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SENATE BILL 5575

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State of Washington

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By Senators Parlette, Morton, Doumit, Honeyford and Hale

Read first time 01/30/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to small irrigation impoundments; and amending RCW  
2 90.03.370, 90.03.380, and 90.44.055.

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 a seasonal water right, permit,  
36 contract, shareholder right, or other entitlement, where use of the  
37 impoundment: (a)(i) Facilitates efficient use of water; or (ii)  
38 promotes compliance with an approved recovery plan for endangered or

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

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

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

1 made a record with the department and the duplicate certificate issued  
2 to the applicant may be filed with the county auditor in like manner  
3 and with the same effect as provided in the original certificate or  
4 permit to divert water.

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

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

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

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

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

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

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

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

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

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

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

22 **Sec. 3.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to read  
23 as follows:

24 The department shall, when evaluating an application for a water  
25 right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100 that  
26 includes provision for any water impoundment or other resource  
27 management technique, take into consideration the benefits and costs,  
28 including environmental effects, of any water impoundment or other  
29 resource management technique that is included as a component of the  
30 application. The department's consideration shall extend to any  
31 increased water supply that results from the impoundment or other  
32 resource management technique, including but not limited to any  
33 recharge of ground water that may occur, as a means of making water  
34 available or otherwise offsetting the impact of the withdrawal of  
35 ground water proposed in the application for the water right or  
36 amendment in the same water resource inventory area. Provision for an  
37 impoundment or other resource management technique in an application

1 shall be made solely at the discretion of the applicant and shall not  
2 be made by the department as a condition for approving an application  
3 that does not include such provision.

4 This section does not lessen, enlarge, or modify the rights of any  
5 riparian owner, or any existing water right acquired by appropriation  
6 or otherwise.

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

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