
SUBSTITUTE SENATE BILL 5575

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Parlette, Morton, Doumit, Honeyford and Hale)

READ FIRST TIME 02/14/03.

1 AN ACT Relating to small irrigation impoundments; and amending RCW
2 90.03.370, 90.03.380, and 90.44.100.

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

4 **Sec. 1.** RCW 90.03.370 and 2002 c 329 s 10 are each amended to read
5 as follows:

6 (1)(a) All applications for reservoir permits are subject to the
7 provisions of RCW 90.03.250 through 90.03.320. But the party or
8 parties proposing to apply to a beneficial use the water stored in any
9 such reservoir shall also file an application for a permit, to be known
10 as the secondary permit, which shall be in compliance with the
11 provisions of RCW 90.03.250 through 90.03.320. Such secondary
12 application shall refer to such reservoir as its source of water supply
13 and shall show documentary evidence that an agreement has been entered
14 into with the owners of the reservoir for a permanent and sufficient
15 interest in said reservoir to impound enough water for the purposes set
16 forth in said application. When the beneficial use has been completed
17 and perfected under the secondary permit, the department shall take the
18 proof of the water users under such permit and the final certificate of
19 appropriation shall refer to both the ditch and works described in the

1 secondary permit and the reservoir described in the primary permit.
2 The department may accept for processing a single application form
3 covering both a proposed reservoir and a proposed secondary permit or
4 permits for use of water from that reservoir.

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

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

9 (ii) Adding or changing one or more purposes of use of stored
10 water;

11 (iii) Adding to the storage capacity of an existing storage
12 facility; and

13 (iv) Applications for secondary permits to secure use from existing
14 storage facilities.

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

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

25 (i) Aquifer vulnerability and hydraulic continuity;

26 (ii) Potential impairment of existing water rights;

27 (iii) Geotechnical impacts and aquifer boundaries and
28 characteristics;

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

30 (v) Recharge and recovery treatment requirements;

31 (vi) System operation;

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

33 (viii) Environmental impacts.

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

1 underground geological formation for which an applicant seeks the
2 status of a reservoir shall be through applicant-initiated studies
3 reviewed by the department.

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

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

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

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

32 (7) This section does not apply to small irrigation impoundments.
33 For purposes of this section, "small irrigation impoundments" means
34 lined surface storage ponds less than ten acre feet in volume used to
35 impound irrigation water under an existing water right where use of the
36 impoundment: (a)(i) Facilitates efficient use of water; or (ii)
37 promotes compliance with an approved recovery plan for endangered or
38 threatened species; and (b) does not expand the number of acres

1 irrigated or the annual consumptive quantity of water used. Water
2 remaining in a small irrigation impoundment at the end of an irrigation
3 season may be carried over for use in the next season. However, the
4 limitations of this subsection (7) apply. Development and use of a
5 small irrigation impoundment does not constitute a change or amendment
6 for purposes of RCW 90.03.380 or 90.44.055.

7 **Sec. 2.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
8 as follows:

9 (1) The right to the use of water which has been applied to a
10 beneficial use in the state shall be and remain appurtenant to the land
11 or place upon which the same is used: PROVIDED, HOWEVER, That the
12 right may be transferred to another or to others and become appurtenant
13 to any other land or place of use without loss of priority of right
14 theretofore established if such change can be made without detriment or
15 injury to existing rights. The point of diversion of water for
16 beneficial use or the purpose of use may be changed, if such change can
17 be made without detriment or injury to existing rights. A change in
18 the place of use, point of diversion, and/or purpose of use of a water
19 right to enable irrigation of additional acreage or the addition of new
20 uses may be permitted if such change results in no increase in the
21 annual consumptive quantity of water used under the water right. For
22 purposes of this section, "annual consumptive quantity" means the
23 estimated or actual annual amount of water diverted pursuant to the
24 water right, reduced by the estimated annual amount of return flows,
25 averaged over the two years of greatest use within the most recent
26 five-year period of continuous beneficial use of the water right.
27 Before any transfer of such right to use water or change of the point
28 of diversion of water or change of purpose of use can be made, any
29 person having an interest in the transfer or change, shall file a
30 written application therefor with the department, and the application
31 shall not be granted until notice of the application is published as
32 provided in RCW 90.03.280. If it shall appear that such transfer or
33 such change may be made without injury or detriment to existing rights,
34 the department shall issue to the applicant a certificate in duplicate
35 granting the right for such transfer or for such change of point of
36 diversion or of use. The certificate so issued shall be filed and be
37 made a record with the department and the duplicate certificate issued

1 to the applicant may be filed with the county auditor in like manner
2 and with the same effect as provided in the original certificate or
3 permit to divert water.

