant, Schoesler and Armstrong

Read first time 01/26/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the agricultural use of water; amending RCW
2 90.03.380; adding new sections to chapter 90.44 RCW; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

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

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

35 (8) The development and use of a small irrigation impoundment, as
36 defined in RCW 90.03.370(8), does not constitute a change or amendment
37 for the purposes of this section. The exemption expressly provided by

1 this subsection shall not be construed as requiring a change or
2 transfer of any existing water right to enable the holder of the right
3 to store water governed by the right.

4 (9) Notwithstanding any other provision of this section or RCW
5 90.44.100, a water right to use surface or ground water that has been
6 applied to any beneficial use within the general category of an
7 agricultural use may be changed to another agricultural use, within the
8 other limitations of the water right, under the following conditions:

9 (a) A change in the type of crop irrigated or from one agricultural
10 use to another agricultural use that does not involve a change in the
11 season of use of the water may be made without applying to the
12 department or any other governmental entity for approval;

13 (b) A change from one agricultural use to another agricultural use
14 that involves a change in the season of use of water may be made after
15 providing notice and opportunity for review to the department as
16 described in this subsection.

17 For these changes, the water right holder shall give written notice
18 to the department describing the proposed change and providing evidence
19 of beneficial use of the right. The water right holder may proceed
20 with the change unless the department notifies the water right holder
21 within twenty calendar days that the proposed change raises concerns
22 regarding potential impairment to other existing water rights. The
23 director may extend the twenty-day period by an additional fifteen
24 calendar days if notice is provided to the water right holder within
25 the twenty-day period and the water right holder consents.

26 The department shall operate under a rebuttable presumption of no
27 impairment of other water rights if the season of use is proposed to be
28 changed from a period that is more critical for other water rights and
29 stream flows to a period that is less critical. If the department
30 determines that the proposed change raises concerns regarding
31 impairment to other water rights, the proposed change may not proceed
32 under this subsection;

33 (c) The department's determination under (b) of this subsection is
34 not appealable. For a change that is not allowed under (b) of this
35 subsection, the water right holder may subsequently apply for a change
36 in right under subsection (1) or (2) of this section or RCW 90.03.390
37 or 90.44.100, in which case the department shall make a full and normal
38 determination and render an appealable decision under those statutes.

1 In making such a decision, the department is not bound by its earlier
2 determination and the earlier determination may not result in a
3 presumption of impairment of any water right; and

4 (d) The general category of an agricultural use of water under this
5 subsection (9) is composed of, but not limited to, the beneficial uses
6 of water for agricultural irrigation; frost protection; watering
7 livestock; processing agricultural commodities; dust suppression;
8 cleaning of agricultural animals, equipment, and facilities; and
9 confined animal feeding operations with applicable land use and water
10 quality permits.

11 NEW SECTION. Sec. 2. A new section is added to chapter 90.44 RCW
12 to read as follows:

13 Any withdrawal of water for stock watering purposes begun before
14 the effective date of this section that is not otherwise embodied in a
15 water right permit, certificate, or claim shall be deemed a water right
16 in good standing and shall receive an agricultural water permit under
17 this chapter if:

18 (1) The use of water exceeding the five thousand gallons per day as
19 a daily average over the period of a year is filed by the water user
20 with the department by July 1, 2006, and the filing is accompanied by
21 proof of beneficial water use based on meter records, livestock
22 numbers, or other appropriate means of demonstrating water use at the
23 time of filing;

24 (2) The water used under a filing made under subsection (1) of this
25 section does not exceed the quantity or rate listed in a permit granted
26 under the provisions of this section; and

27 (3) The water use remains as an agricultural use, as defined in RCW
28 90.03.380(9)(d).

29 NEW SECTION. Sec. 3. A new section is added to chapter 90.44 RCW
30 to read as follows:

31 (1) The stock water account is created in the custody of the state
32 treasurer. Money in the account may only be used by the department to
33 acquire, lease, or otherwise provide water for stock watering purposes
34 in water resource inventory areas where local economics and the cost of
35 water do not allow agricultural interests to compete with other
36 interests for the purchase or lease of water rights. Water rights that

1 are acquired by the department under this subsection must be held in
2 the state trust water rights program pursuant to chapter 90.42 RCW
3 until it is leased for stock watering purposes.

4 In instances where the further diversion or withdrawal of water for
5 stock watering purposes cannot be accomplished without significant
6 instream flow impacts, the department may allocate funds to purchase or
7 lease water rights that will benefit instream flow needs and provide
8 for stock watering purposes.

9 (2) Revenue derived from the lease of waters under subsection (1)
10 of this section must be placed into the account. The department shall
11 seek federal and local funds to augment state funding for the account.

12 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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