4 (2) If an application for change proposes to transfer water rights
5 from one irrigation district to another, the department shall, before
6 publication of notice, receive concurrence from each of the irrigation
7 districts that such transfer or change will not adversely affect the
8 ability to deliver water to other landowners or impair the financial
9 integrity of either of the districts.

10 (3) A change in place of use by an individual water user or users
11 of water provided by an irrigation district need only receive approval
12 for the change from the board of directors of the district if the use
13 of water continues within the irrigation district, and when water is
14 provided by an irrigation entity that is a member of a board of joint
15 control created under chapter 87.80 RCW, approval need only be received
16 from the board of joint control if the use of water continues within
17 the area of jurisdiction of the joint board and the change can be made
18 without detriment or injury to existing rights.

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

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

25 (b) Applications relating to existing surface or ground water
26 rights may be processed and decisions on them rendered independently of
27 processing and rendering decisions on pending applications for new
28 water rights within the same source of supply without regard to the
29 date of filing of the pending applications for new water rights.

30 (c) Notwithstanding any other existing authority to process
31 applications, including but not limited to the authority to process
32 applications under WAC 173-152-050 as it existed on January 1, 2001, an
33 application relating to an existing surface or ground water right may
34 be processed ahead of a previously filed application relating to an
35 existing right when sufficient information for a decision on the
36 previously filed application is not available and the applicant for the
37 previously filed application is sent written notice that explains what
38 information is not available and informs the applicant that processing

1 of the next application will begin. The previously filed application
2 does not lose its priority date and if the information is provided by
3 the applicant within sixty days, the previously filed application shall
4 be processed at that time. This subsection (5)(c) does not affect any
5 other existing authority to process applications.

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

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

12 (7) In revising the provisions of this section and adding
13 provisions to this section by chapter 237, Laws of 2001, the
14 legislature does not intend to imply legislative approval or
15 disapproval of any existing administrative policy regarding, or any
16 existing administrative or judicial interpretation of, the provisions
17 of this section not expressly added or revised.

18 (8) The development and use of a small irrigation impoundment, as
19 defined in RCW 90.03.370(7), does not constitute a change or amendment
20 for the purposes of this section.

21 **Sec. 3.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
22 as follows:

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

30 (2) An amendment to construct replacement or a new additional well
31 or wells at a location outside of the location of the original well or
32 wells or to change the manner or place of use of the water shall be
33 issued only after publication of notice of the application and findings
34 as prescribed in the case of an original application. Such amendment
35 shall be issued by the department only on the conditions that: (a) The
36 additional or replacement well or wells shall tap the same body of
37 public ground water as the original well or wells; (b) where a

1 replacement well or wells is approved, the use of the original well or
2 wells shall be discontinued and the original well or wells shall be
3 properly decommissioned as required under chapter 18.104 RCW; (c) where
4 an additional well or wells is constructed, the original well or wells
5 may continue to be used, but the combined total withdrawal from the
6 original and additional well or wells shall not enlarge the right
7 conveyed by the original permit or certificate; and (d) other existing
8 rights shall not be impaired. The department may specify an approved
9 manner of construction and shall require a showing of compliance with
10 the terms of the amendment, as provided in RCW 90.44.080 in the case of
11 an original permit.

12 (3) The construction of a replacement or new additional well or
13 wells at the location of the original well or wells shall be allowed
14 without application to the department for an amendment. However, the
15 following apply to such a replacement or new additional well: (a) The
16 well shall tap the same body of public ground water as the original
17 well or wells; (b) if a replacement well is constructed, the use of the
18 original well or wells shall be discontinued and the original well or
19 wells shall be properly decommissioned as required under chapter 18.104
20 RCW; (c) if a new additional well is constructed, the original well or
21 wells may continue to be used, but the combined total withdrawal from
22 the original and additional well or wells shall not enlarge the right
23 conveyed by the original water use permit or certificate; (d) the
24 construction and use of the well shall not interfere with or impair
25 water rights with an earlier date of priority than the water right or
26 rights for the original well or wells; (e) the replacement or
27 additional well shall be located no closer than the original well to a
28 well it might interfere with; (f) the department may specify an
29 approved manner of construction of the well; and (g) the department
30 shall require a showing of compliance with the conditions of this
31 subsection (3).

32 (4) As used in this section, the "location of the original well or
33 wells" is the area described as the point of withdrawal in the original
34 public notice published for the application for the water right for the
35 well.

36 (5) The development and use of a small irrigation impoundment, as

1 defined in RCW 90.03.370(7), does not constitute a change or amendment
2 for the purposes of this section.

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